Bond Case Briefs

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Houston's $3 Billion of Debt Cut by Moody's After Oil Drop.

Houston’s $3 billion of general-obligation debt was cut one level by Moody’s Investors Service, which cited weakening economic performance due to lower oil prices, the city’s pensions obligations and restrictions on raising taxes.

The fourth largest U.S. city was downgraded to Aa3, Moody’s fourth-highest level, and remains on watch for additional cuts, the rating company said Wednesday.

“The negative outlook reflects the recent weakness in economic and sales tax performance, fueled by energy companies’ reduced investments in personnel and capital, as oil prices have remained low,” Moody’s said in a release.

The lowered ratings could lead to higher costs when the city borrows in the municipal-bond market. The rating cut came ahead of the planned sale of $600 million of bonds this month to refinance debt.

Moody’s recognized “positive actions” taken by Mayor Sylvester Turner, who took office this year, to curb the city’s costs and generate new revenue over the next two years.

“I am continuing discussions with various stakeholders on a plan to solve the city’s outstanding pension obligations,” Turner said in a statement. “The refinancing will still yield considerable savings. I remain confident that the steps we are taking today will create fiscal stability for the city tomorrow.”

Bloomberg Business

by Darrell Preston

March 16, 2016 — 4:12 PM PDT Updated on March 17, 2016 — 5:42 AM PDT

Not Yet. AllianceBernstein Preaches Patience on Puerto Rico Debt.

Just wait, high-yield investors. That’s the message from AllianceBernstein Holding LP on whether Puerto Rico securities offer a buying opportunity now.

While traditional municipal-bond investors need to hold off on purchasing commonwealth debt, buyers of riskier tax-exempt debt should wait for a potential opening, Guy Davidson, director of municipal-fixed income in New York at AllianceBernstein, which oversees about $32 billion of state and local debt, wrote in an online posting Tuesday.

“A year ago, many people asked us if Puerto Rico’s debt was a good investment. Our answer now, as it was then, is ‘no,’” Davidson wrote. “For investors with strategies that can include high yield, it’s ‘not yet.’ Puerto Rico has the same problem today that we warned of then: too much debt, especially for an economy that continues to contract.”

Puerto Rico and its agencies owe $70 billion after years of borrowing to solve budget shortfalls. Governor Alejandro Garcia Padilla is seeking to cut that amount by asking investors to accept losses on their holdings after announcing in June that the island was unable to repay all of its obligations. Two commonwealth agencies have defaulted and more payment failures may follow. The Government Development Bank owes investors $422 million on May 1. The island owes another $2 billion of principal and interest on July 1.

Puerto Rico securities have been trading at distressed levels for more than two years. A commonwealth general-obligation bond with an 8 percent coupon and maturing 2035, the island's most-actively traded security, changed hands Tuesday at an average 70 cents on the dollar, down from its original price of 93 cents, according to data compiled by Bloomberg. The average yield was 12 percent.

Commonwealth municipalities are unable to file for bankruptcy protection, as Detroit did. Puerto Rico officials are asking Congress to give the island broad restructuring powers as the debt is held by investors with different business strategies, including mutual-fund firms that purchased the debt at par and distressed-debt buyers who bought the securities at a discount. The island needs a legal map to fix its debt crisis, Davidson wrote.

"We believe that a legal framework would create a process for an orderly restructuring of Puerto Rico's debt," Davidson wrote. "It's an approach that would benefit both investors in Puerto Rico bonds and the citizens of Puerto Rico."

Bloomberg Business

by Michelle Kaske

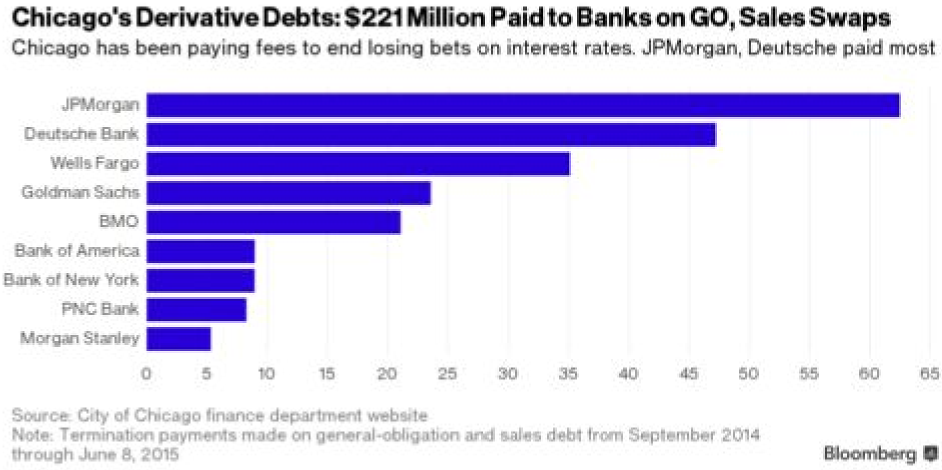
March 16, 2016 — 8:34 AM PDT

Chicago Settling $390 Million Tab When City Can Least Afford It.

Chicago taxpayers, already reeling from a financially strapped school system and mounting pension costs, are looking at a final tab of about $390 million to end ill-timed bets on interest rates.

The city council on Wednesday authorized issuing as much as $200 million of bonds to help pay termination fees, estimated at $100 million, to unwind derivative contracts linked to its water debt, the last of the city's interest-rate swaps. Chicago has already paid about $290 million to exit other swaps, according to city documents. In May, Moody's Investors Service lowered its rating to speculative grade, increasing pressure on the city to restructure the debt.

Chicago and other municipal borrowers made wagers on the future direction of rates using agreements with banks to swap payments in a gamble to squeeze out additional savings. The strategy backfired when the Federal Reserve lowered rates in an attempt to stimulate the economy in the wake of the financial crisis. The result: issuers have paid billions to unravel those agreements.



The swaps "were intended to be defensive in some ways, reduce interest costs, and they've been anything but that," said Richard Ciccarone, the president of Merritt Research Services, which tracks municipal finance. "They've been very costly to the city."

The deals were agreements to trade interest payments based on variable-rate debt and intended to reduce losses for municipalities when interest rates rose. Instead, the Fed kept rates near historic lows, and governments had to pay the market value to break the contracts. To compound the pain, interest rates have declined this year even after the central bank boosted its target rate in December for the first time in almost a decade.

In April, Mayor Rahm Emanuel announced a plan to end the city's interest-rate swaps and convert its variable-rate debt to fixed rate. Less than a month later, Moody's dropped Chicago's rating to Ba1, one step below junk, accelerating the strain on the city by giving banks the right to require it to repay debt early or pay fees to break swap contracts.

Lowest Rated

"We are not out of the woods," Emanuel told reporters at City Hall on Wednesday. "This is another additional step in righting the ship, fixing the fiscal conditions of the city, and making our health of our fiscal picture stronger."

Chicago is the lowest-rated big city in the nation, with the exception of Detroit. Its finances deteriorated as its pension shortfall deepened, reaching $20 billion. That's more than $7,000 per resident. In October, Emanuel made some progress when he pushed through a $543 million property-tax hike, the biggest in city history. Its proceeds will bolster public safety worker pensions. The city's public schools are also grappling with pension debt. The cash-strapped system owes another $676 million to its retirement fund by June 30, and the junk-rated district's deficit is projected to reach $1 billion a year through 2020.

The city has exited all of its interest-rate swaps tied to general-obligation, sales and waste-water debt. Chicago is using the approved borrowing to get out of the water derivatives. There was no public discussion during Wednesday's meeting before aldermen approved issuing the bonds.

"While it's an important step as the city moves forward on refinancing its variable-rate debt and getting out from underneath these swaps, it was disappointing that there weren't more questions over the details that would have reflected a better understanding by the city council members as to what the full cost of the program will be, how it will be impacting them in the future, and how this information will be used going forward to avoid this same cost," said Laurence Msall, president of

Civic Federation, which tracks the city's finances.

Necessary Step

While the council's finance committee approved the $200 million deal in January, a full vote got delayed after some members asked for more time to review the issuance. Scott Waguespack, one of the alderman who had asked the administration for more information, agreed that the issuance should move forward after he met with the mayor's staff and finance department. The deal was originally scheduled to price in the first quarter. The city expects the borrowing "in the coming months," according to Molly Poppe, a city spokeswoman.

"There's a little bit of assurance there that the amount of the payoff is not exorbitant," Waguespack said. "We're kind of resigned to relying on what the market is doing for making the payment."

Exiting the swaps is necessary to ensure long-term stability of the water system, said Dennis Derby, an analyst and portfolio manager at Wells Fargo Asset Management, which holds Chicago general obligations and water debt among its $39 billion in assets. The city's water system's security is "fairly strong," he said.

"We look at it from an operating standpoint as certainly a stronger credit than they had been in the past," said Derby, who is based in Menomonee Falls, Wisconsin. "In order to have a strong credit operationally, they need to remove that swap termination risk, which is I think a prudent thing to do."

Bloomberg Business

by Elizabeth Campbell

March 17, 2016 — 2:00 AM PDT Updated on March 17, 2016 — 7:59 AM PDT

[Buyers Sing Blues After Memphis Bond Default Goes Unrecognized.]

Early last month, a ministry that owns two dilapidated apartment complexes in Memphis said the federal government cut off rental subsidies used to repay $12 million of bonds, triggering a default that would cause the price of the securities to tumble by as much as 81 percent.

Apparently, not all investors got word of the debacle. Seven days after the apartments' owner, Global Ministries Foundation, made the disclosure, the tax-exempt debt was still sold in lots of $25,000 and $50,000 to buyers for as much as 110 cents on the dollar. Within days, they saw the value of their bonds plummet to as little as 21 cents.

"It's odd that the price didn't adjust more quickly," said Richard Ryffel, a former municipal-bond banker at Bank of America Corp. who teaches finance at Washington University's Olin Business School in St. Louis. "Why would they have bought at that price?"

The trades show that small-time investors, who are the biggest holders of state and local debt, may still not be receiving key information when they buy bonds, despite regulators' years-long effort to inject more transparency into one of Wall Street's most opaque niches.

It wasn't until 2005 that investors could even access real-time prices to see whether they were being overcharged when trading in the $3.7 trillion market, where more than 50,000 borrowers have issued over a million securities. In 2009, the Municipal Securities Rulemaking Board, the industry's regulator, created its EMMA system, the first comprehensive, publicly accessible website where issuers report information that could affect the value of their bonds. Yet many investors don't know the records are available or rely on brokers to disclose the risks.

MSRB rule G-47 prohibits dealers from purchasing or selling municipal bonds for a customer without disclosing orally or in writing "all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market." MSRB rules also require that brokers take into account all the factors about the value of the security and charge "fair and reasonable" prices.

"We have what we think are very significant safeguards for retail investors," said MSRB Executive Director Lynnette Kelly, when asked about the Memphis bonds. "We can't opine on whether there's been a rule violation or not. Obviously the enforcement agencies have access to all of this trade information."

The MSRB, whose board includes representatives from securities firms, writes the rules but doesn't enforce them. That's left up to the Securities and Exchange Commission and the Financial Industry Regulatory Authority. SEC spokesman John Nester and Finra spokesman Ray Pellecchia declined to comment.

It's uncertain whether any brokers ran afoul of the rules when trading the housing bonds, which the Cordova, Tennessee-based non-profit ministry sold through a Memphis authority in 2011 to raise money to purchase the apartments. The identities of those buying and selling the bonds isn't publicly disclosed.

Trickling Out

On February 12, Global Ministries posted on the MSRB's website a letter from the U.S. Department of Housing and Urban Development saying that the federal agency was terminating rental assistance because of the decrepit conditions. A letter from the trustee, Bank of New York Mellon Corp., said the loss of federal funds caused a default under the bond contract.

The securities didn't trade again until Feb. 18, when a customer purchased $50,000 of them for 110.67 cents on the dollar.

The price held up the following day, with $25,000 worth changing hands for 110 cents at 9:26 a.m. New York time. Not long before 1 p.m., Standard & Poor's cut the rating on the bonds by ten steps to CCC+, seven ranks below investment grade, saying HUD's action will lead to operating losses and, eventually, a payment default within the next two years unless the apartments can be sold for enough to retire the debt.

Prices on the bonds fell to an average of 64 cents on Feb. 22, the next trading day. By the end of the week, they hit a low of 21 cents.

Ryffel, the former banker, said he doubts the buyers were intentionally left in the dark.

"I don't think a broker-dealer would lightly skirt making lawfully required disclosure," said Ryffel. "Any dealer in the know about these bonds would say the last thing I want to do is fail to disclose when there's hair all over the deal."

Bloomberg Business

by Martin Z Braun

March 17, 2016 — 9:05 PM PDT Updated on March 18, 2016 — 5:06 AM PDT

[Arizona Has a Plan to Get Revenge on Its Pro-Worker Cities.]

Inspired by decisions in cities like Tacoma, Wash., and Elizabeth, N.J., to require companies to offer paid sick leave, Lauren Kuby, a City Council member in Tempe, Ariz., began pushing a year ago for her city to do the same. By September, Kuby had secured enough support from her colleagues to have the city formally explore the issue. “I really took seriously Obama’s call to take local action,” says Kuby. “I saw cities as the place to make a difference.”

Then Kuby and her colleagues heard that Arizona’s Republican-controlled state legislature was considering punishing cities that tried to set their own codes for worker benefits. Arizona’s House passed a bill on March 1 specifying that cities aren’t allowed to require private employers to provide paid sick leave or vacation. The state Senate has passed companion legislation that would cut state funds, used to pay for services like police and firefighting, for cities that try to supersede state laws. “They actually decided to dissolve our study group because they were so chilled by the state threat,” says Kuby.

Lawmakers in Phoenix, Arizona’s capital, say they were inspired to act after the state’s Republican Governor, Doug Ducey, called in his January State of the State address for cities “to put the brakes on ill-advised plans to create a patchwork of different wage and employment laws.” He vowed to do everything in his power to block them, “up to and including changing the distribution of state-shared revenue.” (Arizona municipalities are prohibited from collecting income taxes and rely on distributions from state coffers.)

Cities “think that they’re an independent and sovereign entity from the state, which is not true—they’re a creature of the state,” says Arizona Senate President Andy Biggs, who spearheaded one of the bills. “You can’t put a municipality in jail, nor would we. What we’re really seeking to do is provide a deterrent effect.”

Arizona is one of several states where legislators have moved to stop local officials from trying to pass minimum wage increases or paid leave policies that have no chance in the statehouse. In Alabama, state lawmakers invalidated a Birmingham minimum wage increase to $10.10, from $7.25, in February by passing a law denying cities such authority. Idaho’s legislature passed a similar law in March.

Paid sick leave supporters scored their first win in San Francisco in 2006. Twenty-three cities and five states have enacted sick leave since, most recently on March 9 in Vermont. But such laws have been squashed in Republican-dominated states. Milwaukee voters passed a paid-leave law by referendum in 2008. Following a strategy previously used to block local regulations on smoking or guns, Wisconsin Governor Scott Walker invalidated it in 2011. “Most of us hadn’t paid attention to what had happened in the tobacco world and in the gun world,” says Ellen Bravo, executive director of the nonprofit advocacy group Family Values @ Work. “We should have paid attention in Milwaukee.”

Restaurant owners have led the opposition to city sick-leave ordinances in Arizona. “We just ask that they have the ability to choose what regulations are put on their business,” says Arizona Restaurant Association lobbyist Chianne Hewer. “At the state level, while it’s still crazy there as well, you’re able to have one discussion."

The current fracas is the latest round in a two-decade tug of war between Arizona's cities and its legislature over labor rules. Legislators first banned cities from passing their own minimum wage increases in 1997. Voters overrode that law with a 2006 referendum authorizing cities to pass minimum wage and benefits laws of their own. Legislators passed another law in 2013 banning cities from regulating wages and employee benefits, which activists successfully challenged in court, citing the 2006 referendum.

If legislators' latest proposals become law, Democrats including Phoenix Mayor Greg Stanton are already promising more lawsuits. "My message to members of the legislature that do want to micromanage cities and to preempt cities on ordinances and laws that reflect the values of our community," he says, "is, if you really feel that strongly, run for mayor. It's a great job."

The bottom line: *Arizona cities that raise wages or mandate sick pay would lose state funding under legislation being considered by state lawmakers.*

Bloomberg Businessweek

by Josh Eidelson

March 15, 2016 — 5:00 AM PDT Updated on March 15, 2016 — 8:26 AM PDT

Commentary: Why the Municipal Market Is Going to Need Defending.

The next five years are going to be critical for municipal finance, as surely as default follows distress.

All of a sudden, everyone is eager to defend tax exemption and the municipal market. Hundreds of local officials signed a letter drafted by the National Association of State Treasurers advising the federal government to keep its hands off. In Congress, two House members are starting a bipartisan municipal finance caucus to do much the same thing.

This is good news for all those who think states and municipalities are best served by being able to borrow whenever they feel like it, without having to apply to a higher authority for permission.

It's also a good thing because, boy, is municipal finance going to need defending.

Let me boil this down before I boil over. Every time the municipal market has produced an Event, federal regulators and would-be overlords have reacted with astonishment, outrage, scrutiny, and new rules. As they should; their primary mission is to protect investors.

Consider the rise of the Memphis "Bond Daddies" in the late 1960s and the New York City financial crisis of 1975. The result: the creation of the Municipal Securities Rulemaking Board.

Then there was the Washington Public Power Supply System default in 1983 and the Orange County bankruptcy in 1994. Each produced You've Got To Be Kidding Me moments, lengthy analyses, and new rules.

Since then we've had a steady stream of Events: the deliberate mis-pricing of bonds and swaps called "yield-burning," the Jefferson County and Detroit bankruptcies, and the trashing (by certain parties) of the General Obligation pledge.

What is going to differentiate this year from the past is the possibility of multiple events. There's Puerto Rico at $70 billion in bonded debt, as well as pension liabilities. But there's also the Detroit Public Schools, Chicago Public Schools, and even the city of Chicago.

The municipal market has played a role in every case. Sometimes municipalities delayed balancing the budget with the upfront money they got in connection with swaps. Sometimes they sold bonds to cover operating expenses. Other times, as revealed in the Chicago Tribune's 2013 series "Broken Bonds," they used so-called "scoop and toss" refundings—borrowing money to pay debt service and push off repayment for years, even decades.

There's plenty of blame to go around, as Richard Ciccarone, head of Merritt Research Services, pointed out last year on his MuniNetGuide website: "Too often, government officials and politicians have appeased taxpayers by adopting unhealthy fiscal practices by either maintaining expenses they can't afford or by keeping lower taxes than their liabilities warranted," he wrote. "At the same time, investors and rating agencies may be inadvertent enablers if they ignore early signs of imprudent debt policies or other negative credit factors that are developing but not of immediate concern."

Former Kentucky state official and full-time market commentator Kristi Culpepper observed last year, "All of the recent insolvencies in the municipal bond market have combined protracted fiscal mismanagement with a reliance on innovative financial products (e.g. interest rate swaps and pension obligation bonds)."

The mainstream media is interested in politics, not public finance. It treats every financial blowup as a discrete, rather than a related. almost predictable, event. Washington, I suspect, isn't going to make the same mistake. Borrowing larger and larger amounts of money to delay making hard public policy choices isn't an appropriate use of the municipal bond market.

It's going to be very hard for those who would preserve the municipal market to excuse such abuses. I still think states and municipalities should be able to borrow money when they want to. But I won't defend the indefensible.

The next five years are going to be critical for municipal finance, as surely as default follows distress. This market is a victim of its own success: The numbers have gotten too big. Be prepared for the firestorm to come.

Bloomberg Business

by Joseph Mysak Jr

March 15, 2016 — 5:10 AM PDT

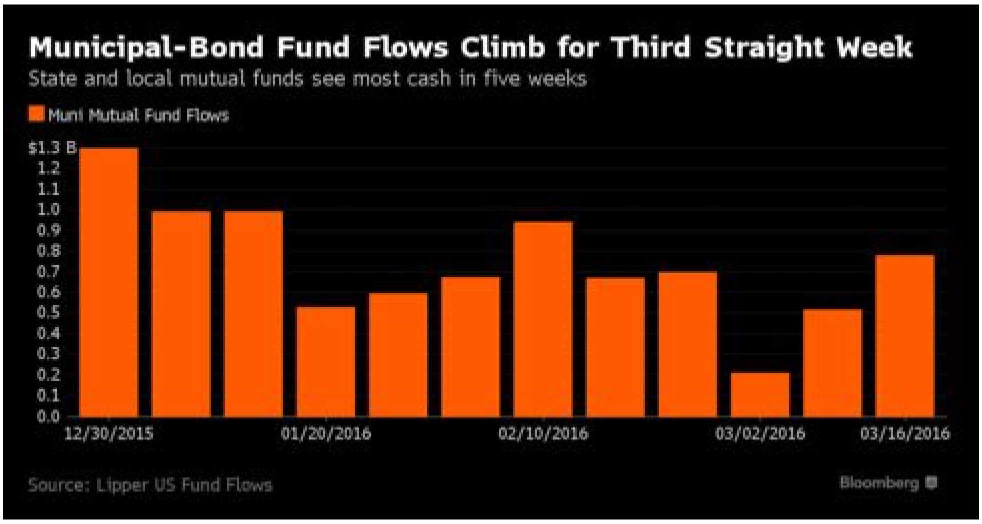
[Bloomberg Brief Weekly Video - 03/17]

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

[Watch the video.]

9:53 AM PDT
March 17, 2016

[Muni Bond Fund Inflows Most in Five Weeks as Yields Rise: Chart.]



Individual investors added $780 million to municipal-bond mutual funds in the week through Wednesday, Lipper US Fund Flows data show. That's the third straight weekly gain and the biggest increase since the period through Feb. 10, when inflows reached about $941 million. The increase in cash comes as benchmark 10-year muni yields are poised for their first decline in five weeks. It was the 24th straight week of inflows.

Bloomberg Business

by Elizabeth Campbell

March 18, 2016 — 5:11 AM PDT

[Christie Wants Moratorium on Towns Seeking Hospital Payments.]

New Jersey Governor Chris Christie called for a two-year ban on lawsuits by towns seeking tax payments from hospitals to cover the cost of municipal services.

Christie, a second-term Republican, asked lawmakers to control suits that have been filed by municipalities since a judge ruled in June that Morristown Medical Center owed local property taxes. The decision opened the door for other municipalities that host nonprofit businesses, including hospitals and universities, to challenge their tax-exempt status.

"It gives us time to come up not just with a solution, but the right solution," he told reporters at Trinitas Regional Medical Center in Elizabeth, New Jersey's fourth-largest city. The Roman Catholic teaching hospital is fighting the city's efforts to tax its properties.

The governor said there has been a "patchwork" solution, and that the state's 62 nonprofit hospitals "need to know with certainty what their costs are going to be." He proposed a commission to examine the issue while the moratorium is in effect.

For the necessary legislation, he said, he has support from the New Jersey Hospital Association and Senate President Steve Sweeney, a Democrat from West Deptford, though not yet from Assembly Speaker Vincent Prieto, a Democrat from Secaucus. Prieto, in a statement, said a moratorium “is not a solution.”

He and Sweeney both said Christie should have signed the bill approved in January by the legislature — and supported by the hospitals — that would have had those with for-profit businesses make payments to their hometowns in exchange for tax-exempt status. Christie didn’t sign the measure by the end of the legislative session, effectively killing it.

“We need to resolve this issue now, not in two years,” Prieto said. “The Assembly will continue working with all parties on an immediate solution.”

Bloomberg Business

by Elise Young

March 18, 2016 — 9:42 AM PDT Updated on March 18, 2016 — 12:12 PM PDT

Moody's: Volatile Market Likely to Increase Unfunded U.S. Public Pension Liabilities in FY 2016.

New York, March 17, 2016 — Recent market volatility has negatively affected the asset performance of several large US pension plans, and could be an early signal that fiscal 2016 returns will fall short of assumed targets for the second consecutive year and erase funding improvements seen in FY 2013 and 2014, Moody’s Investors Service says.

“We project unfunded pension liabilities on a reported basis will grow by at least 10% in fiscal 2016 under even our most optimistic return scenario,” Thomas Aaron, a Moody’s AVP — Analyst says in “Market Volatility Points to Growing US Public Pension Debt in 2016.”

Moody’s also states that 55% of pension plans in its sample are not receiving contributions from state or local governments that cover current benefit accruals and interest on existing unfunded liabilities. That, combined with poor investment performance, will make pension plan liabilities even larger.

Unfunded pension liabilities could reach a four-year high relative to payroll in all but the most optimistic scenario, Moody’s says.

Using available fiscal 2015 accounting disclosures of 56 public plans, Moody’s also projects an alternate scenario of negative 10% returns where a 59% increase in reported-basis unfunded liabilities are estimated. Moody’s adjusted net pension liabilities (ANPLs) will grow up to 29% under the same return scenarios.

However, exposure to market volatility across public plans varies widely among individual states and local governments. While unfunded pension liability growth is anticipated in 2016, the capacity of individual governments to absorb increasing pension costs depends on revenue growth and the ability to control other expenditures.

For its research, Moody's analyzed 56 state and local government pension plans with total assets of more than $2 trillion in FY 2015. The sample comprises slightly more than half of all public defined benefit pension assets and mostly includes plans with June 30 fiscal year-ends.

The report is available to Moody's subscribers here.

Fitch: Flint, Chicago Lead Lawsuits Pressure Water Sector.

Fitch Ratings-New York-08 March 2016: (This announcement replaces the release published on March 4 and corrects the estimate of the costs that the entire U.S. water sector would bear to replace, comprehensively, all lead service lines, which would range from a few billion to $50 billion.)

Lawsuits filed against the city of Flint, MI and the city of Chicago could have a broad, long-term impact on the entire U.S. water sector, Fitch Ratings says.

Utilities are stepping up education efforts to bolster public confidence while also evaluating their existing treatment protocols to ensure ongoing water quality. Significant investment in service line replacement also may be forthcoming over the near term, particularly if the Environmental Protection Agency materially alters existing rules.

Various lawsuits filed against Flint and certain government officials allege that the water residents were using was unsafe. The city had changed water sources and the lawsuits state that the newer source had higher corrosive properties that eroded the pipes, leading to highly elevated lead levels in the water. Separately, certain Chicago residents filed suit against the city within the last several days alleging that repairs by Chicago to its water system allowed dangerous levels of lead to enter the drinking water supply and that the city did not sufficiently notify residents that they may have been exposed.

The EPA currently regulates drinking water exposure to lead based on its Lead and Copper Rule, which seeks to minimize lead in drinking water primarily through corrosion control of lead pipes. If corrosion control is not effective the rule can require water quality monitoring and treatment, corrosion control treatment, the removal of lead lines and public education. The EPA is considering strengthening the rule sometime later this year or next. In light of these lawsuits and the heightened public focus on possible lead contamination, Fitch expects any proposed rule revisions will likely move the industry toward removing all lead service lines.

Reprioritizing and accelerating lead pipe replacement would add significant additional capital needs to the sector and could compete with other critical infrastructure projects, including developing sufficient long-term water supplies and replacing aging infrastructure components other than lead lines. Some sources estimate over 6 million lead service lines exist across the U.S.

Many of these are located in the Northeast, Midwest and older urban areas. We believe the capital costs to replace these lines could range from a few billion to $50 billion, based on industry estimates that the number of lead service lines could be as high as 10 million and replacement costs per line could be as high as $5,000. The EPA's latest survey estimated the entire sector needs $385 billion in water infrastructure improvements through 2030 and this estimate includes the costs to only partially replace lead pipes. Either level of capital cost would likely be manageable for the sector as a whole if it is spread out over a time frame like the one in the EPA survey. However, implementation over a shorter time span may create stress for individual credits.

Fitch: N. Carolina Primary Will Also Choose Infrastructure Path.

Fitch Ratings-New York/Chicago-14 March 2016: When voters in North Carolina choose a presidential candidate in tomorrow's primary, they will also decide whether or not to approve a $2 billion general obligation (GO) bond to fund infrastructure. If approved, the voters' decision will signal a shift toward GOs and away from appropriation-backed lease revenue bonds and, potentially, indicate how voters in the state may prioritize infrastructure funding, Fitch Ratings says.

If approved, most of the proceeds would pay for capital improvements at the University of North Carolina campuses and community college campuses. The remainder would fund water and sewer projects, parks, the North Carolina Zoo and the National Guard and Department of Agriculture.

With tax-supported debt of approximately $7.5 billion as of June 30, 2015, Fitch believes the state's debt levels will remain relatively low if the $2 billion bond is approved. At the end of fiscal 2015 the state maintained reserves of $852 million, or 3.8% of general fund revenues. The current biennial budget would further increase reserves to $1.1 billion, or 5.1% of expected general fund revenues. The state has other reserves in excess of $1.7 billion.

If voters decide against the authorization, North Carolina could pursue other infrastructure financing, such as revenue bond offerings, or public-private partnerships. According to the American Society of Civil Engineers (ASCE), the water systems in the state will need approximately $10 billion over ten years to comply with new regulations and replace aging systems. The ASCE says the state will also need over $4 billion for wastewater infrastructure through 2030 and approximately $8 billion for education in the next five years. Some would be partially borne by the federal budget, tax collection and user fees.

If the state's population continues to rise at its recent rate, those projects may acquire even higher priorities. According to the United States Census Bureau, North Carolina's population has grown by 5.3% since 2010, above that of the US as a whole, which grew by 4.1% over the same period.

SEC Reports First 'Fiduciary' Settlement Involving Municipal Adviser.

WASHINGTON—The Securities and Exchange Commission announced on Tuesday a settlement with a Kansas adviser to resolve allegations that the firm violated a provision of the 2010 Dodd-Frank financial overhaul law that requires municipal advisers to put the interests of municipal clients ahead of their own.

"A municipal adviser's first duty should be to its municipal client, not its own bottom line," SEC enforcement chief Andrew Ceresney said, in announcing the first-of-its-kind case.

The SEC said when the adviser, Central States Capital Markets, worked in 2011 on a municipal-bond deal for an unnamed city, two employees and its chief executive arranged for the offerings to be underwritten by a broker-dealer where the three men also worked, but didn't disclose the conflict of interest to the city.

The firm agreed to settle the claims and disgorge $290,000 in profits and a separate penalty. The three men also agreed to settle the case, the SEC said.

A lawyer for the firm didn't immediately respond to a request for comment.

The men were aware of the conflict posed, the SEC said. In April 2011, one emailed: "if we are going to charge an [advisory] fee and [the City's administrator] keeps calling us [municipal advisors], should we not resign as [municipal advisors] to [underwrite] this issue? Out of an abundance of caution I believe we should resign...."

The SEC said there was a draft resignation letter attached to the email, but said the men never sent the document to the city.

The case comes as the investment industry is bracing for new fiduciary rules that are expected to require retirement advisers to also put clients' interests ahead of their own.

THE WALL STREET JOURNAL

By ARUNA VISWANATHA

March 15, 2016 11:57 a.m. ET

Write to Aruna Viswanatha at Aruna.Viswanatha@wsj.com

Lawmakers See Strong Board as Part of Puerto Rico Debt Fix.

SAN JUAN/WASHINGTON — Republican lawmakers are writing a fix to the Puerto Rico debt crisis that would give an independent financial review board sweeping power to arbitrate creditor disputes and map a future for the U.S. territory's pension system.

Rather than pick winners and losers among investors who hold roughly $70 billion of Puerto Rican debt, the Republican plan envisions leaving key questions to a newly-created board, according to legislative sources familiar with the work. Republicans control both houses of Congress and so the party leaders often write the first draft of legislation.

Under the proposal, White House and congressional leaders would appoint a board of financial experts to arbitrate politically-charged questions like whether bonds issued by utilities or even the island's government should be written down.

"We expect to have a framework that protects taxpayers and restores solvency to the island," said Parish Braden, spokesman for the Natural Resources Committee that is writing legislation in the House of Representatives.

A crucial issue for lawmakers is whether Puerto Rico will have a clear path to restructure debt through the courts, in a process akin to U.S. bankruptcy, if the new board could not facilitate a deal among stakeholders.

The U.S. Treasury Department has long called for a debt restructuring for Puerto Rico. So have Congressional Democrats, and Puerto Rico's leaders.

A spokesman for the Treasury Department said officials were "encouraged by the increased legislative activity," but declined to speculate on the Republican legislation that was expected to be finished before the end of the month.

And while Republicans will write the first draft of the rescue bill, Democrats in Congress and the White House will have a say as legislation moves toward approval from President Barack Obama.

On Monday, New Jersey Senator Robert Menendez, a Democrat, proposed putting roughly $45 billion in unfunded pension liabilities at the top of the list of creditors.

Some creditors are concerned where they might rank with such a move and many oppose any provision that would allow the island to file for bankruptcy. Municipal bond markets would be roiled if Puerto Rico were cleared, some Republican lawmakers have argued.

“These are complicated issues and Congress needs to empower people qualified to handle them,” said one staffer working on the plan.

The 3.5 million residents of Puerto Rico may face a reduction of “essential government services” like public safety and health care if there is no fix before the next debt payments in May, Puerto Rico Governor Alejandro Garcia Padilla told Congress last year.

The Menendez plan would restructure all of Puerto Rico’s debt, establishing a chief financial officer, a “Fiscal Stability and Reform Board” and require the island’s governor to develop a 5-year fiscal plan.

If Puerto Rico accepts the plan Menendez proposes then an automatic 12-month stay on debt payments would go into effect, after which a restructuring plan with creditors would be crafted.

The plan would see that pensions would be paid before the island’s General Obligation debt, which is typically the first in line for payment.

Padilla praised Menendez’s plan for providing tools needed to stave off the immediate impact of the crisis while helping to stabilize the economy.

Orrin Hatch, the Utah Republican who is chairman of the powerful Senate Finance Committee, swatted away Menendez’s proposals.

“While I have yet to see the full legislative text of the proposals, from what I’ve read, Senate Democrats appear to want to move the goal posts on broad debt restructuring,” Hatch said in a statement emailed to Reuters.

By REUTERS

MARCH 14, 2016, 9:18 P.M. E.D.T.

(Reporting By Nick Brown in San Juan and Patrick Rucker in Washington; Editing by Daniel Bases and Diane Craft)

Federal Appeals Court Deciding Municipal Broadband Expansion.

NASHVILLE, Tenn. — A federal appeals court will decide whether to overturn a Federal Communications Commission ruling allowing city-owned broadband services to expand into areas overlooked by commercial providers.

Tennessee and North Carolina both previously passed laws preventing the expansion of super-fast

Internet service in their respective cities of Chattanooga and Wilson to surrounding areas.

The FCC last year voted 3-2 to override those laws. FCC Chairman Tom Wheeler, who voted with the majority, said at the time that some states have created “thickets of red tape designed to limit competition.”

Chattanooga markets itself as the “Gig City” for the widespread availability of gigabit-speed Internet service. Such service is about 50 times the national broadband average — or enough bandwidth to download an entire movie in about two minutes.

At an appeal of the FCC ruling Thursday before the 6th U.S. Circuit Court of Appeals, FCC attorney Matt Dunne called the areas around Chattanooga “digital deserts that are imploring Chattanooga to come to them,” according to arguments posted on the court’s website.

State lawmakers have argued that private broadband providers will have difficulty competing with service subsidized by local governments. But at Thursday’s hearing, attorneys for Tennessee and North Carolina argued the issue is one of state sovereignty. They said the FCC is unlawfully inserting itself between the states and their subdivisions.

Judge Helene White said Congress has stated clearly that it wants the FCC to remove barriers preventing access to broadband because access affects education and other core government interests. Referring to the FCC’s ruling, she asked the attorneys for the states, “Why isn’t that exactly what they’re doing?”

Joshua Turner, a private attorney representing Tennessee, argued that Congress hasn’t given the FCC any special authority to promulgate broadband.

By THE ASSOCIATED PRESS

MARCH 17, 2016, 6:36 P.M. E.D.T.

Arizona OKs Bill Cutting Funds to Cities That Cross State.

PHOENIX — Gov. Doug Ducey on Thursday signed legislation cutting state shared revenue from municipalities and counties that pass regulations like plastic bag bans that conflict with state law.

The action came hours after the organization representing all 91 Arizona cities and towns called on the Republican governor to veto the bill. The letter to Ducey from the League of Arizona Cities and Towns says the measure is heavy-handed and intrusive, and it minimizes the important role of local elected officials.

“The elimination of shared revenue from cities and towns is a crippling and unjust penalty since it represents an average of 40 percent of a city’s general fund,” said the letter signed by the mayors of Tempe, Lake Havasu City and Chandler in the roles as league leaders.

But Ducey was unpersuaded. He had vowed in his state-of-the-state address to cut state shared revenue to any city that adopted a minimum wage that was higher than the state’s, even though the law allows that.

“As Governor Ducey has made clear, for Arizona to be competitive, we can’t have a patchwork of different laws across the state," spokeswoman Annie Dockendorff said in a statement. "This legislation ensures everyone is playing by the same rules."

The state sent nearly $1.1 billion from income and sales taxes to 91 cities and towns in the budget year that ended June 30.

The Republican-dominated Arizona Legislature has taken a firm stance in recent years against cities that enact laws popular in liberal enclaves, such as plastic-bag bans and rules governing energy efficiency in buildings.

The bill passed mainly along party lines, with all but four Republicans supporting it and all Democrats opposed.

Senate President Andy Biggs' legislation allows an individual legislator to trigger an investigation of a municipal ordinance or regulation by complaining to the attorney general. Cities and towns would be penalized if the attorney general determined there was a conflict with state law or the Constitution. They would lose state funds if they didn't rescind the action within 30 days.

"What possible hubris could drive one single legislator to think he or she has more wisdom than the local elected officials who have been chosen by the voters to govern their communities?" the mayors wrote. "What happened to the principle of 'presumption of innocence' in our legal system?"

Democrats argued it was hypocritical for Republican lawmakers who criticize the federal government for forcing Arizona to follows federal laws to turn around and do the same to cities and towns.

"Time and time again, we have heard the argument that the federal government should not use the power of the purse or their influence to dictate to states what they should and shouldn't do," Rep. Reginald Bolding, D-Phoenix, said during a House debate Wednesday.

Republicans who voted against the bill in the House said they were concerned the penalties would harm ordinary citizens.

By THE ASSOCIATED PRESS

MARCH 17, 2016, 8:30 P.M. E.D.T.

Study Finds Public Pension Promises Exceed Ability to Pay.

When Detroit went bankrupt in 2013, investors were shocked to learn that the city had promised pensions worth billions more than anyone knew — creating a financial pileup that ultimately meant big, unexpected losses for Detroit's bondholders.

Now, researchers at Citigroup say the groundwork has been laid for similar conflicts across the developed world: Governments have promised much more than they can most likely pay to current and future retirees, without revealing the disparity to investors who bought government bonds and whose investments could be at risk.

Twenty countries of the Organization for Economic Cooperation and Development have promised their retirees a total $78 trillion, much of it unfunded, according to the Citigroup report.

That is close to twice the $44 trillion total national debt of those 20 countries, and the pension obligations are “not on government balance sheets,” Citigroup said.

“Total global government debt may be three times as large as people currently think it is,” the researchers warned, after gathering as much information as they could about various government pension plans and adjusting the amounts where necessary, to permit fair comparisons with bond debt.

Getting each country’s unstated pension obligations down on paper, along with the sovereign debt, showed that some countries have almost certainly promised more than they can deliver.

“If you owed student loans of $44,000, and the bank called you up and said, ‘actually you owe $134,000,’ you’d fall off your chair,” said Charles E. F. Millard, head of pension relations at Citigroup. “That’s what this is.”

He said he did not expect all the overextended governments to experience sudden head-on collisions between bondholders and pensioners the way Detroit did. Instead, he said many of those countries — as well as many American states, cities, school districts and other jurisdictions — would keep struggling along, cutting more and more services, raising taxes and wondering where all the money was going.

“It’s not going to be, for most cities and states, some enormous collision or explosion,” he said. “It’s going to be 10 fewer cops, or three fewer teachers and ‘Let’s fix the bridge three years from now.’ ”

One of the report’s recommendations was that governments start disclosing the amounts promised to retirees, “so that everyone can see them.”

Government officials are in many cases loath to do that because they believe it will harm their credit ratings, driving up borrowing costs. And the unions that represent public workers believe calls for full disclosure mask a broad anti-labor campaign to cut benefits.

The disclosure issue has grown increasingly contentious in Washington. Republican members of Congress are planning to introduce a bill in the next few days that would require states and local governments to measure their pension obligations using the method now universally used to price municipal bonds. States and cities currently report their pension obligations as calculated by actuaries, and actuarial numbers can greatly distort economic reality.

It was actuarial numbers in Detroit, for instance, that obscured the value of that city’s pension promises before the bankruptcy.

States have long argued that as constitutional sovereigns, they cannot be forced to meet any federal pension disclosure requirements. Republican lawmakers are generally sympathetic to states’ rights issues, but they are also worried about being asked to bail out troubled pension systems in places like Illinois and Puerto Rico.

Since the tax-exempt treatment of municipal bonds is, in fact, a federal subsidy, they have written the bill to require full, market-based pension disclosure only in connection with tax-exempt borrowing. If states and cities remain unwilling to reveal their pension obligations, they could still borrow — but they could not market their bonds as tax-exempt.

Senate Republicans introduced a similar disclosure measure late last year as part of a package to help Puerto Rico through a huge debt crisis. The island appears not to have nearly enough money to pay both its bond debt and its retirees’ pensions, but up-to-date information about its pension system does not exist in the public domain.

For years there have been frequent reports of pension systems rife with pay-to-play deals, improper payouts, overly risky investment strategies and other problems. But the Citigroup researchers looked beyond such scandals and depicted the worldwide accumulation of giant, invisible pension obligations as a matter of simple demographics.

Most developed countries had baby booms after World War II, and their populations are now aging and enjoying significant gains in health and longevity. When the boomers first joined the work force, they provided a big supply of labor to support what was then a much smaller population of retirees drawing pensions. Those favorable demographics made it seem that government pension systems could operate forever with minimal funding — or in many cases, no funding at all.

Now that is changing as populations age in many places, and the Citigroup report said the numbers no longer work. More and more retirees are receiving benefit payments every month, straining retirement systems even when the individual amounts paid are modest. And now there are relatively fewer younger workers generating the revenue that is supposed to support those systems.

The report said these demographic strains would worsen in the next few decades, noting that China now has seven workers to support every retiree, but will have only two by 2050; Japan is on track to have just one per retiree by then.

Citigroup said governments were aware of these trends, but had generally been slow to adapt their retirement systems. It expressed particular concern about pay-as-you-go systems, which are common in Europe.

In a few deeply troubled American jurisdictions, pension systems that were supposed to be funded have exhausted all their assets and effectively become pay-as-you-go plans, in which payments come from current tax revenues rather than dedicated, invested funds. Puerto Rico now looms as the biggest case — but while Puerto Rico's financial troubles are widely seen as an aberration, the Citigroup research suggested they were not.

"Future population and life expectancy trends will exert considerable pressure on public and private sector pension systems," the report said. "Unless addressed quickly, we believe this could overwhelm public and private sector balance sheets, and act as a major drag on economic growth."

The report discussed possible solutions, such as "collective defined contribution plans," in which workers' nest eggs are pooled and professionally invested, but retirees are not promised a predetermined benefit, and taxpayers are not required to replace money lost on Wall Street.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

MARCH 17, 2016

MSRB Lengthens Board Member Terms of Service.

Washington, DC – On March 17, 2016, the Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission to lengthen the term of service for members of its Board of Directors to four years from three, among other amendments to MSRB Rule A-3, on Board membership.

"Longer Board terms support greater continuity and institutional knowledge while preserving the benefits of a yearly incoming class with new perspectives and expertise," said MSRB Executive Director Lynnette Kelly.

The Board establishes regulatory policies and oversees the operations of the MSRB and has 11 independent public members and 10 members from firms regulated by the MSRB, including broker-dealers, banks and municipal advisors.

Under the amended rule, the 21-member Board will be divided into four staggered classes – one class of six members and three classes of five – to ensure consistent and manageable turnover from year to year. Due to this change, instead of selecting seven new Board members for the term beginning in Fiscal Year 2017, the MSRB will select a class of six. Board members will be precluded from serving more than two consecutive terms.

The MSRB is implementing a three-year transition plan during which the Board will vote to determine which Board members' terms will be extended by one year. All members beginning a term on the Board in FY2017 or later will serve four-year terms.

Date: March 18, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
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- IRS Model Closing Agreements for VCAP and Examinations.
- White Paper Examines Municipal Bond Dealer Markups.
- California Water District Fined by S.E.C. Over 'Enron Accounting.'
- Assessing the Less Contemplated Risks of Bank Placement Agreements.
- IRS Releases Proposed Regulations Defining a "Political Subdivision" For Purposes of Determining Eligibility to Issue Tax-Exempt Bonds: Butler Snow
- Treasury Corrects Proposed Regulations on What is a Political Subdivision: Squire Patton Boggs
- IRS Makes Political Subdivision Rules Prospectively Effective.
- *New Orleans City v. Ambac Assur. Corp.* – Court of Appeals holds that bond insurance policy was limited to the guaranteed payment of principal and interest to the bondholders in the event of non-payment by the city and did not require that insurer maintain its credit rating in order to maintain the credit rating of the insured bonds.
- *AXA Advisors, LLC v. Lee* – District Court holds that family was entitled to seek arbitration against AXA (a broker-dealer member of FINRA) under FINRA Rule 12200, despite the fact that they were customers of an associated person of AXA and not direct AXA customers.
- And finally, pity the poor plaintiff in *Kendoll vs. Rosenblum* for his exceedingly unfortunate surname. One can only hope that he's more anatomically correct than was Barbie's boyfriend. Here's a tip: any time you're reading an opinion and the court drops this very deadpan statement w/r/t a police officer – "His tenure with the department was not entirely without incident" – we highly recommend that you read on.

PUBLIC UTILITIES - CALIFORNIA

Rosen v. Uber Technologies, Inc.

United States District Court, N.D. California - February 23, 2016 - F.Supp.3d - 2016 WL 704078

Taxicab driver brought putative class action against mobile-based transportation network company, which allowed passengers to request paid transportation from third-party transportation providers on their smartphones, alleging failure to comply with applicable California Public Utilities Commission regulations for taxi and other transportation companies, and misrepresentations in regards to company's "safe rides fee." Company moved to dismiss.

The District Court held that:

- Action interfered with Commission's regulatory authority, and thus Commission had sole jurisdiction over claims;
- Driver did not allege his actual reliance on alleged misrepresentations made by company, and thus failed to state claim for misrepresentation against company under Unfair Competition Law;
- Driver did not allege any vested interest in profits of network transportation company, and thus failed to state claim for restitution under False Advertising Law; and
- Driver failed to allege any interference with existing economic relationship by company, precluding claim for intentional interference with prospective economic advantage.

District court action on taxicab driver's claims against mobile-based transportation network company, which allowed passengers to request paid transportation from third-party transportation providers on their smartphones, alleging failure to comply with applicable Public Utilities Commission regulations for taxi and other transportation companies, would hinder or interfere with the exercise of regulatory authority by the California Public Utilities Commission, and thus Commission had sole jurisdiction over the claims. Commission had commenced rulemaking procedures in order determine how to supervise companies that offered new ways of arranging transportation of passengers over public highways for compensation through smartphone applications.

PROPERTY - GEORGIA

Atlanta Development Authority v. Clark Atlanta University, Inc.

Supreme Court of Georgia - March 7, 2016 - S.E.2d - 2016 WL 860297

University filed complaint against city development authority for declaratory judgment, seeking declaration and judgment that university had a valid automatic reversionary interest in college's property that was triggered when college sold property to authority. The Superior Court denied authority's motion to dismiss complaint. Interlocutory appeal was granted.

The Supreme Court of Georgia held that:

- Restriction and reverter provisions of deed were valid, and
- College's sale of property was not a permitted "use" under provisions.

Easement in gross in favor of named individual with respect to one parcel conveyed in deed, which contained a restriction and reverter provision that all three parcels conveyed would revert to grantor university if grantee college ceased to use the property for specified educational purposes, did not insulate that parcel from restriction and reverter provision applicable to all parcels that were conveyed. Easement allowed university employee to use property that he occupied at time of conveyance, which was consistent with expressed intent that property be used for educational purposes.

College's sale of property to city development authority did not qualify as college's "use" of property as contemplated in restriction and reverter provisions of deed, under which property would revert to grantor if grantee college ceased to use the property for specified educational purposes.

FINRA ARBITRATION - IDAHO

AXA Advisors, LLC v. Lee

United States District Court, D. Idaho - January 27, 2016 - Slip Copy - 2016 WL 335852

The Lee family lost over a million dollars in investments they made through Douglas Roberts, who was a representative for AXA at the time. The Lees filed an arbitration claim with the Financial Industry Regulatory Authority (FINRA) against plaintiff AXA Advisors, a broker-dealer and member of FINRA. In their arbitration claim, the Lees claim that AXA failed to properly supervise Roberts.

AXA brought this lawsuit seeking to enjoin the arbitration on the ground that the Lees were never customers of AXA and hence could not compel arbitration under FINRA Rule 12200. Both sides agree – for the purposes of these cross motions only – that (1) AXA is a FINRA member governed by FINRA Rules, (2) Roberts was an "associated person" with AXA at all times relevant here for purposes of FINRA Rule 12200; (3) the Lees dealt exclusively with Roberts and never opened an account with AXA or purchased any services from AXA; and (4) the Lees were customers of Roberts.

The parties diverge, however, in the meaning they attach to these undisputed facts. AXA argues that because the Lees dealt exclusively with Roberts, the Lees were never customers of AXA and hence cannot compel arbitration under Rule 12200. The Lees argue that because they were customers of Roberts who was an associated person with AXA, they are entitled to compel arbitration under Rule 12200.

"The issue boils down to whether it is enough for the Lees to be customers of Roberts, an associated person of AXA, or whether the Lees must be direct customers of AXA."

The court denied AXA's motion, holding that the Lees have the right to seek arbitration against AXA under FINRA Rule 12200.

EASEMENTS - IDAHO

Morgan v. New Sweden Irr. Dist.

Supreme Court of Idaho., Boise, December 2015 Term - March 4, 2016 - P.3d - 2016 WL 852737

Property owner brought negligence action against irrigation district, and district counterclaimed for declaratory judgment as to its easement's existence and scope. Following remand from the Supreme Court the District Court entered declaratory judgment determining where to measure 16-foot width of easement held district that bordered irrigation canal that ran the length of property owner's property. Property owner appealed.

The Supreme Court of Idaho held that:

- Property owner was not entitled to jury trial on declaratory judgment claim;
- Admission of new evidence was not warranted following remand;
- Trial court was not required to incorporate original judgment into judgment entered following remand; and
- District was entitled to award of appellate attorney's fees.

Claim concerned only issues of equity, and therefore property owner did not have right to a jury trial under state constitution on irrigation district's request for declaratory judgment concerning terms of easement.

Admission of new evidence was not warranted on remand to trial court in property owner's negligence action on narrow issue of determining where on the servient estate the width of a 16-foot easement held by irrigation district was to be measured. Additional evidence property owner sought to have admitted on remand was not probative on limited issue.

Judgment entered after remand was not required to describe every aspect of easement, and therefore trial court was not required to incorporate original judgment into its judgment following remand from the Supreme Court in negligence and declaratory judgment dispute between property owner and irrigation district that held easement, where Supreme Court remanded for consideration of limited issue of where on the servient estate the width of a 16-foot easement held by irrigation district was to be measured.

Irrigation district was entitled to award of appellate attorney's fees pursuant to statute that permitted municipal entities to recover fees when nonprevailing party acted without reasonable basis in fact or law in property owner's appeal following entry of declaratory judgment after remand regarding terms of district's easement, where remand was limited to narrow issue of where on property width of easement was to be determined, and property owner attempted to argue numerous issues outside scope of remand.

BOND INSURANCE - LOUISIANA

New Orleans City v. Ambac Assur. Corp.

United States Court of Appeals, Fifth Circuit - March 2, 2016 - F.3d - 2016 WL 825388

To help fund a pension plan for firefighters, the City of New Orleans decided to issue municipal bonds in December 2000. City officials enlisted the help of an accounting firm, three law firms, and a financial advisory firm to consult in the bond issuance. At the time, the City's credit rating was just above "junk" status. The City contracted with Ambac Assurance Corporation to provide municipal bond insurance. The City paid Ambac a nonrefundable, up-front premium of $6,388,658.80 for the Municipal Bond Insurance Policy. Under the Policy, Ambac guaranteed payment of principal and interest to the bondholders in the event of non-payment by the City. When the Policy was issued, Ambac enjoyed a Aaa credit rating from Moody's.

Starting in late 2007, securities analysts and market commentators began to question the exposure of bond insurers to sub-prime residential mortgage backed securities and similar consumer finance asset-backed securities. As a result, Ambac's credit rating began to fall. As Ambac's credit rating fell, so too did the rating of the City's bonds, despite not missing a payment to the bondholders. The bonds became costlier for the City to service, and Paine Webber eventually stopped remarketing them. Consequently, the City has paid tens of millions of dollars in additional debt service and refinancing costs.

The City brought action against Ambac alleging breach of agreement to provide credit enhancement, bad faith, and misrepresentations as to value of insurer's credit enhancement product. The United States District Court granted insurer's motion to dismiss. City appealed.

The Court of Appeals held that:

- No larger credit enhancement agreement bound insurer under policy;
- Any error by city as to what it was purchasing was unilateral error that did not vitiate city's consent; and
- City did not sufficiently allege detrimental reliance cause of action.

Under municipal bond insurance policy, pursuant to which insurer guaranteed payment to bondholders of principal and interest if city failed to make such payment, no larger credit enhancement agreement bound insurer, precluding city's Louisiana-law breach of contract claim. Policy made no mention of such agreement, no written statement recognizing existence of such agreement was attached to policy, insurer was only party to policy and surety bonds, rendering other alleged agreements mentioning such agreement irrelevant in this analysis, city's use of term "credit enhancement device" to describe policy did not create any obligation for insurer, and city failed to provide sufficient factual allegations to support existence of oral agreements with insurer.

Any error about what city was purchasing when it paid insurer more than six million dollars for municipal bond insurance policy was unilateral error by city, and such error was neither reasonable nor excusable, and thus error did not vitiate city's consent, precluding its claim for damages under Louisiana contract law. Policy's clear language promised municipal bond insurance, not credit enhancement, and insurer's marketing of policy as form of credit enhancement and its assistance in drafting city's resolutions did nothing to support belief that city was purchasing larger agreement for credit enhancement.

City did not allege sufficient facts that insurer represented that it would maintain its credit and underwriting standards for term of municipal bonds, precluding its Louisiana-law detrimental reliance claim against insurer, as related to municipal bond insurance policy, where city's resolutions showed only that city purchased policy from highly-rated insurer, which, at time of issuance, lessened perceived credit risk of city's bonds, and any alleged representation by insurer to provide larger credit enhancement was foreclosed by clear policy language.

Even if city sufficiently pled that insurer represented that it would maintain its credit and underwriting standards for term of municipal bonds, city was not reasonable in relying on such representations, precluding its Louisiana-law detrimental reliance claim against insurer, as related to municipal bond insurance policy, where insurer made only general statements in its annual reports and references to term credit enhancement in city's resolutions, and city and insurer were sophisticated parties that engaged in arm's-length negotiations with respect to bond offering.

LAW ENFORCEMENT - MASSACHUSETTS

Frawley v. Police Com'r of Cambridge

Supreme Judicial Court of Massachusetts, Middlesex - March 4, 2016 - N.E.3d - 2015 WL

10401419

Retired police officer brought action against police commissioner for declaratory and injunctive relief, seeking declaration that commissioner breached his duty by refusing to issue officer replacement retired officer identification card, which allows the retired officer to carry a concealed firearm across state lines. The Superior Court Department granted summary judgment to officer. Commissioner appealed, and the case was transferred to the Supreme Judicial Court.

As matters of first impression, the Supreme Judicial Court held that:

- There is no private cause of action to compel a commissioner to issue a replacement card;
- Appropriate avenue to challenge decision to deny application for card was in nature of certiorari;
- A reviewing court will examine whether commissioner's decision was an abuse of discretion;
- Commissioner could reopen officer's case; and
- Commissioner abused his discretion in denying officer's application.

Appropriate avenue of relief for retired police officer's challenge to police commissioner's decision to deny officer's application for replacement retired officer identification card was in nature of certiorari, rather than declaratory judgment action. Commissioner's legal obligation under regulations was not in dispute, proceeding after officer completed application included professional standards review, which was quasi judicial, officer did not have private cause of action, and denial of card rendered officer ineligible to exercise federal right to carry concealed firearm across state lines.

Supreme Judicial Court would decide retired police officer's challenge to police commissioner's decision to deny officer's application for replacement retired officer identification card that allowed retired officers to carry concealed firearms across state lines, which was in nature of action for certiorari and which was improperly brought to trial court as action for declaratory relief. Even though officer's challenge would have been untimely if brought as certiorari action, judicial review of commissioner's decision proceeded under same standard whether conducted by Supreme Judicial Court or on remand, review under certiorari action was limited, and no appellate court had previously decided whether aggrieved party could challenge denial of identification card.

Police commissioner abused his discretion in deciding that retired police officer had not met standard set by police department for retiring in good standing, as required to obtain replacement retired officer identification card that allowed officer to carry concealed firearm across state lines. Department had cleared officer of any wrongdoing with respect to citizen complaint at time of retirement, charges that officer failed to tell truth during investigation were effectively closed, and officer's prior suspension for insubordination and misconduct were not pending at time of retirement.

AUCTION RATE SECURITIES - MICHIGAN

William Beaumont Hospital v. Morgan Stanley & Co., L.L.C.

United States District Court, E.D. Michigan, Southern Division - January 19, 2016 - Slip Copy - 2016 WL 213028

Hospital brought standard-issue Auction Rate Securities claim against Morgan Stanley. Morgan Stanley moved to dismiss the action as time-barred and for failure to state a claim.

Morgan Stanley argued that the fraud and misrepresentation claims accrued when Hospital executed the contract that it alleges it was fraudulently induced to sign. Because these agreements were executed in March 2006, it is asserted that the limitations period expired in March 2012, and thus Plaintiff is time-barred from bringing this complaint.

Hospital argued that the harm it suffered as a result of the underwriters' fraud occurred when the ARS market collapsed in February 2008, meaning that their claims would have been timely, as filed on January 28, 2014.

The District Court held that Michigan case law supports the view that a fraud or misrepresentation claim alleging fraudulent inducement to enter into a contract accrues when the plaintiff enters into the contract, because the harm is suffered when the contract is signed. Consequently, the Hospital's claim was time-barred.

The Court also noted that, even if the claims were not time barred, the Court would still be required to dismiss Hospital's fraud and misrepresentation claim for failure to state a claim.

EMINENT DOMAIN - NEW YORK

Village of Haverstraw v. Ray River Co., Inc.

Supreme Court, Appellate Division, Second Department, New York - March 2, 2016 - N.Y.S.3d - 2016 WL 802700 - 2016 N.Y. Slip Op. 01500

Village commenced condemnation proceeding, and the Supreme Court, Rockland County, granted that branch of landowners' motion which was, in effect, to extend their time to file notice of appearance. Village appealed.

The Supreme Court, Appellate Division, held that landowners established good cause for extension of time to file notice of appearance.

Landowners established good cause for extension of time to file notice of appearance in village's condemnation proceeding, even though landowners' counsel failed to properly file notice of appearance with clerk of court, where village was nevertheless served with notice of appearance that alerted it to landowners' claims, landowners repeatedly demanded "advance payment" for taking, requested that their expert appraisers be given access to subject property in order to assess its value, and sought to exchange "written appraisal reports," judicial viewing of property took place after village acquired property, and landowners demonstrated potential merit of their claim with expert evidence demonstrating that property was worth significantly more than amount tendered by village as advance payment.

REFERENDA - OREGON

Kendoll v. Rosenblum

Supreme Court of Oregon, En Banc - March 3, 2016 - P.3d - 2016 WL 852731

Petitioner sought review of certified ballot title for initiative petition that, if enacted, would require as matter of state law, that employers use a federal website to verify authenticity of documents establishing that new employee was not an unauthorized alien.

The Supreme Court of Oregon held that:

- Caption did not reasonably identify subject matter of the measure;
- “yes” and “no” result statements were inadequate; and
- Summary inaccurately implied that existing state law required employers to confirm new employee’s employment authorization.

Caption for ballot initiative, “Imputes employment license to employers; conditions license on using specified federal program for employment authorization”, did not reasonably identify subject matter of certified ballot title. Caption did not highlight effect of initiative, which if enacted, would require, as matter of state law, that employers use a federal website to verify authenticity of documents establishing that new employee was not an unauthorized alien, when federal law required only review of documents.

Result statement in certified ballot title, that a “yes” vote would impute employment license to employers, and conditioning license on verifying new employee’s employment authorization using federal program, did not identify a significant and immediate effect of the measure, which was to require employers to use a federal website to verify that new employees were authorized to work in the United States.

Result statement in certified ballot title, that a “no” vote would maintain current law requiring employer to confirm employee’s employment authorization, implied inaccurately that the “current law” found its source in state rather than federal law.

Summary for certified ballot title relating to employment authorization, stating in part that existing law required employers to confirm employee’s employment authorization, inaccurately implied that existing state law required the authorization, when federal law was the source of that requirement.

IMMUNITY - OREGON

Johnson v. Gibson

Supreme Court of Oregon - March 3, 2016 - P.3d - 2016 WL 852868

Jogger who was injured after falling while jogging in municipal park brought action in diversity against park employees, alleging negligence. Parties consented to final disposition by magistrate judge. The District Court granted summary judgment for defendants. Jogger appealed. The Court of Appeals certified questions.

The Supreme Court of Oregon held that city employees responsible for maintaining improvements on city-owned recreational land were not entitled to city’s tort immunity under Public Use of Lands Act.

Individual employees responsible for repairing, maintaining, and operating improvements on city-owned recreational land made available to the public for recreational purposes are not “owners” of the land, as that term is defined in the Oregon Public Use of Lands Act and, therefore, they are not immune from liability for their negligence.

TAX - CALIFORNIA

City of Bellflower v. Cohen

Court of Appeal, Third District, California - March 3, 2016 - Cal.Rptr.3d - 2016 WL 858801

Cities brought two actions against State Director of Finance, State Board of Equalization, the State Controller, and various local government entities to challenge the validity of statutes authorizing withholding of tax revenues from cities that failed to turn over dissolved redevelopment agencies' funds to county auditor-controllers.

The Superior Court found no violation of the state constitution in the withholding of property, sales, or use tax revenues. Cities appealed. The Superior Court found that the withholding of sales and use tax revenues from sponsoring agencies violated the state constitution. Director of Finance, Board of Equalization, Controller, and local government entities appealed.

The Court of Appeal held that the statute authorizing withholding of tax revenues for a successor agency's failure to turn over a dissolved redevelopment agency's funds violates the constitutional provision prohibiting reallocation of local government tax revenues.

White Paper Examines Municipal Bond Dealer Markups.

SAN DIEGO, March 10, 2016 /PRNewswire/ — A white paper released by Gurtin Fixed Income Management LLC, an SEC-registered investment advisor managing $10.3 billion in assets as of February 2016, outlines proposed regulations that would require municipal bond dealers to disclose markups to customers, a requirement that aims to increase transparency in the municipal market.

Key insights in Gurtin's white paper include:

- Current and proposed regulations from the Municipal Securities Rulemaking Board (MSRB) and the Financial Industry Regulatory Authority (FINRA) are a good start, but unfortunately fall short of the level of full transparency available in other liquid markets such as equities
- Magnitude of markups and commissions vary across asset classes, with marked differences between markets with established disclosure requirements and the municipal market
- Retail investors are typically most disadvantaged, historically paying larger markups on municipal bonds than do institutional investors

"Current regulation does little to protect retail investors from excess markups on municipal bonds," said Bill Gurtin, CEO and CIO at Gurtin Fixed Income. "Investors can facilitate transparency through understanding markups and using tools – which are free and publicly available – to at least approximate the actual commission they're being charged. Alternatively, retail investors can benefit from exploring institutional managers who not only offer professional investment expertise, but also reduce transaction costs by working with multiple dealers and purchasing the bonds at the bid price with no markup at all."

Gurtin's white paper, "Municipal Bond Dealer Markups Q&A," is available here.

About Gurtin Fixed Income Management:

Based in San Diego and Chicago, Gurtin Fixed Income Management LLC specializes in separately managed high grade municipal bond portfolios. Working with high and ultra-high net worth individuals and families, as well as many independent investment consulting firms and multi-family offices, Gurtin strives to build fixed income-related financial solutions that meet clients' unique needs.

For more information, visit www.gurtin.com or contact us at research@gurtin.com.

SEC: RIEDC, Wells Fargo Defrauded Investors In 38 Studios Deal.

WASHINGTON – The Securities and Exchange Commission on Monday charged a Rhode Island agency, its underwriter, and three individuals associated with $75 million of 2010 bonds for a startup video game company with defrauding investors by not revealing the complete financial status of the company or the extent of the compensation arrangement with the underwriter.

The commission also settled related charges against First Southwest, the agency's financial advisor at the time, for failing to document its advisory relationship with the agency for seven months. First Southwest, without admitting or denying the findings, agreed to disgorge $120,000 of ill-gotten gains plus pay prejudgment interest of $22,400 as part of the settlement.

The SEC filed its complaint alleging fraudulent disclosures related to privately-placed bonds for the now-bankrupt video game company 38 Studios in a federal district court in Providence, R.I. The complaint names the Rhode Island Economic Development Corp., now called the Rhode Island Commerce Corp., Charlotte-based underwriter Wells Fargo Securities, as well as Peter Cannava, who the SEC said was Wells Fargo's lead banker on the deal. The litigation against these parties is ongoing with the SEC seeking injunctions against future violations and civil penalties of unspecified amounts for each defendant.

Gabriel Boehmer, a spokesperson for the firm, said Wells Fargo disputes the SEC's allegations in connection with the placement of the municipal bonds and will respond to the specific allegations in the complaint in court.

Two other individuals, former RIEDC executive director Keith Stokes and former RIEDC deputy director James Michael Saul, already settled charges and agreed to each pay $25,000 without admitting or denying the allegations that they were responsible for the RIEDC not making complete and truthful disclosures in the bond placement memo — the key disclosure document for potential investors. The two former RIEDC executives are also barred from participating in future muni offerings.

The charges stem from the $75 million of muni bonds that the RIEDC privately placed in November 2010 to help finance a project being developed by 38 Studios, whose board chair and majority shareholder was former baseball player Curt Schilling. The funding for the project was part of a Rhode Island program intended to spur economic development and promote job growth. The RIEDC loaned 38 Studios $50 million in bond proceeds and used the remaining funds to pay related bond offering expenses and establish a reserve fund and a capitalized interest fund.

The loan was meant to be repaid with revenues 38 Studios generated from a multi-player video game project code-named Project Copernicus. However, the bond placement memo failed to disclose to investors that Massachusetts-based 38 Studios needed at least $75 million to produce the game and even more money to relocate to Rhode Island. The video game company did not obtain the extra financing and eventually defaulted on its loan in 2012.

"Municipal issuers and underwriters must provide investors with a clear-eyed view of the risks involved in an economic development project being financed through bond offerings," said Andrew Ceresney, director of the SEC's enforcement division.

The SEC included evidence in its complaint against the RIEDC, Wells Fargo and the three individuals that the defendants either knew or should have known, about the company's financing issues before moving forward with the private placement. The company had made clear throughout its negotiations with the RIEDC that it would require $75 million and it was clear from discussions and documents at the time that the company would only receive $50 million from the RIEDC loan, the SEC said.

Both Stokes and Saul reviewed the bond placement memo, as well as other financial documents, for the RIEDC. The SEC alleged Cannava had primary responsibility for Wells Fargo on the 38 Studios bond offering as well as the authority to sign contracts and agreements on behalf of Wells Fargo.

The SEC complaint also alleges that Wells Fargo misled investors by not informing them that the firm had a side deal with 38 Studios that allowed it to receive almost double the amount of compensation as was disclosed in the offering documents. The additional compensation created a conflict of interest, according to the commission.

“An underwriter’s ‘skin in the game’ is material information to investors,” said LeeAnn Ghazil Gaunt, chief of the SEC enforcement division’s municipal securities and public pensions unit.

When 38 Studios was first trying to get additional financing, it was considering both an RIEDC loan as well as funding from an equity private placement. Wells Fargo worked on both financing options during the spring of 2010, but ultimately did not find any investors for the equity private placement. The underwriter designed a $400,000 fee structure to insure it would be compensated for the work it did on both financings, even though one wasn’t chosen. Wells Fargo only disclosed that it would receive a $406,250 share of a $634,065 placement agents’ fee but not the additional $400,000, according to the SEC’s complaint.

The SEC said the actions by the RIEDC and Wells Fargo violated SEC rules that prohibit fraud in the offer or sale of securities while, Wells Fargo additionally violated MSRB rules on fair dealing and disclosure by municipal market professionals. The three individuals were found to have aided and abetted the violations of their employers.

Rhode Island general treasurer Seth Magaziner said in a statement that the fraud charges illustrate the urgent need for stronger debt management and oversight in Rhode Island.

“My office has taken action to strengthen debt management in Rhode Island, by replacing the financial advisor involved in the 38 Studios deal and introducing legislation to strengthen oversight of public borrowing at all levels of government,” he said. “I am committed to working with the General Assembly to reform Rhode Island’s system of debt management and oversight, to minimize the chance of a future public debt debacle.”

The Bond Buyer

By Jack Casey

March 7, 2016

Assessing the Less Contemplated Risks of Bank Placement Agreements.

Direct bank placements have been increasingly utilized as a capital source for healthcare and other tax-exempt entities over the past several years. While our focus is within healthcare finance, the potential risks discussed here are relevant to entities across the entire municipal landscape. Due to the private nature of bank placements, it is difficult to assess the total size of the market; however, it

is not uncommon to find one or several bank placement obligations on a not-for-profit hospital's balance sheet. Borrowers have eagerly taken advantage of the attractive cost of capital, ease and speed of execution, as well as lower issuance cost and less required documentation compared to publicly issued bonds. As many of our clients prefer to use their limited time and resources on running their core business in this disruptive
operating environment, bank placement financing has emerged as an appealing capital source.

A number of sources, including the rating agencies, have done a commendable job of educating the marketplace on certain risks associated with bank placements. The emphasis of the bank placement risk discussion has generally been focused on the ability of lenders to accelerate debt repayment, the renewal risk or contingent liability aspect of many agreements, as well as the general lack of public disclosure on key covenants and events of default included in bank agreements.

Tax-exempt bank placements are structured in various forms including variable rate, synthetic fixed rate (variable with an interest rate swap or hedge) and natural fixed rate. The natural fixed rate bank placement has been a popular structure for many not-for-profit hospitals as an alternative to interest rate swaps. As the bank placement market has evolved, we have noted certain provisions have become more onerous, making the typical natural fixed rate bank placement structure share a risk profile – not dissimilar to interest rate swaps, but in a slightly different and perhaps more adverse form. In our view, one of the most underappreciated risk elements of bank placements is the "yield maintenance" or "increased cost" provision. This clause allows the lender wide latitude to unilaterally increase the underlying all-in interest rate by modifying the interest rate, tax-exempt ratio or credit spread of the agreement. Typically yield maintenance language in bank placements does not specify what conditions would trigger the bank to raise the underlying placement all-in interest rate, but rather very broadly specifies the considerations allowing yield maintenance enactment for a wide variety of developments.

The current environment in bank lending is trending toward more onerous regulation and greater capital requirements, led by Dodd-Frank and Basel III. These and other regulatory changes could lead banks to enact yield maintenance language to retain bank placement returns on capital. If additional capital requirements are imposed on banks for any reason, including a bank downgrade, additional costs could be passed on from the bank to the borrower. In tax-exempt placements, a tax-law change that reduces the tax-benefit banks generate from tax-exempt lending could lead to an enactment as well. While these are several potential examples, the open-ended nature in which yield maintenance provisions are drafted in documents provide banks extreme leeway in not only the circumstance that can trigger enactment but also the magnitude of the increase or compensation owed to the bank upon enactment. While no bank lenders have enacted these provisions to date and we still view the probability of enactment as low despite the heightened bank regulatory agreement, all borrowers should be fully aware of these provisions at the management and board level and the potential for interest rate increases that could be significant under most bank documents. Further, in recent transactions, we are seeing banks require the ability to retroactively enact yield maintenance provisions up to 12 months from the time they give notice, so in essence the bank could ask for payment of the lost yield up to a year prior to the borrower even receiving notice.

Another consideration for borrowers is the make-whole call provision currently included in many natural fixed rate bank placements. Make-whole calls are fairly standard in the taxable fixed rate bond market, but of course, nearly every long-dated municipal fixed rate bond is structured with a 10-year par call option. One implication of a make-whole call is it virtually eliminates the ability to economically refund a fixed rate placement. While on shorter bank placements this is not necessarily a major concern for a borrower, it becomes a more important consideration on a longer-term placement of greater than 10-years.

The other important discussion point with make-whole call provisions is the one-way termination structure. Most fixed placement call provisions only include a scenario where the borrower will make a payment to the bank. If interest rates increase and the borrower wanted to refund the debt; the borrower would receive no compensation. However, if interest rates have declined or if the current rate levels are less than the yield or formula in the make-whole call, the borrower would be required to pay a make-whole premium to the bank. While make-whole call provisions vary by bank, some require strict yield maintenance to call the bonds, meaning the make-whole premium would require the payment of the underlying bank cost of funds (which can be a subjective interest rate) plus the entirety of the credit spread. On taxable bond issues, the make-whole call formula is typically based on a formula of Treasury rate plus a spread that is materially less than most bank placement credit spreads, making the bank placement make-whole provisions potentially more punitive in comparison.

As noted, we believe yield maintenance and make-whole call provisions to be important consideration points, but borrowers should also understand and contemplate the relationship between both the yield maintenance and
make-whole call provisions. For example, considering if a yield maintenance provision is enacted and how it could ultimately impact any potential make-whole premium if the borrower desires to refund the debt following the yield increase.

One final trend in the current bank placement market is to also include ratings based downgrade triggers as an event of default under the agreement. In addition to covenants that are often stronger than public fixed rate bonds, a ratings downgrade trigger adds another risk element that could potentially allow a bank placement provider to accelerate debt upon an event of default breach. Managing to a rating covenant isn’t as controllable as managing to discrete financial covenants; such as days’ cash on hand, maximum annual debt service coverage or debt-to-capitalization requirement. We also note, recently, hospital ratings have been adjusted solely based ratings criteria changes.

In summary, we believe that bank placements will continue to be an attractive capital source for not-for-profit hospitals for all the advantages they offer regarding cost of capital and ease of execution. However, as noted, the lower cost of capital does not come without certain inherit risks compared to traditional publicly offered bonds. While no banks have enacted yield maintenance/increased cost provisions in bank placements to date and we see enactment as a low probability event, we believe this is the key systemic risk of the structure and potential high severity. One of the key lessons of the financial crisis is to understand and contemplate all the risks embedded in financing agreements. Ultimately, we believe it is critical for borrowers to contemplate how these risks fit in the overall capital structure and within the organization’s risk tolerance.

The Bond Buyer

by Mike Quinn

March 10, 2016

Mike Quinn is managing director and Todd Smart is a vice president of Ziegler Investment Banking, Healthcare Finance.

Recent Developments Affecting Property Assessed Clean Energy (PACE) Loans.

New Jersey Governor's Conditional Veto Restricts New Jersey PACE, Florida's Supreme Court Expands State's PACE Market, Congress Extends the Federal Investment Tax Credit and States Reduce Effectiveness of Net-Metering

In today's climate conscious world, renewable energy sources—and programs to support their use—are increasingly important. Property Assessed Clean Energy ("PACE") loans, beginning in 2008, have become a major tool for local governments, homeowners, and commercial property owners to use to install energy efficient upgrades, such as solar panels or energy efficient windows, on private property.

Previous Dechert OnPoints discussed the potential for securitization of PACE loans as well as regulatory developments regarding PACE potential.1 This Dechert OnPoint discusses some recent developments regarding PACE.

New Jersey PACE

To date, thirty-two states have approved legislation implementing some form of PACE program. The legislature in New Jersey, a potential major market for solar panel installers and other green industries, passed a bill which could have significantly expanded the Garden State's PACE program but Governor Chris Christie issued a conditional veto of that bill on November 9, 2015.

The Governor's conditional veto stipulates that (i) no municipality that is disqualified from the local budget examination exemption issued to municipalities in connection with special assistance funding from the state would be eligible for a PACE bond program, (ii) PACE assessments should not be made against properties with less than five dwelling units and (iii) existing lienholder consent must be obtained in connection with PACE assessments. Additionally, instead of rolling out the program across the state, the program would be limited to the first ten municipalities to apply and be approved by the New Jersey Division of Local Government Services.2

Advocates of the bill passed by the legislature are concerned that these conditions will stall the development of industries associated with PACE loan spending in New Jersey, and thus, limit such economic activity within the state. Proponents of the NJ PACE bill argue limiting the program to commercial properties in only ten municipalities will prevent the economies of scale needed for wide-spread development of a NJ PACE program. Advocates have also indicated that the multi-family condition proposed by the conditional veto is problematic because single-family homeowners are a major source of borrowers within PACE loan systems but Governor Christie's conditional veto bars single family homeowners from New Jersey's program.3

The conditional veto, however, appeals to mortgage companies and others who object to the super priority status of PACE assessments; Fannie Mae and Freddie Mac, for example have indicated that they will not purchase mortgage loans on homes with PACE financing if such loans have pari passu status with tax liens.45 The mortgage companies claim that such prioritization: (i) changes the risk profile of properties which are subject to PACE assessment liens relative to the credit underwriting completed in the initial closing of a mortgage loan and (ii) lessens PACE lenders incentives to maximize profits in foreclosure as compared to mortgage lenders because of the size of PACE loans (which are usually up to US$20,000) and because of the inability of PACE lenders to accelerate PACE loans for the full amount in the event of a default. Under the conditional veto scheme, PACE assessments will remain subordinate to mortgages and other lien holders unless consent is granted to change the prioritization among the liens by the applicable mortgage lenders.6

Additionally, advocates of the PACE bill have expressed concern that the Governor's first stipulation will prohibit some large population centers, such as Newark, Camden, and Atlantic City from accessing the program because the conditional veto bars special funding recipients—which includes these cities—from participating in the program.7 These areas, however, have more potential commercial sector borrowers, given their population sizes. The ten municipality limit will also reduce the number of potential borrowers, further lessening the program's potential success.

Florida PACE

In contrast to Governor Christie's actions, the Florida Supreme Court recently rejected two challenges to PACE programs in Florida in a combined case.8 The court rejected a claim by the Florida Bankers Association, which objected to the super priority status of PACE loans, by holding that the group did not have standing.9 The decision sidestepped the issue of whether PACE loans may subordinate mortgage loans; even so, the solar industry seems optimistic about the potential of Florida's PACE market.

The Florida Supreme Court also reviewed the bond validation process used to provide PACE loans, specifically whether the process complied with Florida statutes. On this point, the court validated the special assessment revenue bonds used by the Florida Development Finance Corporation (FDFC) for Florida's PACE program.10 However, the court also held that the FDFC must remove all references within the financing agreements to judicial foreclosure as a remedy and remove all references to the FDFC's own or delegated authority to levy the special PACE assessments in order for the program to comply with Florida statutes.11 The court held that once these changes are made, Florida's PACE market will be in accordance with state law and the court's decision.12

The Florida Supreme Court's decision may help expand the growth of PACE programs in Florida, especially in the residential market. In 2014, residential PACE spending surpassed commercial PACE spending13 and Florida may be poised to take advantage of PACE market growth nationwide.

Federal Investment Tax Credit

Nationwide, the market for solar panels and the PACE loans that often finance them will be strengthened by Congress's extension, in December 2015, of the Federal Investment Tax Credit for renewable energy. This tax credit extends the 30% federal tax credit through 2019.14 Thereafter, the credit will decline through 2022 to 10%, where it will remain.15 This tax credit has been a crucial component in the growth of renewables and this extension is predicted to lead to US$73 billion—or a 56 percent boost—in new investments according to Bloomberg New Energy Finance over the next five years.16

Commercial PACE

Commercial PACE has not taken off the same way that residential PACE has. One reason is that most statutes providing for commercial PACE require the consent of the first-mortgage lender on the related property. It appears that the consent processes within the mortgage lending institutions for allowing commercial PACE assessments to be placed on one of their borrower's properties can be lengthy. Connecticut's Green Bank appears to have done a good job explaining commercial PACE to mortgage lenders in Connecticut. It may only be a matter of time before other states follow.

Net-Metering Under Threat

Net-metering is a tool and billing mechanism that credits solar energy system owners for the electricity they add to the grid when their solar panels create more energy than their home or business uses.17 Net-metering helps consumers and businesses but some utilities dislike the policy because they believe it lowers profits.18 The public utilities commissions in both Nevada and Hawaii changed their state's rules in December and October, respectively,to lower the rates earned by selling back excess energy.19 Nevada also increased the basic service charges for solar- panel users.20 As a result, SolarCity, a major solar panel installer, announced that it will leave Nevada—firing 550 employees and closing a training center opened in November 2015 in the process of moving out.21 The moves by Nevada and Hawaii may be followed in other states; for example, a utility in Arizona is already seeking permission to enact the same changes as Nevada.22

Conclusion

Late 2015 saw many developments in the renewable energy sector including regulation that helped establish or expand PACE programs that have helped increase availability of renewable power in many states. These programs also often help create jobs, such as the 10,000 estimated jobs that Renovate America has created through its PACE lending since December 2011.23 Though New Jersey's PACE program is constrained by Governor Christie's conditional veto and questions of PACE loan prioritization remain, Florida's program appears to be poised for growth. Congress's extension of the Federal Investment Tax Credit should also help this growing field.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

Dechert LLP – Patrick D. Dolan and Kira N. Brereton

USA March 1 2016

IRS Makes Political Subdivision Rules Prospectively Effective.

WASHINGTON – The Internal Revenue Service issued a "correction" on Wednesday that makes its proposed definition of political subdivision truly prospectively effective.

The six-page "correction," which will be published in the Federal Register on March 14, is expected to lessen the ire of bond lawyers meeting here on Thursday who were prepared to blast Treasury Department and IRS officials for the initial proposed effective date, which had not been prospectively effective despite assurances it would be.

"This is a clean, clear prospective effective date for bonds that are either existing or issued within 90 days after the final issue political subdivision rules are published in the Federal Register with regard to all tax-exempt bond provisions of the federal tax code," said John Cross, the Treasury Department's associate tax legislative counsel.

The same effective date applies to refundings of those bonds, as long as the refundings don't extend the maturities of the underlying bonds, he said.

Treasury and IRS officials had faced a firestorm of criticism from bond lawyers over the technically complicated first proposed effective date that would have been prospectively effective under certain tax-exempt bond provisions of the tax code, but not others. As a result, the prospective effective date would not have been prospective at all.

The correction means that the old political subdivision definition will apply to all existing bonds or those bonds issued within 90 after the final political subdivision rules are published, as well as to refundings of those bonds that don't extend maturities of the underlying bonds. Under the old definition, an entity is a political subdivision that can issue tax-exempt bonds if it has a delegated right to exercise a substantial amount of at least one of three recognized sovereign powers of a state or local governmental unit: eminent domain, taxation or police.

For existing political subdivisions that want to issue new tax-exempt after 90 days after the final rules are published, the old definition applies temporarily, but issuers have three years to reorganize to comply with the proposed new definition of political subdivision. New issuers that want to issue tax-exempt bonds must also meet the proposed new definition of a political subdivision.

Under the new definition, an entity is a political subdivision that can issue tax-exempt bonds if it meets a three-prong test. It must: be delegated the right to exercise a substantial amount of at least one of the three sovereign powers; serve a governmental purpose; and be governmentally controlled.

The IRS says the determination of whether an entity serves a governmental purpose is based, in part, on whether the entity carries out the public purposes set forth in its enabling legislation and whether it operates in a manner that provides a significant public benefit "with no more than an incidental private benefit."

The IRS proposes at least three benchmarks of rights or powers that constitute control. These would be the right or power: to both approve and remove a majority of an entity's governing body; to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; and to approve or direct the significant uses of funds or assets of the entity in advance of those uses.

Apart from these three arrangements, the determination of whether a collection of rights and powers constitutes control would depend on facts and circumstances. Control of an entity by a small faction of private individuals, businesses or corporations, trusts, partnerships or other persons "is fundamentally not governmental control," the IRS said.

Therefore the proposed rules would generally require that control be vested in either a general purpose state of local governmental unit or in an electorate established under an applicable state or local law of general application. If, however, a small faction of private persons controls an electorate, the electorate's control of an entity does not constitute governmental control of the entity. Under the proposed rules, an entity controlled by an electorate is not governmentally controlled with the outcome of the exercise of control is determined solely by the votes of an unreasonably small number of private persons.

The IRS provides two facts and circumstances tests that serve as brackets to determine if there is governmental control. On one hand, the number of private persons controlling an electorate "is always unreasonably small" if the combined votes of the three voters with the largest share of votes determine the outcome of an election, regardless of how the other voters vote, the agency said.

On the other hand, the number of private persons controlling an electorate "is never unreasonably small" if determining the outcome of an election requires the combined votes of more voters than the 10 with the largest share of votes. "For example, control can always be vested in any electorate comprised of 20 or more voters that each have the right to cast one vote in an election without giving rise to a "private faction," the IRS said.

The Bond Buyer

By Lynn Hume

March 9, 2016

Privatized University Housing: An American P3 Success Story.

While Washington policy experts ponder how best to advance Public-Private Partnerships (P3) as a solution to the underfunding of U.S. infrastructure needs, they should look no further than to colleges and universities for a true American success story.

In recent years, privatized university housing has emerged as an important alternative by which higher education institutions use P3 financing to build new student housing capacity. Since 2010, over 64,000 new beds on more than 100 different campuses across the country have been financed, built and are being maintained by the private sector.

By way of background, P3 is a financing technique that has emerged in Western economies as a way for the private sector to provide public infrastructure. It can take various forms, but in its broadest application involves a private sector sponsor contracting for a fee with a governmental entity to finance, construct, operate, and maintain a given piece of public infrastructure such as a toll road or a bridge that remains under governmental ownership. Proponents point to various private sector efficiencies as one of the technique's advantages.

The Obama Administration and many in the think tank world are active promoters of P3, and this approach is often positioned as an alternative to the U.S. municipal bond market that historically has provided about 75% of our country's infrastructure financing. This market is unique to the U.S. and it remains a primary reason that the P3 model has not caught on here with the same speed as it has in other countries. To date, P3 has only provided about 1% of infrastructure financing in the last 25 years.

So why has P3 in the privatized, on-campus university housing sector been so successful? There are unique characteristics of this sector that allow for P3 and the municipal market to work well together and provide a better overall solution than if a transaction was executed purely through one financing technique or the other. Said another way, convergence of the two markets (municipal and P3) delivers a better result.

An overwhelming number of higher education institutions in the U.S. have significant capital improvement and deferred maintenance plans where improvements are necessary not only to replace and restore aging facilities, but also to modernize academic programs and expand capacity. High on the list of needed improvements is student housing, a large portion of which remains dilapidated or outdated.

Unfortunately, most higher education institutions have to operate on lean budgets and, with the nation's recent economic challenges, support for new capital projects is scarce. As an auxiliary service, student housing often falls low on the list of priorities, taking a back seat to direct education projects. Colleges and universities often have to choose between improving their educational facilities and providing new student housing, making P3 financing an attractive alternative when traditional state funding is unavailable.

Even if state funding is available, the procurement process associated with obtaining such funding can be burdensome and time consuming, often taking years to complete. P3 financing offers an alternative that is usually faster and often more cost effective than the traditional approach, allowing colleges and universities to meet their needs and the needs of their students more immediately.

Under a long standing provision in federal law, tax exempt financing is available for these projects through a 501c3 sponsor, which enters into a tri-party partnership through a long-term ground lease with its university partner, and development and operating agreements with a private sector partner that provides student housing development and management expertise. This is less often the case for other infrastructure sectors and levels the playing field for P3 in terms of the cost of financing as compared to the municipal market for student housing projects.

Additionally, there is a dedicated revenue source to pay for these new student housing rooms–typically, from the parents of students attending the college. Many infrastructure projects often do not have a specified revenue source to repay the related debt. The private sector in a P3 transaction obviously expects to be paid for the financing and other services they are providing and it is helpful to have a readily identified source of that payment in the case of privatized university housing.

As a consequence of this confluence of circumstances, American higher education is often opting to use P3 to deliver expanded housing capacity. It has the low financing cost of the municipal market and the efficiencies of the private sector in terms of development, operations and maintenance with the university transferring this responsibility to the sponsor. Note the final product is also a lot nicer than the dorms many of us Iived-in decades ago when attending college.

One example of many is the Texas A&M University System ("System"). Beginning in 2013, P3 financing was used to finance and construct approximately 4,000 beds of on-campus housing on four separate campuses of the System. The System's Administration distributed an RFP to pre-qualify developers of student housing. Numerous firms responded, five of which were selected as qualified developers. Subsequently, these five firms competed for each project with specific requirements of design, location, construction, financing, operations and maintenance.

The System partnered with Collegiate Housing Foundation, which is a national 501c3 organization that over the last 17 years has participated in 49 projects in 23 states, to own the facilities, and also partnered with one of the qualified developers for each of the projects.

Those facilities are all now completed and open for operations. Over the next year, the System plans to utilize a similar P3 approach for three additional new construction projects, as well as the acquisition of a fourth.

Washington should be informed by the lessons of this success story. It should expand the availability of tax exempt financing to other infrastructure sectors for state and local government to advance key projects. Until it does, P3 may continue to languish as a financing alternative to the considerable backlog of U.S. infrastructure needs.

The Bond Buyer

By Chris Hamel and Michael Baird

March 7, 2016

Chris Hamel is Head of RBC Capital Markets' Municipal Finance group.

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City Wins Legal Battle with Cory Briggs Over Infrastructure Bonds.

San Diego City officials declared victory Thursday in an ongoing legal battle over the use money from lease-revenue bonds being used for infrastructure, after the California Supreme Court refused to hear the case brought by the group San Diegans for Open Government.

At issue was whether the city could legally use the money for street repairs, and other neighborhood infrastructure like fire stations, libraries and lifeguard towers. A lower court had ruled the practice constitutional.

“The Supreme Court has once again affirmed San Diego’s ability to use lease-revenue bonds to plan, build and repair public infrastructure that is essential to our quality of life,” City Attorney Jan Goldsmith said in a statement. “Had SDOG succeeded in this costly and meritless action, our children would have fewer libraries, our firefighters would be stationed farther from the neighborhoods they serve, and our streets would be repaired at a much slower rate.”

The decision leaves intact lower court rulings that upheld the constitutionality of the bond financing mechanism, which has been used by local governments throughout California since it was ruled constitutional in 1998, according to Goldsmith.

SDOG and lawyer Cory Briggs had sought to invalidate lease-revenue bonds to finance library projects in Skyline, Mission Hills/Hillcrest, San Ysidro and San Carlos; fire station projects in City Heights, Hillcrest and Skyline; sea wall repairs in Mission Beach; and other neighborhood projects, the statement said.

The bonds were delayed by the lawsuit, but eventually issued after a lower court and appellate court rejected SDOG’s arguments. A parallel action to prevent the City from refinancing of Petco Park bonds was dismissed, but remains pending on appeal.

Briggs was out of town on vacation and not available for comment.

TIMES OF SAN DIEGO

POSTED BY HOA QUACH ON MARCH 10, 2016

New Michigan Law Allows Drainage Districts to Issue Term Bonds.

Michigan drainage districts can issue term bonds for their projects under a new law signed by Gov. Rick Snyder on March 1.

Term bonds allow bond issuers to group a number of bond maturities into one bond certificate. While they have become commonly used in recent years to increase interest in municipal bond issues, the language of the Drain Code was not flexible enough to permit them, resulting in higher interest rates in certain circumstances. Attorneys worked with the Michigan Association of County Drain Commissioners to propose the bill that became Public Act 27 of 2016, which makes term bonds available in drain bond financings. Term bonds will not be used in every drain bond issue, but they will provide an additional tool for finance professionals to use in the right circumstances to reduce the interest cost of drain bonds for the benefit of benefited properties and public corporations that are assessed for the cost of these projects.

Tuesday, March 8, 2016

High-Yield Muni Sector Thrives on Inflows, Low Volatility.

Inflows should remain steady and continue to fuel the municipal high-yield sector, where strong performance, attractive spreads, and low volatility are boosting demand while other fixed income asset classes languish, municipal experts said this week.

At the same time, the sector has also seen the arrival of "fallen angels," as formerly investment grade credits like Chicago became part of the speculative market, giving investors more options.

With performance thriving and volatility trending lower, heavy demand has pumped cash into high-yield municipal bond funds for the past 22 weeks to extend the sector's more than two-year recovery, while other fixed-income sectors, like corporate bonds, have sold off.

"Most of the returns are being driven by the income, and the stability is noteworthy this year as well," John Miller, co-head of fixed income at Nuveen Asset Management told The Bond Buyer on Tuesday.

Municipal high yield mutual funds have three month total returns of 1.65%, year to date of 1.06%, and 4.46%, 3.71%, and 7.22% over one, three, and five years, according to Morningstar data as of Mar. 9.

Excluding Puerto Rico, defaults have been low in the municipal high yield arena, and that has moderated redemptions and boosted demand, according to the Miller, who manages municipal funds with about $20 billion of assets, including a high-yield municipal portfolio.

"There is less of a compelling reason to redeem," he said.

Despite some spotty selling pressure during individual weeks or months, he said the municipal high-yield sector in general has been on a recovery path since the end of 2013 – and remains on that path.

"2014 was a very strong year, and 2015 was much more of earning your income and coupon and also low volatility, good demand, good liquidity and low default, and 2016 looks a lot like 2015 so far," Miller said. "Investor inflows to high-yield muni product are consistently positive alongside municipal products in general" so far in 2016, he continued.

Additionally, Miller said while the sector's low supply pales in comparison to corporate issuance of roughly $1 trillion a year, there are increasing defaults in the corporate bond market and added volatility from its exposure to the low oil prices and oil and gas exploration and production.

The municipal high-yield sector by comparison has less exposure, he said, to the more highly energy-intensive sectors that are affecting the corporate market – even though there isn't as high a corollary in the municipal market.

Overall, the scenario of strong market technicals should lead to many additional weeks of inflows in the near-term as demand for the product grows under the current positive market conditions, experts said.

Triet Nguyen, managing director and group co-head of NewOak Fundamental Credit, said the technicals for the sector have been bolstered by steady inflows into high-yield municipal funds, though the inflows tapered off last week.

High-yield municipal funds reported inflows of $27.310 million for the week ended March 2, after inflows of $245.834 million the previous week, according to Lipper data. Experts said the inflows probably result from seasonal shifts in assets ahead of the April 15 income tax deadline.

Weekly reporting municipal bond funds attracted $212.25 million in the week ended March 2, after inflows of $696.39 million in the previous week, Lipper said.

Nguyen said scarcity and investors' growing confidence in the U.S. economic outlook has helped insulate the high-yield municipal market from this year's sell-off in the corporate bond market.

"Many high-yield names are trading at levels that seem disconnected from the underlying credits," he said.

For example, Nguyen said corporate-backed municipals in the distressed energy and commodity sectors are at their richest levels in years versus their corporate counterparts.

That has helped price stability on the municipal side, he said.

"On the taxable side, many of the energy-related names are trading at depressed dollar price levels that reflect expectations for an eventual debt restructuring, yet on the muni side the same credits are still trading at a much higher dollar price," he said.

While rising interest rate fears do have a more direct impact on the municipal market, the Federal Reserve Board's quarter point increase after more than eight years of its zero-bound target was understated and showed little to any effect on the general or high-yield market. "That is not to suggest that it couldn't eventually have a big impact," Miller said, "but it doesn't appear to be having a big impact just yet."

The Fed's rate increase may even have been a catalyst of investment in the municipal high-yield asset class, according to Miller.

"I think people were waiting to get it over with to see what the impact would be – and there weren't any undue declines out there resulting from that," he said.

Investor concerns seem to be waning even in a sector that is heavily long-dated. "Although those fears are ever-present, I think they receded a bit, and that is one worry that is less pronounced," Miller said.

The opportunity to earn attractive average spreads of 250 basis points compared to the generic triple-A market helps offset the sectors' inherent risks.

Miller said there is value to be had in the health care sector where mergers and acquisitions have been strong and credit upgrades have been more frequent than downgrades lately.

For instance, nonrated bonds for New York's Albert Einstein Medical Center recently sold with a 5.50% coupon due in 2045 at par, and have traded up since the late January new issue, according to Miller.

In addition, the property tax-backed sector has seen steadily narrowing credit spreads – but yet is still attractive with some credits offering plus-240 basis points to the triple-A scale, down from as high as plus-275, Miller said.

“Underlying that is very steady property tax collections supporting these bonds and making them secure and reliable,” he explained.

Nonrated bonds for the Crystal Crossing Metropolitan District in Colorado recently sold with a 5.25% coupon due in 2040 at par back in January and have also traded up in the secondary market due to the strong market conditions, Miller noted.

Meanwhile, the tobacco sector – a top-performer in the last two years — is also offering value due to some technical and fundamental catalysts, he said.

The sector has been supported by the steady inflows in 2014, 2015, and in 2016, according to Miller, as well as the combination of employment growth and falling oil and gas prices, which contributed to the stabilization and consumption.

He said they are a liquidity management tool that is sensitive to fund flows. “People buy them when they have inflows so they can sell them when they have outflows,” he said.

The most actively-traded tobacco credits are California’s Golden State Tobacco Securitization 5.75% coupons due in 2047, which is was trading at 6.08% yield on Wednesday. The bonds are rated B3 by Moody’s Investors Service and B-minus by Standard & Poor’s.

While these bonds represent the traditional municipal high-profile, the strong performing sector has gone through a bit of a recent transition, as “fallen angel” credits have arrived, expanding the scope and availability of high-yield options.

“While real-estate dependent sectors such as senior living and special assessment districts [dirt bonds] have rebounded along with the housing market, a new source of high-yield supply is coming from traditionally investment-grade sectors, specifically local governmental entities who have never fully recovered from the Great Recession, and are now struggling with the rising burden of unfunded pension liabilities,” Nguyen said.

“School districts from Chicago to Detroit and Philadelphia are paying the price for years of structural deficits which are now brought to a head by budget shortfalls at the state level, and Illinois and Pennsylvania are prime examples of this,” Nguyen continued.

While a lot of high-yield is new projects involving hospitals, schools, roads and bridges, it can also include “fallen angel” credits, so-called because of their recent decline from investment grade ratings due to serious fiscal distress and resulting credit turmoil, Miller said.

While many credits in Chicago remain investment-grade, Chicago general obligation bonds and Chicago Board of Education public school credits lost their investment-grade ratings last year amid the city’s pension woes and severe credit deterioration and their own rocky finances.

Chicago carries a junk-level rating of Ba1 from Moody’s Investors Service, and BBB-plus ratings from both Fitch Ratings and Standard & Poor’s, with negative outlooks.

Spreads on a $500 million GO refunding and restructuring in January offered narrower spread penalties in its first GO deal since approving a large property tax hike.

However, its 2038 maturity with a 4.875% yield still offered 229 basis points over the triple-A benchmark when the deal was priced by Citi Jan. 12.

Even including these new troubled credits into the high-yield municipal universe Miller expects a forecast of lower default activity outside of Puerto Rico to be a supportive of the municipal high-yield sector going forward.

“In a low interest-rates world, an average of 250 basis points of excess return is pretty good, so I think the demand continues to be there,” he said.

“I think we can earn our coupon and plus perhaps a moderate amount of price appreciation if your credit selection pans out favorably,” he added.

The Bond Buyer

By Christine Albano

March 11, 2016

[Fed's Brainard: Regulation May Hurt Bond Market Liquidity — But it's Preventing Something Much Worse.]

In a speech Monday, Federal Reserve Governor Lael Brainard admitted there is a liquidity issue in the bond market and that regulation may be a part of the problem.

But, she argued, this regulation is also preventing another 2008-style banking collapse.

Which is simply more important.

The issue of bond market liquidity has been a consistent theme over the past years or so with financial executives such as JP Morgan CEO Jamie Dimon, Blackstone CEO Steve Schwarzman, and Oaktree Capital’s Howard Marks weighing in on the issue and generally pointing the finger at a lack of liquidity exasperating moves in financial markets.

Some of the blame has been pointed at federal regulations that force banks to have more cash on hand.

Brainard recognized that there are some liquidity strains, especially in the high-yield bond market, but these are worth the increased security offered by banks’ holding fewer risky assets.

“While acknowledging the role of regulation as a possible contributor, it is important to recognize that this regulation was designed to reduce the concentration of liquidity risk on the balance sheets of the large, interconnected banking organizations that proved to be a major amplifier of financial instability at the height of the crisis,” said Brainard.

Brainard conceded that, “there may be some deterioration in the resilience of liquidity at times of stress, along with a greater incidence of outsized intraday price movements,” adding that, “Relatedly, liquidity appears to be more segmented based on the characteristics of the securities being traded and the underlying structure of the markets in which they are traded.”

And so essentially Brainard is allowing that regulations have probably caused some decline in liquidity conditions in markets, but the impacts are being felt by smaller investors rather than by large, systemically-important banks. (Recall that banks themselves were the ultimate bagholders on many mortgages that went south in the run-up to the financial crisis.)

This, in turn, reduces the likelihood of contagion to the broader economy.

Here’s Brainard’s complete statements on liquidity:

Liquidity

In addition to raising uncertainty around the outlook, the recent financial market volatility has underscored the importance of ongoing attention to the resilience of market liquidity. Although it is fair to say that the recent uptick in volatility has in part reduced earlier concerns about prolonged low volatility and associated reach-for-yield behavior, it has placed added focus on the resilience of liquidity, particularly in markets, such as the market for corporate bonds, that may be prone to gapping between liquidity demand and supply in stressed conditions.

The Federal Reserve’s surveillance of liquidity conditions in financial markets has broadened and deepened considerably since the “taper tantrum” in mid-2013 and the events of October 2014 in the Treasury market. The analysis so far suggests a few preliminary observations. While it does not appear that day-to-day liquidity has declined notably, some characteristics of liquidity provision are changing. Broadly, traditional price-based measures of liquidity such as bid-asked spreads and the price effect of a given trade size generally remain in line with pre-crisis norms in most markets. In contrast, both anecdotes from market participants and the declining size of trades in some markets suggest it may have become more expensive to conduct, and may take more time to implement, large trades.

Moreover, there may be some deterioration in the resilience of liquidity at times of stress, along with a greater incidence of outsized intraday price movements. Relatedly, liquidity appears to be more segmented based on the characteristics of the securities being traded and the underlying structure of the markets in which they are traded. Based on granular disaggregation of the traded securities, liquidity appears little changed in secondary markets that have traditionally been highly liquid, such as on-the-run Treasury bonds and highly rated corporate bonds. By contrast, there has been some reduction in liquidity in the segments of these markets that have historically been less liquid.

The move toward somewhat greater segmentation of liquidity, in conjunction with ongoing electronification and acceleration of trade execution, might be contributing to increased linkages across markets. Anecdotally, it appears market participants may be using relatively more liquid instruments to hedge exposures in other less liquid market segments, perhaps unintentionally contributing to increased correlation across markets.

From a broader financial stability perspective, the possible deterioration in the resilience of liquidity suggests a special focus on segments where price gaps are most likely to arise at times of stress between holders of relatively illiquid or thinly traded securities that want to sell and dealers with an apparently reduced willingness to take the other side of the trade, as indicated, for example, by leaner dealer inventory holdings. Mutual funds holding relatively less liquid assets is one area of focus. Despite having share prices that move with market prices, these funds can give rise to first-mover advantages for redeeming shareholders and create the potential for destabilizing waves of redemptions and asset fire sales if liquidity buffers and other tools to manage liquidity risk prove insufficient. In this regard, our surveillance has been closely monitoring for any signs of liquidity strains associated with the recent increases in spreads for high-yield corporate bonds, as well as for idiosyncratic events affecting particular funds in this segment, such as the events surrounding the abrupt closing of Third Avenue Management's Focused Credit Fund last December.

More broadly, the regulatory agencies in the United States and the Financial Stability Board internationally have work under way focusing on possible fire-sale risk associated with the growing share of less liquid bonds held in asset management portfolios on behalf of investors who may be counting on same-day redemption when valuations fall. The recent proposal by the Securities and Exchange Commission (SEC) to ensure mutual funds have ample liquidity buffers under stressed scenarios and undertake measures to address the risk of heavy redemptions and fire sales is notable in this regard. Our surveillance will continue to undertake more granular analysis of liquidity resilience and associated risks.

Across financial markets, it is difficult to disentangle the effects on liquidity of changes in technology and market structure and changes in broker-dealer risk-management practices in the wake of the crisis on the one hand and enhanced regulation on the other. While the leverage ratio and other Dodd-Frank Act requirements likely are encouraging broker-dealers to be more rigorous about risk management in allocating balance sheet capacity to certain trading activities, the growing presence of proprietary firms using algorithmic trading in many of these markets, which predated the crisis, is also influencing trading dynamics in important ways. The Request for Information issued by the U.S. Treasury and the recent proposals from the Commodity Futures Trading Commission and the SEC will be important in deepening our understanding. While acknowledging the role of regulation as a possible contributor, it is important to recognize that this regulation was designed to reduce the concentration of liquidity risk on the balance sheets of the large, interconnected banking organizations that proved to be a major amplifier of financial instability at the height of the crisis.

Business Insider

by Bob Bryan

Mar. 7, 2016, 3:30 PM

SIFMA: Cut MSRB's Proposed Close-Out Period for Muni Trades in Half.

WASHINGTON – The Securities Industry and Financial Markets Association wants municipal securities transactions to be closed out within 15 days of settlement, rather than the 30 days proposed by the Municipal Securities Rulemaking Board.

The MSRB proposed the 30-day period in January in an amendment to a more than 30-year-old portion of its Rule G-12 on uniform practice that the board said would lessen the effect of interdealer transaction failures on the market. The self-regulator currently recommends that dealers who fail to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date.

The proposal would allow the purchasing dealer to issue a close-out notice the day after the settlement date and mandate the 30 calendar-day timeframe. The changes would also allow the purchasing dealer to start close-out procedures within three business days of the settlement date instead of the current 10-business day window. Once the rule is approved, dealers would have 90 days to comply with it.

Leslie Norwood, a Securities Industry and Financial Markets Association managing director and co-head of its munis group, said SIFMA believes "30 days is great" but that the MSRB has not gone far enough and should instead mandate the close-out occur in 15 days.

“In the interest of investor protections, investors need the certainty to know that securities are in their accounts,” Norwood said. SIFMA is also proposing that if both sides agree that more time is needed to complete the close-out, the shorter timeline could be extended another 15 days.

“The industry is willing to commit to a faster standard and we think the MSRB should take us up on it,” Norwood said, adding in her comment letter that “almost universally, failed transactions don’t get better with age, and it is easier to have conversations about close-outs for failed transactions sooner rather than later.”

In addition to proposing an even shorter close-out period, SIFMA also requested that the MSRB reconsider the existing requirement that close-outs need both sides to agree before they can be carried out. SIFMA asked for additional guidance when one dealer is trying to resolve a fail but the other party is not cooperating. It suggested the MSRB should consider allowing a party that has already taken reasonable steps to resolve the fail to unilaterally cancel a transaction if the counterparty is unresponsive.

The group also said it would like to talk to the MSRB and Depository Trust & Clearing Corp., whose managing director expressed his support for the MSRB proposal in a letter to the board, on whether a purchasing dealer should be required to accept a partial delivery on an inter-dealer fail from the National Securities Clearing Corp.’s Continuous Net Settlement system, which often serves as counterparty for buyers of municipal bonds.

While the MSRB wants to limit the close-out timeline, it made clear in its proposal that the three interdealer options for remedying a failed transaction would remain the same through the transition. The options would allow the purchasing dealer to either: choose a “buy-in” and go to the open market to purchase the securities; choose to accept securities from the selling dealer that are similar to the originally purchased securities; or allow the purchasing dealer to require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

Mike Nicholas, chief executive officer for Bond Dealers of America, said BDA appreciates “the commonsense approach the MSRB has taken in regard to the proposed amendments” but has several concerns with the three options available for closing out a transaction and would like to see a 180-day transition period for dealers to adjust to the rules after they’re finalized.

Nicholas pointed out that some munis trade infrequently and that in some cases only a few investors may hold the vast majority of a small serial maturity within a larger issuance. In that case, it is hard for dealers to use the first close-out option and buy the same security within 30 days.

While dealers could then try to find a comparable security for its customer, Nicholas said, it is important to note that finding such bonds could be cost prohibitive for BDA’s small and middle market dealers.

BDA also suggested the MSRB add a requirement to the third close-out option for the selling dealer to deliver securities to its customer within 30 days.

Additionally, BDA is requesting that the MSRB clarify information related to several systems dealers may use to resolve fails. First, the group is asking the MSRB to state more clearly that dealers should use the original settlement date for calculating timeframes. BDA said dealers would have questions if they use the NSCC’s automated fail clearance system, called the Reconfirmation and

Pricing Service, which resets the settlement date to make net capital calculations. It is also asking that the MSRB give additional guidance on how dealers should resolve fails using the Automated Customer Account Transfer Service, which facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

The Bond Buyer

By Jack Casey

March 8, 2016

IRS Releases Proposed Regulations Defining a "Political Subdivision" For Purposes of Determining Eligibility to Issue Tax-Exempt Bonds: Butler Snow

On February 22, 2016, the Internal Revenue Service (the "IRS") released proposed treasury regulations (the "Proposed Regulations") to provide guidance as to how the IRS intends to prospectively define a "political subdivision" for purposes of allowing political subdivisions to issue tax-exempt bonds under Section 103 of the Internal Revenue Code (the "Code"). The Proposed Regulations have not yet been enacted as "final" regulations, and accordingly, until the Proposed Regulations are finalized, the existing IRS guidance continues to control. The Proposed Regulations will mainly impact special districts formed by developers to provide infrastructure for new development.

The IRS has solicited comments to the Proposed Regulations and a public hearing is scheduled for June 6, 2016. As these Proposed Regulations, when finalized, will have a significant impact on many of Butler Snow's clients, be assured that Butler Snow lawyers will be directly and actively involved with the preparation of comments on these Proposed Regulations directly with Treasury Department's Chief Counsel's Office, as well as through the National Association of Bond Lawyers and the American Bar Association.

Section 103 of the Code provides that interest on certain bonds issued by States and political subdivisions will be exempt from federal income tax. Traditionally, provided that a governmental entity possessed one or more substantial sovereign powers, including the power to tax, the power of eminent domain or the police power, the governmental entity was generally deemed to be a political subdivision, eligible to issue tax-exempt bonds under Section 103 of the Code. In 2013, however, the IRS issued Technical Advice Memorandum 201334038 (the "TAM") which challenged traditional belief that a governmental entity possessing one or more substantial sovereign powers alone was enough to ensure the entity was in fact a political subdivision eligible to issue tax-exempt bonds. As a result of the TAM, there has been a great deal of uncertainty as to whether many of our special district clients qualify as political subdivisions, and ultimately, remain eligible to issue tax-exempt bonds under Section 103 of the Code.

The Proposed Regulations provide a new three-part test for determining whether an entity qualifies as a political subdivision, taking into account all of the relevant facts and circumstances, which includes:

1. The entity must possess the right to exercise a substantial amount of at least one sovereign power (the "Sovereign Power Test");
2. The entity must serve a governmental purpose (the "Governmental Purpose Test"); and

3. A State or local government must exercise control over the entity (the "Control Test").

Unlike the Sovereign Power Test and the Governmental Purpose Test, the Control Test is a substantial deviation from the current regulatory regime.

The Proposed Regulations define control, for purposes of the Control Test, as an ongoing right or power to direct significant actions of the entity and suggest the following significant rights or powers, on a discretionary and non-ministerial basis, will constitute control:

1. Right or power to elect a majority of the governing body of the entity.
2. Right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency.
3. Right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use.

The Proposed Regulations further provide that control, for purposes of the Control Test, may be vested in one or both of the following:

1. State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities; or
2. An electorate established under applicable state or local law of general application, provided the electorate is not a "private faction."

For this purpose, an electorate is a "private faction" if the outcome of the exercise of control is determined by the votes of an unreasonably small number of private persons. The Proposed Regulations provide that whether the number of private persons is unreasonably small will be determined based on all of the facts and circumstances, but also conclusively affirm that a private faction will always exist if the combined votes of three voters with the largest shares of votes can determine the outcome. The Proposed Regulations provide a safe harbor whereby a private faction will not exist provided a combined vote of more than 10 voters with the largest shares of votes in the electorate can determine the outcome. So, for example, an electorate with 20 voters, each with 5% equal voting power, would satisfy the safe harbor as 11 voters would be required to determine the outcome. In contrast, an electorate with 20 voters with unequal voting power in which 10 or few members could determine the outcome, would not satisfy the safe harbor.

The Proposed Regulations, if enacted as drafted, could have a significant impact on many Butler Snow clients. These Proposed Regulations are scheduled to be effective 90 days after publication in final form, with certain transition rules. It is likely that these Proposed Regulations will be modified to some degree following the comment process and public hearing, and therefore, it is unlikely they will be finalized as currently drafted. Please note, for all entities in existence prior to March 25, 2016, the Proposed Regulations would not be effective until three years and 90 days after publication in final form, presumably to give existing entities an appropriate amount of time to restructure and become compliant.

Of note to the development community is that the Treasury Department and IRS are seeking public comment on whether it is necessary or appropriate to permit special districts formed for new developments to be political subdivisions during an initial development period in which one or two private developers elect the district's governing body and no other governmental control exists. The development community should consider commenting on the Proposed Regulations to make clear how important this tool is to new development.

As mentioned above, Butler Snow lawyers will continue working with IRS, the National Association of Bond Lawyers and the American Bar Association to ensure that the concerns of our Butler Snow clients are represented.

Butler Snow LLP

by Rene Adema Moore & Dee P. Wisor

March 1, 2016

S&P Reports On U.S. Public Finance Bank Loans Evaluated In 2015.

NEW YORK (Standard & Poor's) March 9, 2016– Standard & Poor's Ratings Services U.S. Public Finance department said in a report today that in 2015 it evaluated the impact on obligors' ratings of 126 bank loans totaling $5.16 billion. Of that total, five loans negatively affected the credit quality of Standard & Poor's-rated parity obligations because of lenient covenants and inadequate liquidity levels to handle potential acceleration events.

The overwhelming majority of bank loans generally haven't negatively affected U.S. public finance issuers' credit quality when the financing structures mitigate contingent liquidity risks and where liquidity is sufficient under our criteria, the report says.

The report is titled "S&P Evaluated $5.1 Bil. Of U.S. Public Finance Bank Loans In 2015: Issuers' Liquidity Positions Helped To Support Ratings."

Standard & Poor's continues to stress the importance of loan disclosures in our written analyses and communications with issuers as direct purchase debt is often not subject to disclosure rules like rated securities.

We have determined, based solely on the developments described herein, that no rating actions are currently warranted. Only a rating committee may determine a rating action and, as these developments were not viewed as material to the ratings, neither they nor this report were reviewed by a rating committee.

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

Moody's Predicts Bright Future for U.S. P3 Market.

Although the U.S. public-private partnership market has been marked by slow growth and fragmentation, it is poised to become one of the world's largest, predicted Moody's Investors

Service.

“New state and federal P3 resources and political and legislative support, combined with a strong underlying legal framework for contractual enforceability and a deep capital market ready to finance projects,” will help to drive this projected surge in P3s, the credit ratings agency said March 10.

The creation of the Build America Transportation Investment Center (BATIC), which serves as an information and coordination clearinghouse for state and local governments and project sponsors that wish to pursue P3s, is improving the outlook for this market, said Moody’s.

On the other hand, the FAST Act also cuts Transportation Infrastructure Finance and Innovation Act (TIFIA) funding by about 70 percent from 2015 levels although negative effects of this may be blunted by the fact that the law also allows TIFIA to keep uncommitted funds, Moody’s added.

A record number of availability-payment P3 agreements were finalized in 2015, including several that were negotiated by states that had never undertaken such projects, the credit ratings agency noted. Examples include the KentuckyWired broadband P3, the Ohio Portsmouth bypass, Pennsylvania’s Rapid Bridge Replacement Project, and Michigan’s Freeway Lighting Project.

“State-level P3 activity has risen over the last three years and nearly all P3 projects have been completed early or on time,” noted Moody’s Vice President and Senior Analyst John Medina.

However, many government agencies have much to learn about how to negotiate and conduct P3s, he warned.

“The need for more inter- and intra-government P3 best practice sharing remains key for the U.S. P3 market’s long-term development compared to other markets where infrastructure development and funding may be more centrally aligned,” Medina explained.

NCPPP

March 14, 2016

Treasury Corrects Proposed Regulations on What is a Political Subdivision: Squire Patton Boggs

Recently, Treasury proposed a new test for an entity to qualify as a “political subdivision” that is entitled to issue tax-exempt bonds on its own behalf. (These are merely proposed regulations, and are not yet governing law.)

The proposed regulations included some transition rules that Treasury put in place to make sure that the proposed regulations would only apply prospectively. (Prop. Reg. 1.103-1(d)(2) – (4).)

One of the transition rules said that solely for purposes of determining whether outstanding bonds of an entity were issued by a political subdivision, the new, more restrictive definition of political subdivision would not apply to that entity with respect to its outstanding bonds that are issued no more than 30 days after Treasury finalized the proposed regulations. We immediately noted a nasty trap lurking in these new rules. If Treasury finalized the rules in their current form, this transition rule would mean that existing bonds would be treated as issued by a political subdivision (under the current definition of political subdivision), but the issuer itself would be treated as a private user (because the transition rule only applies for purposes of determining whether the bonds were issued by a political subdivision, and no further). The same trap would ensnare refunding bonds that were intended to qualify from the additional transition rule that would grandfather in refunding bonds that did not extend the weighted average maturity of prior bonds issued under the old definition of political subdivision.

Our immediate thought was that this trap could not have been what Treasury intended, and Treasury has agreed. Treasury corrected the proposed regulations yesterday. The corrections make it clear that the transition rules apply for all tax-exempt bond purposes, avoiding this potential trap. The revised provisions look like this:

Click here to view the image

The proposed regulations have many other substantive flaws that the tax-exempt bond community will continue to discuss, which are based on policy disagreements between Treasury and the tax-exempt bond community. Treasury should be commended for fixing this obviously unintended result in the meantime.

Squire Patton Boggs – John W. Hutchinson

March 10, 2016

IRS Model Closing Agreements for VCAP and Examinations.

The IRS office of Tax Exempt Bonds (TEB) developed model closing agreements to resolve compliance issues on an examination and in the Voluntary Closing Agreement Program (VCAP). These model agreements contain language that will generally be used by TEB in closing agreements relating to tax-exempt bonds. Closing agreements for build America bonds and other types of tax credit bonds will use similar agreements modified for tax credits rather than tax exempt interest.

The model agreements are designed to improve consistency in closing agreements for similar violations, whether the case is in VCAP or under examination. In most instances, deviations from the operative terms of the model agreement language will require additional review.

MODEL CLOSING AGREEMENTS

These examples show use of the model closing agreement for an examination and a VCAP case.

All VCAP submission requests must include a draft of the VCAP model closing agreement filled in as appropriate for the TEB VCAP request.

- TEB VCAP Model Closing Agreement – showing use of the model agreement when the violation was discovered by the issuer and brought to TEB under VCAP
- TEB Examinations Model Closing Agreement – showing use of the model agreement when the violation was discovered during an examination

The examples cover the compliance issue of the sale of bond-financed property to an entity that is not a 501(c)(3) organization or governmental unit. Under VCAP, this violation is described in the resolutions standards found in IRM 7.2.3.4.2.2. For simplicity, we kept the settlement amount the same in both examples; however, a violation identified during an examination will generally be resolved less favorably than the same violation identified through VCAP.

PARTS OF THE MODEL CLOSING AGREEMENTS

Generally, the model closing agreement contains the following elements (references are to the paragraph identifiers in the attached closing agreements):

Authorizing paragraph – The closing agreement is executed under the authority of section 7121 of the Code and is between the parties identified in this paragraph: generally the issuer, the conduit borrower for the bond issue (if applicable), and the IRS.

Preamble ("Whereas" Clauses):

Paragraph A – Describes the bond issue to which the closing agreement relates. Only the bonds described in this paragraph will be covered by the closing agreement.

Paragraph B – For VCAP: Issuer's representations reflecting the basis for the IRS having reason to conclude that the bonds do not meet the requirements of tax-advantaged bonds. For examination cases: a statement providing a basis for the IRS to conclude that taxpayers are taking a position that interest on the bonds is tax-exempt or the bonds are otherwise tax-advantaged.

Paragraph C – Provides a description of the matter that is being resolved with the closing agreement. Any matter not described in this paragraph is not resolved with the closing agreement.

Paragraphs D-F – Additional description of the scope of the agreement.

Paragraph G – Provides issuer representations that describe the sources of the monies to be used to fund the settlement payment and a description of any other remedial action to be taken. VCAP Internal Revenue Manual provisions generally require redemption of any nonqualified bonds prior to the execution of the closing agreement by the IRS. For examination closing agreements, in certain situations an irrevocable notice of redemption of bonds to be redeemed may be allowed in lieu of a defeasance escrow, but will generally include a requirement to provide the IRS with evidence the required redemption was made.

OPERATIVE PARAGRAPHS

Paragraph 1 – Provides the settlement amount required to be paid under the closing agreement and the required method of payment.

Paragraphs 2-4 – Procedural and tax treatment of Settlement Amount paid.

Paragraph 5 – Describes the federal tax treatment provided by the closing agreement for the matter described in paragraph C.

Closing agreements resolving the taxability of interest on a bond issue may also address whether the facilities acquired with bond proceeds by a taxable conduit borrower shall be treated as tax-exempt bond financed property under section 168(g) of the Code (relating to accelerated depreciation).

Paragraph 6 – Provides that only matters described in paragraph C are covered by the agreement.

Paragraph 7 – Provides that proceeds of any bond redeemed as a condition of the closing agreement are treated as unspent proceeds for any future refunding of those bonds. The effect of this paragraph is to sever the connection between bond proceeds and the expenditures to which they were originally allocated. Accordingly, should a taxable refunding of the nonqualified portion of the bonds subsequently be refunded with tax advantaged bonds the proceeds would not be considered as “spent,” which could result in violations of tax rules regarding the expectation to use proceeds and certain arbitrage restrictions.

Paragraphs 8-10 – Describe limitations on the scope of the agreement, and finality of agreement.

Signatures – The signatures required include the issuer, the conduit borrower (when a conduit borrower is a party to the agreement), and the IRS. If an issuer and the conduit borrower are not able to sign on the same page due to logistical limits, the IRS may modify the signature page of the agreement to allow for separate execution by issuers and borrowers. The issuer (and borrower, if applicable) sign the agreement before it is signed by the IRS.

Exhibit A –When terms of the closing agreement include a redemption or defeasance of bonds prior to execution of the agreement, this exhibit describes the bonds redeemed or defeased. In cases where redemption of bonds is to be completed after execution of the closing agreement, the agreement will contain instructions for submitting a notification to the IRS of the actual redemption.

Exhibit B – Instructs issuers how to make the settlement payment required under the closing agreement using the Electronic Federal Tax Payment System.

Disclosure Consent – The consent will authorize the IRS to disclose the existence and subject matter of a closing agreement to correct any material misstatement with respect to any public statement by the issuer or borrower (or their agents).

This article is intended to give you an overview of what to expect with the new closing agreement templates. Any questions about how the agreement will be applied to the facts of any specific case should be directed to the TEB employee assigned to that case.

Additional resources

- Tax Exempt Bonds Voluntary Compliance
- TEB VCAP Resolution Standards

CDFA Energy Investment Partnership Webinar Series.

The **Energy Investment Partnerships Webinar Series** is a tailored four-part webinar series designed specifically for states and stakeholders working to develop or enhance an Energy Investment Partnership (EIP). The webinar series will provide research-based education on EIPs and how development finance agencies, public entities, foundations, energy organizations and the financing community can work together to achieve greater program and project success to drive clean energy deployment.

This webinar series is a joint effort of the Council of Development Finance Agencies and the U.S. Department of Energy and is inspired by the recently published Energy Investment Partnerships guide. Each webinar is three hours and focuses on a financing technique or specific field of growing interest in the clean energy finance industry. A dedicated panel of industry experts will lead each webinar with concentrated presentations and discussions to explore how to achieve greater program and project success to drive clean energy deployment.

The following topics will be the focus of the webinar series:

- Webinar 1: Energy Investment Partnerships (EIP) — What Is It and How to Get Started
- Webinar 2: Energy Investment Partnerships (EIP) — Market Assessment & Product Offerings
- Webinar 3: Access to Capital & Leveraging Existing Financing Tools
- Webinar 4: Measuring Impact & Data Collection

Participants are invited to attend one, two, three, or all four webinars. The Energy Investment Partnerships Webinar Series is complimentary for all participants. To confirm your participation, register for the webinar series by clicking on the link below. Additional login information will be sent to all registered participants approximately 2-3 days before each webinar.

Click here to learn more and to register.

TAX - OHIO

Oak View Properties, L.L.C. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - March 3, 2016 - N.E.3d - 2016 WL 827799 - 2016 -Ohio- 786

City board of education appealed decision of Board of Tax Appeals (BTA) that affirmed reduced valuations of property ordered by county board of revision.

The Supreme Court of Ohio held that board of education failed to preserve for appeal to BTA its claim that BTA should not retain valuations set by board of revision.

Supreme Court of Ohio holds that city board of education failed to preserve for appeal to Board of Tax Appeals (BTA) its claim that BTA should not retain valuations set by county board of revision, where board of education presented no arguments for reversing and reinstating auditor's valuation, which had been rejected by board of revision.

TAX - OHIO

Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - March 2, 2016 - N.E.3d - 2016 WL 827784 - 2016 -Ohio- 757

City board of education appealed decision of the Board of Tax Appeals (BTA) affirming valuation of hotel property by county board of revision for tax purposes.

The Supreme Court of Ohio held that evidence supported decision of county board of revision and BTA not to rely on sale price of property.

Evidence supported decision of county board of revision and Board of Tax Appeals (BTA) not to rely on sale price of hotel property in valuing property for tax purposes. Record documented a decline in property values after sale not only for subject property but also for its competitive set of comparable hotels, and appraiser testified that sale lacked arm's-length character.

TAX - NEW JERSEY

New Jersey Turnpike Authority v. Township of Monroe

Tax Court of New Jersey - February 22, 2016 - N.J.Tax - 2016 WL 741487

Turnpike Authority brought action against township challenging local property tax assessments. Authority and township filed cross-motions for summary judgment.

The Tax Court held that:

- Tax exemption granted for real property acquired by an authority created by the State may be denied on grounds that the property was not used for a Turnpike purpose for a later tax year;
- Turnpike's acquisition of property to satisfy its mitigation obligations to Department of Environmental Protection for loss of environmentally protected lands was used for a "transportation project," and thus property was exempt from tax assessments under Turnpike's enabling statute; and
- Turnpike's claim for an exemption on property for an earlier tax year was time-barred, and thus Tax Court lacked subject-matter jurisdiction to consider claim.

Tax exemption granted for any real property acquired by an authority created by the State after written notice was provided to the assessor may be denied on the grounds that the property was not used for a Turnpike purpose for a later tax year.

Turnpike's acquisition of property to satisfy its mitigation obligations to Department of Environmental Protection for loss of environmentally protected lands was used for a "transportation project," and thus property was exempt from tax assessments under Turnpike's enabling statute, even if Turnpike obtained some acreage in excess of what was required by Department. Turnpike acquired property solely in furtherance of a project to widen and reconfigure portion of a highway to improve traffic, increase safety, and reduce motor vehicle congestion, Turnpike was required by law to obtain permits from Department allowing it to disturb environmentally sensitive areas, and but for project, such areas would not have been impacted, and property was not being held for an indeterminate purpose or time, nor with an intention to sell it as surplus property.

Turnpike's claim for an exemption from tax assessments on property that it acquired and used for a transportation project was time-barred, and thus Tax Court lacked subject-matter jurisdiction to consider claim, even though Turnpike was granted an exemption in the prior tax year and there was no change in property's ownership or use. Turnpike did not challenge assessment in any forum, timely or otherwise, and raised right to exemption only in a summary judgment motion before the Tax Court.

S&P's Public Finance Podcast: The U.S. Healthcare Sector Outlook.

In this week's Extra Credit, Managing Director Martin Arrick and Director David Peknay provide an overview of our recent report on the U.S. healthcare industry and our outlook for the segments within the sector, including for-profit and insurance companies.

Listen to the Podcast.

Mar. 11, 2016

The Tools We Need to Measure the Real Value of P3s.

A lot of deals never get off the ground because they appear to be too expensive. But we're not looking at them the right way.

It's no surprise that public-private partnerships (P3s) are a hot topic in the United States. Non-traditional approaches to infrastructure financing promise to help fiscally strapped state and local governments increase investment in public infrastructure, something everyone wants to happen.

But how exactly do P3s make good on this promise? Despite popular perceptions, P3s aren't all about (or even mostly about) lowering construction costs and increasing operational efficiency. The really unique value of P3 arrangements arises from the way they can transfer a specific project funding risk, such as revenue volatility, from local taxpayers to private-sector investors who can bear such risk more efficiently.

"Less fiscal risk, more public infrastructure" is a compelling story. But despite the obvious need for much more investment in public infrastructure, intense interest among public-sector officials, and a huge amount of available private-sector capital, the development and adoption of P3s in the United States has been far slower than expected. Why?

The common theme of failed deals is not hard to find: sticker shock. Risk-transferring P3 transactions appear to be expensive compared to traditional alternatives, which erodes support and makes otherwise-surmountable issues fatal. But it is not substantively correct in many cases. It is actually a problem of measurement. If P3s are to fulfill their promise, we need better tools for measuring the value of what they are expected to deliver.

Risk-transferring P3s appear expensive because the existing ways of describing and evaluating infrastructure financing alternatives (such as the classic "value for money" analysis) focus on expected project-level costs but generally fail to adequately measure the value of funding risk transfer in the public sector's specific fiscal context.

Such a one-sided analysis is akin to judging an insurance policy by adding up all the expected premium payments but ignoring the policyholder's specific benefits of avoiding costly outcomes, such as personal bankruptcy, when an unexpected event occurs. Looked at this way, an insurance policy will at best appear to be a bad deal — and at worst an egregious waste of money that calls into question the purpose of the policy in the first place.

Inadequate measures of P3 value also impede risk-transferring product innovation. Despite private-sector infrastructure investors' ability and motivation to develop innovative financing products, new infrastructure risk-sharing techniques won't be pursued without a guide to their specific value to the public sector. This is true even where there is an intuitive understanding that risk transfer will be valuable to fiscally constrained governments.

Measuring the value of infrastructure risk transfer is not easy. It involves probabilistic modeling of uncertain factors and their interactions in both complex infrastructure projects and the public sector's fiscal situation. A lot of data and math is required. But successful precedents in the private sector (most notably in financial portfolio management) show that a probability-based methodology can be the basis for practical and effective tools that could be widely used by real-world decision-makers.

A specialized tool for measuring the value of fiscal risk transfer that is accessible to non-technical users among public-sector decision-makers and stakeholders could directly address the problem that risk-transferring P3 transactions appear unnecessarily costly. With such a tool in place, the focus of P3 proposal development and evaluation would shift to optimizing the (now measurable) value of risk transfer for fiscally constrained governments, leading to faster product innovation, better deal-success ratios and higher levels of investment in public infrastructure.

Such a specialized tool for P3 risk transfer doesn't exist — but it could. There's already powerful off-the-shelf software, abundant fiscal data for U.S. state and local governments, and skillful and motivated people on all sides of the P3 equation. The tool should be designed first and foremost to protect the public sector from bad deals — and to do this in a way that is clear and transparent to a broad range of stakeholders. But it also must ensure that genuinely valuable P3 proposals get a fair hearing.

Given the scale of the challenge of improving America's public infrastructure, developing better ways to correctly evaluate all of the public sector's options is clearly worth the effort. Measurement of P3 value should be part of the solution, not the problem.

GOVERNING.COM

BY JOHN RYAN | MARCH 11, 2016

Tax Revenues Are Starting to Slow in Most States: Rockefeller Report.

A new report details revenue projections for each state, showing that many will have sizable budget shortfalls to close.

The outlook for tax revenues in many states isn't particularly rosy. Tax collections are starting to slow, meaning lawmakers in many states will have sizable budget shortfalls to close.

A Rockefeller Institute report released this week depicts weaker tax revenue growth or slight declines for most states. State personal income tax receipts are expected to grow a median of 4.6 percent in fiscal year 2016 and 4.4 percent in fiscal 2017, compared with 7.8 percent last year. Sales taxes are similarly expected to rise by a median of just 3.5 percent this year and 3.9 percent in fiscal 2017, down from 4.5 percent growth last year.

"The bleak forecasts certainly mean tough decisions for the state officials, whether it's in the form of tax increases, spending cuts, or tapping the rainy day funds," said Lucy Dadayan, a Rockefeller Institute senior policy analyst who co-authored the report.

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | MARCH 10, 2016

New Jersey Transit Strike Piles Onto Transportation-Fund Crisis.

The prospect of the first New Jersey Transit workers' strike in three decades come Sunday risks hitting the state and its transportation system while they're already down.

The New Jersey Transportation Trust Fund Authority, which finances road and rail projects throughout the Garden State, has had expenses exceed revenue by an average of $1 billion in each of the last three years.

As of July 1, the state will have exhausted its $8 billion capital budget for roads and mass transit, and no replacement plan is in place. Democratic lawmakers want to reduce future shortfalls by raising the gasoline tax, a proposal Republican Governor Chris Christie has resisted.

New Jersey is the most densely populated U.S. state and its economy relies on a network of superhighways, airports and ocean terminals. A strike from the nation's second-biggest commuter railroad would strand tens of thousands of Manhattan-bound workers. It would mark the latest strain on a state whose credit rating has tumbled to the second-worst in the U.S. and has a swelling $83 billion unfunded pension liability, even though its residents pay the highest property-tax rate nationwide.

"People generally who live in New Jersey are not happy about their tax situation and the services they're getting," said Howard Cure, director of municipal research in New York at Evercore Wealth Management, which oversees $6.2 billion of assets. "This is just going to be another frustration."

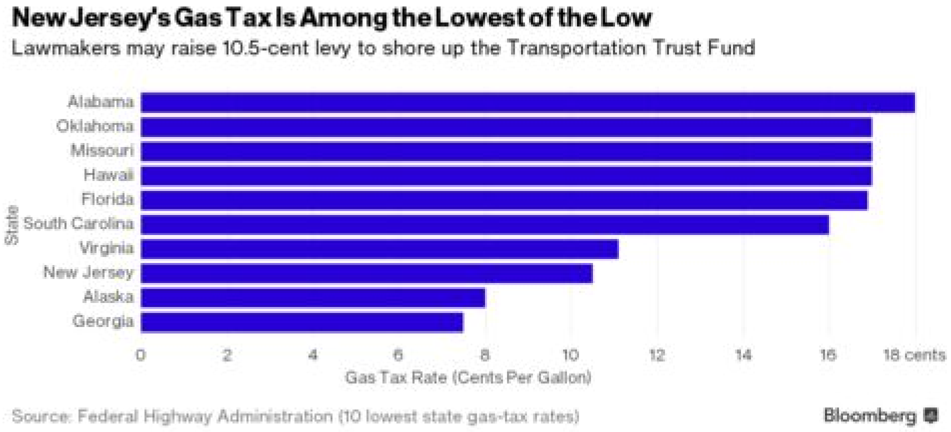
Spreads Widen

Pension and benefit payments, plus debt costs, have diminished New Jersey's ability to pay for infrastructure improvements, including on its rail line, where trains break down four times more than the U.S. average. To help cover shortfalls in the past three years, the agency issued a net $2.4 billion of bonds. The transportation authority has about $16 billion of securities outstanding, making it one of the 20 most-indebted borrowers in the municipal market.

In the authority's most-recent bond offering in November, 30-year debt priced to yield 5 percent, or 1.78 percentage point more than benchmark munis, data compiled by Bloomberg show. That spread is twice as wide as when it issued similarly dated bonds in May 2011. Moody's Investors Service and Standard & Poor's have lowered their credit ratings by two steps since then.

The most-traded Transportation Trust Fund securities on Friday were zero-coupon bonds due in 2035 that changed hands at an average 35.9 cents on the dollar, the lowest price since December, Bloomberg data show.

Christie pledged to use more cash and less debt for highway and bridge repairs in 2011. Instead, he put no money into the transportation fund for three years and borrowed $1 billion more than promised. That's left Democrats, who control the legislature, supporting a raise in the state's 10.5-cent gasoline tax, which is the third-lowest in the U.S. and hasn't been increased since 1988.



The levy brings in about $500 million annually to the trust fund, its largest pool of money. Yet in the 2015 fiscal year, the agency's total revenue wasn't enough to cover transportation costs, let alone $825 million in bond payments.

"Even a doubling or tripling of the gas tax doesn't solve all their problems, it only makes a dent," said Adam Weigold, who runs a $166 million New Jersey mutual fund at Eaton Vance Management in Boston. "They need billions of dollars, not hundreds of millions of dollars."

Christie, who ended his campaign for president last month, said in a radio interview that it's up to the legislature to make the first move and put forward a proposal to raise the gasoline levy. He didn't say whether he'd support the measure, just that he'd "react to it."

Christie and his administration "refuse to renew the Transportation Trust Fund and have failed to recognize the critical importance of the state's infrastructure to the economic conditions for working people in New Jersey," New Jersey Senate President Steve Sweeney, a Democrat, said this week. "The years of indifference to the state's transportation needs now threaten to cripple transit and choke off economic activity."

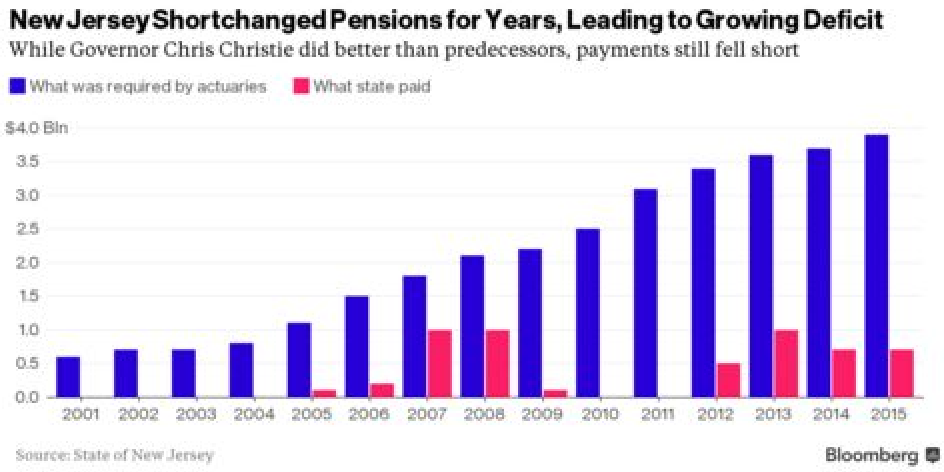
Contract Negotiations

The potential transit strike would be the first since 1983. It stems from the expiration of contracts for 4,200 unionized rail workers in 2011. New Jersey Transit's negotiator said that there was nothing to report as of Thursday, when talks resumed after a day-long break for each side to review the latest proposals.

An emergency negotiating board appointed by President Barack Obama had recommended that New Jersey Transit adopt the final offer made by the union group, at a cost of $183 million. It called for a six-and-a-half-year contract with annual raises of 1.5 percent to 3.5 percent and a maximum 5 percent annual health-care contribution, according to the presidential board report.

New Jersey Transit said the state couldn't afford the recommendation. The agency had offered a seven-and-a-half-year contract that had annual increases of 1 percent to 2.5 percent and employees covering as much as 20 percent of medical costs.

Capital investment in New Jersey Transit has declined 19.4 percent since 2002, even as ridership jumped 20.2 percent, according to a report released this month by New Jersey for Transit, a coalition pushing for more spending. To offset the lack of funding, the system has raised fares five times in the past 14 years and diverted money for capital projects to cover day-to-day costs, the group said.



Raising the gasoline-tax rate would be a good first step to bolster the transportation trust fund, according to the report. That, in turn, would allow New Jersey Transit to focus on capital projects.

For investors, who see the money flow through New Jersey's coffers before reaching the transportation fund, the underfunded pensions are a bigger concern than lack of infrastructure spending. Over the past decade, the state put about $24 billion less than it should have into the funds, skipping payments as a one-time solution to close budget shortfalls and avoid tax increases.

"The gas tax seems to be the last bastion of reasonable taxation in New Jersey," Weigold said. But even with a higher levy, "we don't see the trends turning around. We see the state's financial underperformance continuing for the foreseeable future, with the pension issue being the biggest overhang."

Bloomberg Business

by Brian Chappatta

March 10, 2016 — 9:00 PM PST Updated on March 11, 2016 — 11:33 AM PST

[Bloomberg Brief Weekly Video - 03/10]()

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

[Watch the video.]()

March 10, 2016

[SEC Issues Record Fine to California's Largest Agricultural Water District.]

LOS ANGELES—California's sustained drought has set another record, this time with the U.S. Securities and Exchange Commission.

The SEC on Wednesday fined California's largest agricultural water district $125,000 to settle civil charges that it misled investors over its ability to pay debt on a $77 million bond. It is only the second time the SEC has fined a municipal bond issuer and represents the largest fine paid by an issuer.

According to SEC documents, the Westlands Water District, which serves central California, overstated its ability to make payments on a 2012 bond offering as the drought reduced water supply and depressed revenue.

During a 2010 board meeting discussing transactions meant to boost the district's revenue numbers to show investors it could meet its debt obligations, General Manager Thomas Birmingham joked that district officials were engaging in "a little Enron accounting," according to SEC documents.

Mr. Birmingham has agreed to pay a $50,000 penalty, and former Assistant General Manager Louie David Ciapponi has agreed to pay $20,000, the SEC said.

The district and its officials agreed to the settlements without admitting or denying wrongdoing, according to the district and the SEC.

"Westlands, [Messrs.] Birmingham and Ciapponi determined that entering into the settlement to fully resolve the matter was in the District's best interest," according to a statement from the district.

The SEC didn't allege the district or officials "intended to mislead potential purchasers" of the 2012 bond, the district statement said.

California has endured a drought that has pummeled the state and prompted Gov. Jerry Brown to mandate a 25% cut in water use in urban areas.

The Westlands Water District supplies water to more than 700 family-owned farms in western Fresno and Kings counties that produce $1 billion in crops each year, according to the district.

The district pulls water from the Sacramento-San Joaquin Delta and the San Luis Reservoir. According to the district's website, the total water available "is about 13% short" of what's needed to "to water the entire irrigable area" in the district.

The district assured investors it could still generate revenue equal to 125% of its debt-service payments, known as a debt coverage ratio. Investors use those assurances to make decisions about purchasing bonds. Failing to meet a debt covenant could put an issuer in technical default and drive up the cost of borrowing.

SEC investigators said Westlands "failed to disclose it had engaged in extraordinary accounting transactions" in 2010 to meet its debt coverage ratio without raising rates on customers.

District projections showed it would be about $10 million short of maintaining its ratio for fiscal year 2010, according to SEC documents.

"Westlands learned in 2010 that drought conditions and reduced water supply would prevent the water district from generating enough revenue to maintain" its debt ratio, according to an SEC statement.

To make up the difference the district reclassified cash from reserve and other accounts "to record additional revenue," SEC documents say.

Before making the transactions, the district "consulted with its independent auditor," who believed they were permissible, according to the district's statement.

The transactions "benefited customers but left investors in the dark about Westlands Water District's true financial condition," said Andrew J. Ceresney, director of the SEC Enforcement Division.

THE WALL STREET JOURNAL

By TAMARA AUDI

March 9, 2016 6:18 p.m. ET

Write to Tamara Audi at tammy.audi@wsj.com

Wells Fargo Charged With Fraud in Video Game Start-Up Case.

Wells Fargo has been accused of fraud over its role in underwriting a $75 million municipal bond deal for a video game company in Rhode Island that eventually went bankrupt, leaving taxpayers on the hook for the debt.

On Monday, the Securities and Exchange Commission charged Wells Fargo and the state agency that issued the bonds on behalf of 38 Studios, the now defunct video game start-up, with failing to disclose to investors the company's true financial picture.

The state agency had agreed to borrow the money in the tax-exempt municipal market and then lend most of the proceeds to 38 Studios, whose chairman and majority shareholder was the former Red Sox pitching ace Curt Schilling.

By lending money to a private company, owned by a local sports hero, state officials had hoped to stimulate jobs and lure other businesses to relocate to Rhode Island, which had been hit particularly hard by the recession.

But neither the state agency nor bankers at Wells Fargo disclosed in the bond offering documents that 38 Studios faced a funding shortfall even after it had received the bond proceeds.

Unable to pay off the debt, 38 Studios declared bankruptcy, sticking Rhode Island taxpayers with the bill. The bonds carried the state's "moral obligation" to repay them in the event that 38 Studios could not. Although such an obligation stopped short of an explicit requirement, the state has chosen to pay the debt — which totals about $90 million, including interest — for fear of damaging Rhode Island's credit rating.

The debacle set off years of hand-wringing and recriminations in Rhode Island. But the S.E.C.'s lawsuit, filed in the Federal District Court in Providence on Monday, is the first time that Wells Fargo's role in the bond deal has been exposed in such detail.

Wells Fargo had been hired by the Rhode Island Economic Development Corporation to underwrite the tax-exempt bonds in 2010. But the S.E.C. said Wells Fargo also cut a “side deal” with 38 Studios, which agreed to pay the bank an additional $400,000 if the bond deal closed. The side deal was never disclosed to the bond investors, the regulator said.

That side deal enabled the bank to receive twice as much money from the bond deal as was detailed in the official offering documents.

In a statement, the S.E.C. said the San Francisco-based bank failed to inform potential bond investors of the full extent of its economic interests in ensuring that the deal closed.

“An underwriter’s ‘skin in the game’ is material information to investors,” LeeAnn Ghazil Gaunt, the head of the S.E.C. enforcement division’s municipal securities and public pensions unit, said in a statement. A Wells Fargo spokesman said the bank “disputes the S.E.C.’s allegations in connection with the placement of these municipal bonds.”

A spokeswoman for the economic development agency, now the Rhode Island Commerce Corporation, said in a statement that the agency had filed lawsuits against some of its former employees and Wells Fargo in connection with the bond deal.

“The corporation will continue to work toward its goals of recouping money for Rhode Island and holding the defendants in the Commerce Corporation’s lawsuit accountable,” the spokeswoman said.

THE NEW YORK TIMES

By MICHAEL CORKERY

MARCH 7, 2016

Major California Water District Hit With Rare Federal Fine.

FRESNO, Calif. — Federal regulators issued a rare fine Wednesday to the nation’s largest agricultural water district for misleading bond investors about the district’s financial circumstances.

Thomas Birmingham, general manager of Central California’s Westlands Water District, joked at a 2010 board meeting about carrying out “a little Enron accounting” to overstate the agency’s revenue to avoid increasing rates for customers, the Securities and Exchange Commission said. That misleading information then was used to promote investment in a $77 million bond issue in 2012, the SEC said.

The California water district agreed to pay $125,000 in fines, marking only the second time that the SEC has issued a financial penalty against a municipal-bond issuer, regulators said in a statement.

Birmingham and a former water district official agreed to pay additional penalties totaling another $70,000.

At the time of the incident, Westlands executives were expecting water scarcity and drought to cut into the district’s revenue, potentially making the water agency’s bond issue less attractive to investors, regulators said.

Rather than raise water rates for its customers, however, Westlands used an improper accounting technique to make the agency look more prosperous than it really was, the SEC said.

The water district's actions "left investors in the dark about Westlands Water District's true financial condition," Andrew J. Ceresney, director of the SEC's enforcement division, said in the statement.

In its own statement Wednesday, Westlands said it had been following the advice of independent auditors.

Under the settlement with the SEC, neither Westlands nor the two executives acknowledged innocence or guilt, the water district said.

Westlands supplies irrigation water to 700 farms growing everything from almonds to tomatoes in 1,000 square miles of the San Joaquin Valley, which leads the nation in producing fruits, vegetables and nuts.

Westlands also is currently slated as one of the possible main participants, at $3 billion, in a $15.7 billion plan promoted by Gov. Jerry Brown to build two, 35-mile-long tunnels to carry more water to Central and Southern California. No water agency has yet formally committed funding for the giant tunnels, however.

Birmingham, the general manager, declined comment Wednesday on whether the SEC action would affect any effort to arrange financing for the proposed tunnels project. State officials leading the tunnels project also declined to comment, said Nancy Vogel, a spokeswoman for the California Natural Resources Agency.

Potential lenders will look hard at the incident in setting interest rates for Westlands, the next time the water district tries to raise money with a bond issue, said Chicago attorney James Spiotto, who specializes in laws related to municipal finance. Spiotto said the penalties didn't strike him as unusually high.

THE NEW YORK TIMES

By THE ASSOCIATED PRESS

MARCH 9, 2016, 5:24 P.M. E.S.T.

California Water District Fined by S.E.C. Over 'Enron Accounting.'

Enron was the huge energy and commodities company whose 2001 collapse revealed one of the largest accounting frauds in corporate history.

The S.E.C. said that Westlands had violated the section of the 1933 Securities Act covering misrepresentation. In a statement that neither admitted nor denied guilt, Westlands said its administrators had cleared the accounting changes with the district's auditor and noted that the settlement did not say the violation was intentional.

Westlands, based in Fresno, supplies irrigation water to a swath of farmland the size of Rhode Island, and its owners effectively control the district. It is the largest customer of the Interior Department's Bureau of Reclamation, which controls the distribution of federal water to farmers.

Westlands has been a powerful player not only in California politics but also in Washington, where it has been an influential voice at the Interior Department and in the development of water legislation in Congress.

Although the S.E.C. charge centers on a 2012 sale of $77 million in bonds, it is rooted in an accounting change two years before that, when the state's long drought had crimped the district's supply of federal water and cut deeply into its income from selling that water to farmers.

Under the terms of earlier municipal-bond sales, Westlands had promised to collect enough fees from its customers that its net revenue would not only pay its annual debt service, but leave a 25 percent cushion.

In 2010, however, the drought-induced dip in water fees had left the district roughly $9.8 million short of that 125 percent requirement — so short that it would be able to cover only 63 percent of its debt service without additional money. That could have led to a downgrade of Westlands's debt rating and to higher borrowing costs.

The straightforward solution would have been to raise the price of its water and other fees — but that would have meant an 11.6 percent price increase for the farmers who controlled the district. Instead, the district took $8.3 million from an account used to pay other expenses and $1.46 million from an account that held money dedicated to another bond issue 11 years earlier.

"We're not collecting any more money from the ratepayers," the S.E.C. settlement quoted Mr. Birmingham telling the district's board. "All we're doing is, we're taking money and saying we are reclassifying it from an account payable to income."

When Westlands sold more municipal bonds in 2012, it assured purchasers that it had met the 125 percent debt-service requirement for the previous five years. In fact, the S.E.C. said, the district not only had run short in 2010, but had changed its accounting methods in 2012 in a way that made the shortfall even greater.

Had it accurately stated its 2010 position, the commission said, it would have told bond buyers that it had only 11 percent of the money needed to service its debt — not 63 percent.

Responding on Thursday to the settlement, Fitch Ratings placed a negative ratings watch on $193.6 million in Westlands debt, indicating a higher chance that those AA bonds would be downgraded. It also placed a negative watch on $29.8 million in bonds issued by the San Luis and Delta-Mendota Water Authority, a collection of California water districts whose leading member and partial financier is Westlands.

THE BOND BUYER

By MICHAEL WINES

MARCH 10, 2016

GASB Request for Research.

Gil Crain Memorial Research Grant

Since its formation in 1984, the Governmental Accounting Standards Board (GASB) has encouraged academics and other researchers to conduct studies that would be relevant to the GASB's standards-setting activities. For more than 30 years, such research efforts have resulted in publishing their research in research briefs, journal articles, and occasionally in GASB research reports.

The GASB hopes to encourage more collaborative research efforts with academics by offering two $5,000 research grants, to be awarded by the end of June 2016.

To learn more, click here.

Click, Call and Comply: Understanding Continuing Disclosures.

Friday, March 18, 2016

12:00 p.m.- 12:45 p.m. EST

During this free webinar, the Municipal Securities Rulemaking Board (MSRB) staff will demonstrate resources available in the MSRB's Education Center and on the Electronic Municipal Market Access (EMMA®) website and other MSRB educational materials to support issuers' understanding and fulfillment of their continuing disclosure obligations.

At the end of this webinar, you will be able to:

- Understand the framework and importance of issuers' compliance with continuing disclosure obligations
- Identify where to get live help on submitting continuing disclosures to EMMA
- Navigate the EMMA website to view the universe of issuer disclosures

To learn more, and to register, click here.

- MSRB Releases New Annual Fact Book of Municipal Securities Data.
- CDFA & USDA Launch Community Facilities Infrastructure Toolkit.
- MSRB Revises Effective Date for Amendments to Transaction Reporting.
- MSRB Seeks Approval to Facilitate Shortening the Settlement Cycle.
- BDA Submits Letter to MSRB on Rule G-12, Modernizing Close-Out Procedures.
- Experts to Convene to Discuss Federal Scoring Solutions.
- State-By-State Trends In U.S. Public Finance, 2015.
- IRS Disputes Tax-Exempt Status of Solid Waste Bonds in S.C.
- *Fraternal Order of Police v. Montgomery County* – Court of Appeals holds that use of county funds to campaign for passage of ballot question in county referendum for modifying requirement of collective bargaining with fraternal order of police officers was appropriate use of government speech.
- *Goldman, Sachs & Co. v. City of Reno* – In ARS action brought by City against Underwriter, District Court holds that – because the allegedly fraudulent statements were made from New York – New York law should apply, in particular New York's six-year limitations period (vs. Nevada's three-year period).
- And finally, this week's guest commentator is John Oliver on Special Tax Districts. [Strong Language! NSFW! You've Been Warned!]

PUBLIC UTILITIES - CALIFORNIA

Seacrist v. Southern California Edison Company

Court of Appeal, Fourth District, Division 2, California - January 27, 2016 - 244 Cal.App.4th 308 - 197 Cal.Rptr.3d 834 - 16 Cal. Daily Op. Serv. 1100 - 2016 Daily Journal D.A.R. 948

Homeowners sued electric company for negligence, nuisance, trespass, strict products liability, breach implied warranty of fitness, strict liability based on ultra hazardous activity, and intentional infliction of emotional distress, alleging that stray electrical currents from company's substation were causing homeowners to suffer various medical issues. The Superior Court sustained company's demurrer without leave to amend. Homeowners appealed.

The Court of Appeal held that:

- Homeowners were not bound by theory that trial court's jurisdiction was based upon company's violation of rule prohibiting utilities from using ground or earth as a normal neutral to return electricity along the circuit;
- Trial court had authority to decide whether electric company was negligent;
- Trial court had authority to determine nuisance, trespass, and intentional infliction of emotional distress claims; and
- Trial court had authority to determine products liability, breach of implied warranty of fitness, and ultra hazardous activity claims.

Homeowners were not bound by theory that trial court's jurisdiction was based on violation of rule prohibiting utilities from using the ground or earth as a normal neutral to return electricity along the circuit on appeal from trial court's decision sustaining electric company's demurrer in homeowners' action stemming from allegation that stray electric currents were causing homeowners to suffer medical issues. Homeowners' comments about violations of rule were not made in format that would cause them to be judicial admissions, and facts and legal theories upon which homeowners asserted on appeal were found in homeowners' complaint.

Trial court had authority to decide whether electric company was negligent in its operation of substation in homeowners' action against company, alleging that stray electrical currents from substation were causing homeowners to suffer various medical issues. Negligence claims would not have hindered or interfered with Public Utility Commission (PUC) policy, as element of test used to determine whether claim fell within PUC's exclusive jurisdiction.

Trial court had authority to determine homeowners' claims against electric company for nuisance, trespass, and intentional infliction of emotional distress, alleging that stray electrical currents from company's substation near homeowners' property were entering their property, causing homeowners to suffer health issues and distress, discomfort, anxiety, fear, and anguish. Stray voltage litigation would not have hindered or interfered with Public Utility Commission (PUC) policy, as element of test used to determine whether claim fell within PUC's exclusive jurisdiction.

Trial court had authority to determine homeowners' claims against electric company for strict products liability, breach of implied warranty of fitness, and strict liability based on ultra hazardous activity, stemming from allegation that stray voltage from company's substation caused homeowners to suffer health issues, since stray voltage litigation would not have hindered or interfered with Public Utility Commission (PUC) policy, as element of test used to determine whether claim fell within PUC's exclusive jurisdiction.

EMINENT DOMAIN - CONNECTICUT

Barton v. City of Norwalk

Appellate Court of Connecticut - February 23, 2016 - A.3d - 163 Conn.App. 190 - 2016 WL 597384

Property owner brought action against city, alleging that city inversely condemned his building when it took the building's parking lot by eminent domain. The Superior Court entered judgment in favor of property owner. City appealed.

The Appellate Court held that:

- Property owner was not judicially estopped from asserting his position regarding valuation of property at issue;
- City's taking of parking lot resulted in the substantial destruction of owner's ability to use and enjoy the neighboring building, supporting claim of inverse condemnation, but
- Offer of compromise statute did not apply to authorize award of interest to owner.

Property owner who previously asserted in eminent domain proceedings that condemned parking lot should be valued according to its "highest and best use" as a mixed use development, and who had received just compensation for it on that basis, was not judicially estopped in subsequent inverse condemnation action involving a neighboring property from assuming that it was still a parking lot when he asserted the neighboring property's value prior to the taking. The positions were not clearly inconsistent or contradictory in the context of the two actions, and owner derived no unfair advantage.

City's taking of property owner's parking lot by eminent domain resulted in the substantial destruction of owner's ability to use and enjoy the neighboring building, thus supporting determination that city inversely condemned owner's building. 90 percent of owner's building was effectively unleasable due to lack of parking, and building's value dropped from $1.1 million to $200,520, which expert testified could be lower than the value of the land if vacant and available for development.

Offer of compromise statute did not apply to authorize award of interest to property owner in his action against city, alleging that city inversely condemned his building when it took the building's parking lot by eminent domain, even though, after offering to settle claims in exchange for $500,000 with interest, plus up to $20,000, plus all necessary permits to use the property for its intended use as a mixed use retail/office building, owner actually recovered $899,480 with interest and no permits. Even if owner could properly include nonmonetary demands in his offer of compromise, owner's recovery was different from, not equal to or greater than, his demand.

INVERSE CONDEMNATION - CONNECTICUT

Buck v. Town of Berlin

Appellate Court of Connecticut - February 23, 2016 - A.3d - 163 Conn.App. 282 - 2016 WL 597944

Property owners brought inverse condemnation claim against town. The Superior Court denied town's motion for summary judgment, and town appealed.

The Appellate Court held that:

- Property owners' current claims against town for inverse condemnation were based on the same underlying transaction as their prior claims against town for purposes of claim preclusion, and
- Property owners had an adequate opportunity to litigate their present claim in a prior action, and therefore, the present claim was barred by res judicata.

Property owners' current claims against town for inverse condemnation were based on the same underlying transaction as their prior claims against town for purposes of claim preclusion, regardless of whether they differed in the legal theories espoused and the relief sought. Property owners' claim that town's interference with their properties in the form of a locked gate and large concrete blocks that prevented property owners from accessing their property by means of the only point of access was virtually the same in both actions.

Property owners had an adequate opportunity to litigate their present inverse condemnation claim against town in a prior action, and therefore, their present claim was barred by res judicata. Property owners' did not allege in the first action that road to their properties had been abandoned or formally discontinued, but rather that town had wrongfully blocked road and prevented property owners from using their easement to access their properties, which was the same claim brought in the current action.

ANNEXATION - GEORGIA

City of Lovejoy v. Clayton County

Court of Appeals of Georgia - March 1, 2016 - S.E.2d - 2016 WL 785688

County filed action seeking declaration that city's annexation of property was void for multiple reasons. The trial court granted county's motion for summary judgment, declaring ordinance of annexation invalid. City appealed.

The Court of Appeals held that city's failure to publish a notice of public hearing that accurately described the property to be annexed, as required by annexation statute, so that owners of certain properties had notice that their land was being considered for annexation, rendered annexation null and void.

REFERENDA - MARYLAND

Fraternal Order of Police v. Montgomery County

Court of Appeals of Maryland - February 23, 2016 - A.3d - 2016 WL 699459

Fraternal order of police officers, individually and as class of officers below rank of lieutenant, brought declaratory judgment action against county and individual county employees, alleging that county improperly used county funds to campaign for passage of ballot question concerning mandatory collective bargaining in county referendum.

The Circuit Court entered judgment declaring that county had no authority to use funds to campaign but dismissed counts seeking monetary relief against county employees on basis of qualified immunity. County and employees appealed and order cross-appealed. The Court of Special Appeals reversed. Order filed petition for certiorari and county and employees filed cross-petition, which were both granted.

The Court of Appeals held that:

- Order had standing to bring action;
- Doctrine of laches did not bar order's action;
- Use of county funds to campaign was appropriate use of government speech;
- County executive and director of county's office of public information were not political committee; and
- Use of other county employees by executive and director was appropriate county function.

Fraternal order of police officers, individually and as class of officers below rank of lieutenant, had standing to bring declaratory judgment action against county and individual county employees, alleging that county improperly used county funds to campaign for passage of ballot question in county referendum. Although all citizens living in county had general interest in assuring that county government did not exceed its legitimate authority and did not expend funds or labor of its employees for unlawful purposes, order had more specialized interest in sustaining effect bargaining and assuring that county did not use unlawful means to repeal provision of county code providing for collective bargaining.

Doctrine of laches did not bar declaratory judgment action by fraternal order of police officers, individually and as class of officers below rank of lieutenant, against county and individual county employees, alleging that county improperly used county funds to campaign for passage of ballot question in county referendum. Order's action was solely to seek monetary redress for what it regarded as unlawful activity by county and employees that was prejudicial to it and to preclude county and employees from engaging in that conduct in future, there was no prejudice to county and employees from order's waiting until eve of election on question to file suit, delay was not inordinate, and order's claims could be adjudicated as easily after election as they could have been before.

Use of county funds to campaign for passage of ballot question in county referendum for modifying requirement of collective bargaining with fraternal order of police officers was appropriate use of government speech. Proposed law was intended to correct what county council found to be behavior by fraternal order of police officers and its members that was disruptive to running of police department and was not conducive to public safety, order succeeded in petitioning law to referendum and was mounting substantial political campaign to persuade voters to nullify it, and county executive, in aid of preserving law and countering order's effort, directed expenditure of county funds to inform voters of impact of nullifying law and, for welfare of county, advocate for its confirmation.

County executive and director of county's office of public information were not political committee, and, thus, they were not required to comply with campaign finance provisions of election law. Since provisions did not apply to county, they could not apply to authorized county officials when acting solely in their official capacity, for it was only through those officials that county could exercise its powers.

Use of other county employees by county executive and director of county's office of public information to further county's advocacy efforts for passage of ballot question in county referendum for modifying requirement of collective bargaining with fraternal order of police officers was appropriate county function. Since activities by executive and director, on behalf of county, were authorized and appropriate manifestation of legitimate government speech, any assistance in those activities by subordinate county employees at direction of executive and director was also appropriate county function and fell within scope of their official duties.

PENSIONS - MARYLAND

Employees' Retirement System of Baltimore County v. Bradford

Court of Special Appeals of Maryland - February 24, 2016 - A.3d - 2016 WL 743687

County police officer sought to change his retirement benefit option after he retired for second time subsequent to rehire and additional period of employment with police department. County employees' retirement system determined that officer could not select retirement option upon second retirement that did not exist at time of first retirement. Officer appealed. County board of appeals reversed. Retirement system appealed.

The Court of Special Appeals held that:

- Decision of "agency" being reviewed was that of board of appeals, rather than that of retirement system, and
- Officer was not prevented, upon his second retirement, from changing his retirement benefit option to one that did not exist at time of first retirement, despite county code provision indicating that members who had elected an optional benefit could not change such an election after the first payment of the member's allowance became normally due.

AUCTION RATE SECURITIES - NEVADA

Goldman, Sachs & Co. v. City of Reno

United States District Court, D. Nevada - January 25, 2016 - Slip Copy - 2016 WL 320120

On February 10, 2012, the City of Reno filed a complaint against Goldman Sachs ("GS") with the Financial Industry Regulatory Authority ("FINRA"), alleging wrongdoing with respect to $200 million of Auction Rate Securities ("ARS"). GS sued the City in this Court, asking the Court to declare that FINRA was an inappropriate forum in light of the forum selection clauses in the Broker-Dealer Agreements and the lack of any arbitration clauses in either the Broker-Dealer Agreements or the Underwriter Agreements.

The City subsequently consented to a permanent injunction against the arbitration. The Court then ordered the City to answer and file any counterclaims. The City answered and filed counterclaims for breach of fiduciary duty, fraud, and negligent misrepresentation. GS moved to dismiss the counterclaims as time-barred and for failure to state a claim.

GS argued that a three-year statute of limitations barred all of the counterclaims. If New York law applied to the counterclaims, a six-year limitations period applied. A three-year limitations period applied to all of the counterclaims if Nevada law applied.

The Court found that Nevada's choice of law rules govern the tort claims in this case despite the contractual choice-of-law clause. None of the counterclaims are contractual claims. The City's tort claims are therefore governed by Nevada law, including Nevada's choice of law rules.

Nevada courts apply the Restatement (Second) of Conflict of Laws to tort claims. In this case, all the counterclaims sound in fraud and thus Section 148 of the Restatement (Second) applies.

Following an analysis of Section 148, the Court held that because the fraudulent statements themselves were made from New York, that state's law should control. "The Restatement (Second) makes clear that the place where the fraudulent representations are made is more important (and is as important as the place of the tortious activity in a personal injury case) than the place of reliance and loss, which is difficult to determine conceptually in contractual cases such as this one." Therefore, New York's six year limitation period applied.

EMINENT DOMAIN - NEW YORK

In re Village of Port Chester

Supreme Court, Appellate Division, Second Department, New York - March 2, 2016 - N.Y.S.3d - 2016 WL 802693 - 2016 N.Y. Slip Op. 01501

In condemnation proceeding, after principal sum of $3,062,000 awarded to claimants after nonjury trial as just compensation for taking of real property was upheld on appeal, claimants moved for additional allowance of $832,244.59. The Supreme Court, Westchester County, granted motion only to the extent of awarding the sum of $406,827.44. Claimants appealed.

The Supreme Court, Appellate Division, held that the Supreme Court properly determined that an additional allowance in an amount less than what claimants requested was necessary for them to receive just and adequate compensation.

Additional allowance in an amount less than what condemnees requested was necessary for them to receive just and adequate compensation, given that portion of condemnees' efforts and costs were used to develop and present valuation theories to support a claim for compensation substantially in excess of the condemnation award, and so Supreme Court providently exercised its discretion in granting condemnees' motion for additional allowance only to the extent of awarding them $406,827.44, despite their request for $832,244.59.

HIGHWAYS - WASHINGTON

Washington State Dept. of Transp. v. City of Seattle

Court of Appeals of Washington, Division 1 - February 29, 2016 - P.3d - 2016 WL 783919

After city required grading permits for construction on temporary easements of work bridges for highway floating bridge project, Washington State Department of Transportation filed a land use petition seeking to invalidate the permits. The Superior Court granted petition and invalidated permits. City appealed.

The Court of Appeals held that:

- Exception to mootness doctrine was met, and
- City's interpretation of grading code exemption was an erroneous interpretation of the law.

Because an authoritative determination would provide future guidance, and interpretation of municipal grading code exemption for Washington State Department of Transportation (WSDOT) development in state highway right-of-way presented an issue of continuing and substantial public interest that was likely to recur, exception to mootness doctrine was met in Department's land use petition seeking to invalidate grading permits.

City's interpretation of municipal grading code exemption, requiring Washington State Department of Transportation to obtain grading permits for construction on temporary easements of work bridges necessary to access and construct portion of state highway floating bridge project, was not entitled to deference, for purposes of reviewing decision under Land Use Petition Act (LUPA), as it was an erroneous interpretation of the law. City's interpretation gave no meaning to language that exempted development undertaken by the Department in state highway right-of-way, ignored state law, and the exclusive authority of the Department to construct and acquire property for the construction of state highway right-of-way.

MSRB Revises Effective Date for Amendments to Transaction Reporting.

The Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC) a rule change to revise the effective date of several amendments to MSRB Rule G-14, on transaction reporting.

The new effective date of the amendments will be **July 18, 2016** to align with the implementation of similar Financial Industry Regulatory Authority (FINRA) reporting requirements. The MSRB, in its filing, designated this revision for immediate effectiveness. Read the regulatory notice. View the SEC filing.

The amendments to Rule G-14 will enhance the post-trade price transparency information provided through the MSRB's Real-Time Transaction Reporting System (RTRS). View the new rule.

MSRB Seeks Approval to Facilitate Shortening the Settlement Cycle.

The Municipal Securities Rulemaking Board (MSRB) is seeking approval from the Securities and Exchange Commission (SEC) to facilitate shortening the settlement cycle for transactions in municipal securities as a means of reducing risk and improving overall efficiency. The MSRB's proposal is in response to a securities industry-led initiative to shift the current settlement cycle for all fixed-income and equity securities from T+3 (trade date plus three days) to T+2 (trade date plus two days). An industry-wide shift from T+3 to T+2 requires action by multiple regulators, and the MSRB is one of the first to propose rule changes in support of this shift.

View the SEC filing.

TAX - OHIO

Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision

Supreme Court of Ohio - February 4, 2016 - N.E.3d - 2016 WL 427832 - 2016 -Ohio- 372

On appeal of County Board of Revision's ("BOR") valuation before the Board of Tax Appeals ("BTA"), Lowe's and the county presented competing property appraisals. The BTA adopted the county's appraisal, and Lowe's appealed.

Lowe's argued that the BTA adopted the county's appraisal without addressing whether the evidence justified applying the special-purpose doctrine that was the basis for the Ohio Supreme

Court's holding in *Meijer Stores*.

The Supreme Court of Ohio held that the BTA's adoption of the county's appraisal without addressing whether the evidence justified applying the special-purpose doctrine required vacation of the BTA's decision and remand for further proceedings.

Leased comparables will typically need to be adjusted in determining the value of a subject property that is itself unencumbered by such a lease; however, adjustments may not be necessary when the special-purpose doctrine applies.

John Oliver on Special Tax Districts. [Strong Language! NSFW! You've Been Warned!]

On the heels of his long-awaited Trump takedown, "Last Week Tonight" host John Oliver brought down the tempo to talk special tax districts on Sunday night's episode.

"Hello, people watching for the first time because of our Trump piece," Oliver prefaced. "And also, I presume, goodbye. Thanks for checking in."

"Special districts are small units of government with the power to take tax dollars to do one specific thing," Oliver explained. There are about 40,000 (often overlapping) special tax districts in the country, accounting for about $100 billion in spending.

"Think of a special district like a cult. It can take your money and you may not even be aware you're in one," he continued. "Although, it is worth remembering, in a special district, allowing the leader to impregnate you is not mandatory, no matter what the guy in charge of the library district says."

Watch the video.

SALON.COM

BRENDAN GAUTHIER

MONDAY, MAR 7, 2016 08:33 AM PST

STANDING / TAX APPEAL - CONNECTICUT

Fairfield Merrittview Ltd. Partnership v. City of Norwalk

Supreme Court of Connecticut - March 1, 2016 - A.3d - 320 Conn. 535 - 2016 WL 730546

Limited partnership appealed board of assessment appeals' decision upholding municipal property tax assessment on commercial office complex. The Superior Court granted partnership's motion for permission to amend appeal to add limited liability company (LLC) as plaintiff, and, subsequently, the Judge Trial Referee, valued complex at $35,059,753. City appealed. The Appellate Court reversed and remanded. Partnership and LLC appealed.

The Supreme Court of Connecticut held that:

- LLC had standing to appeal decision upholding tax assessment, and

- Mistake should be construed in its ordinary sense, rather than as connoting absence of negligence, abrogating *DiLieto v. County Obstetrics & Gynecology Group, P.C.*, 297 Conn. 105, 998 A.2d 730.

Limited liability company (LLC), which was added as plaintiff by limited partnership, had standing to appeal board of assessment appeals' decision upholding municipal property tax assessment on commercial office complex, despite claim that LLC had not appeared before board. LLC was aggrieved by board's refusal to reduce claimed overassessment of complex, LLC was owner of property on date of board's assessment and was legally responsible for payment of any taxes levied on basis of assessment, city did not object to amendment of appeal, which named LLC as plaintiff, and naming of partnership, instead of LLC, was due to error, misunderstanding, or misconception.

Mistake should be construed in its ordinary sense, rather than as connoting an absence of negligence, as used in statute allowing a court, when necessary for determination of real matter in dispute, to substitute or add a plaintiff when any action has been commenced in name of the wrong person as plaintiff through mistake, abrogating *DiLieto v. County Obstetrics & Gynecology Group, P.C.*, 297 Conn. 105, 998 A.2d 730.

SEC Charges Rhode Island Agency and Wells Fargo With Fraud in 38 Studios Bond Offering.

Washington D.C., March 7, 2016 — The Securities and Exchange Commission today charged a Rhode Island agency and its bond underwriter Wells Fargo Securities with defrauding investors in a municipal bond offering to finance startup video game company 38 Studios.

The Rhode Island Economic Development Corporation (RIEDC, now called the Rhode Island Commerce Corporation) issued $75 million in bonds for the 38 Studios project as part of a state government program intended to spur economic development and increase employment opportunities by loaning bond proceeds to private companies.

According to the SEC's complaint filed in federal district court in Providence:

- The RIEDC loaned $50 million in bond proceeds to 38 Studios. Remaining proceeds were used to pay related bond offering expenses and establish a reserve fund and a capitalized interest fund.
- The loan and, in turn, bond investors would be repaid from revenues generated by video games that 38 Studios planned to develop.
- The bond offering document produced by the RIEDC and Wells Fargo failed to disclose to investors that 38 Studios had conveyed it needed at least $75 million in funding to produce a particular video game.
- Therefore, investors weren't fully informed when deciding to purchase the bonds that 38 Studios faced a funding shortfall even with the loan proceeds and could not develop the video game without additional sources of financing.
- When 38 Studios was later unable to obtain additional financing, the video game didn't materialize and the company defaulted on the loan.

"Municipal issuers and underwriters must provide investors with a clear-eyed view of the risks involved in an economic development project being financed through bond offerings," said Andrew Ceresney, Director of the SEC Enforcement Division. "We allege that the RIEDC and Wells Fargo knew that 38 Studios needed an additional $25 million to fund the project yet failed to pass that material information along to bond investors, who were denied a complete financial picture."

The SEC also charged Wells Fargo's lead banker on the deal, Peter M. Cannava, and two then-RIEDC executives Keith W. Stokes and James Michael Saul with aiding and abetting the fraud. Stokes and Saul agreed to settle the charges without admitting or denying the allegations and must each pay a $25,000 penalty. They are prohibited from participating in any future municipal securities offerings. The SEC's litigation continues against Cannava, Wells Fargo, and RIEDC.

The SEC's complaint further alleges that Wells Fargo and Cannava misled investors in an additional way in bond offering materials:

- Wells Fargo disclosed its bond offering compensation as a share of the placement agent fee plus a $50,000 payment from 38 Studios. No other fees or compensation to Wells Fargo were disclosed, and the bond placement agreement stated that no other money was anticipated.
- Investors weren't informed that Wells Fargo had a side deal with 38 Studios that enabled the firm to receive nearly double the amount of compensation disclosed in offering documents.
- This additional compensation, totaling $400,000 and paid from bond proceeds, created a conflict of interest that Wells Fargo should have disclosed to bond investors.
- Cannava was responsible for Wells Fargo's failure to disclose its additional fees.

"An underwriter's 'skin in the game' is material information to investors," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Municipal Securities and Public Pensions Unit. "We allege that Wells Fargo failed to fully disclose its own economic interest in this bond transaction."

The SEC's complaint charges the RIEDC and Wells Fargo with violations of Sections 17(a)(2) and (a)(3) of the Securities Act of 1933, and charges Stokes, Saul, and Cannava with aiding and abetting those violations. Wells Fargo also is charged with violations of Section 15B(c)(1) of the Securities Exchange Act of 1934 and Rules G-17 and G-32 of the Municipal Securities Rulemaking Board (MSRB). Cannava is charged with aiding and abetting those violations.

In a separate administrative proceeding, the RIEDC's financial advisor for the bond offering – First Southwest Company LLC – agreed to settle charges that it violated MSRB rules by failing to document in writing the scope of the services the firm was providing in the bond offering until seven months after the financial advisory relationship began. Without admitting or denying the findings, First Southwest agreed to pay disgorgement of $120,000, prejudgment interest of $22,400, and a penalty of $50,000.

The SEC's investigation was conducted by its Municipal Securities and Public Pensions Unit, including Louis Randazzo, Joseph Chimienti, Jonathan Wilcox, Kevin B. Currid, and Deputy Chief Mark Zehner. The SEC's litigation is being led by Kathleen B. Shields of the Boston Regional Office and Mr. Randazzo.

Bond Market Rescue for Oklahoma's Budget Woes Entices Governor.

Oklahoma, grappling with the fallout from the collapse in oil prices, may turn to the municipal-bond market to provide relief from a $1.3 billion budget deficit rather than cutting spending or raising taxes.

Borrowing would free money for other priorities, such as pension costs and education, that would ease the way of balancing the budget as options proposed by Governor Mary Fallin aren't palatable to some lawmakers.

It would also fall just short of a maneuver known as "scoop-and-toss" that involves selling debt to pay off maturing securities, a practice employed by issuers ranging from Puerto Rico to Chicago that has led to disastrous results.

"The budget situation is very serious, it's a matter of deciding priorities with limited resources," said Tim Allen, deputy to Oklahoma Treasurer Ken Miller. "Borrowing is something the treasurer supports looking at."

Oil-patch states around the U.S. are grappling with lower revenue since the price of oil has crashed to as low as $27 a barrel this year after peaking in mid-2014 at over $100 a barrel. Besides Oklahoma, states hardest hit are Alaska, Louisiana and North Dakota.

By borrowing for $100 million or so for road projects now funded on a pay-as-you-go basis, the state could apply most of that money to other priorities while only using about $7 million for debt service, said Jim Joseph, the state's bond adviser, who has discussed the idea with lawmakers. No decisions have been made about what alternatives to pursue, said Oklahoma state Representative Earl Sears, the Republican chairman of the House appropriations committee.

"We have been looking at hundreds of proposals, but we don't have a clue which ones we will use," Sears said, in an interview. "We may have a better answer in a month."

After oil prices fell 21 percent between Dec. 21 and mid February, Oklahoma's projected deficit widened by 19 percent to $1.3 billion. Governor Fallin's budget proposed last month included $910 million of new revenue from removing sales tax exemptions and raising cigarette taxes while cutting spending by $167 million.

How the state balances its budget will be watched closely by companies that rate the state's municipal debt. Failing to balance its budget and under-funding state pensions could lead to rating cuts, Standard & Poor's said in a Feb. 4 report.

Considering Options

"The governor's budget addresses to a large extent the large deficit," said Carol Spain, an S&P analyst who covers the AA+ rated state. "Whatever they do to address the budget gap will be critical for the state's credit quality."

Oklahoma officials said they aren't opposed to the possibility of bonding combined with other changes to state finances.

"We might consider a bond if a larger reform package of recurring revenues was also enacted," said Preston Doerflinger, the state's finance secretary, in an e-mail. "This budget challenge is a multi-year challenge while a bond is a one-time, one-year option."

Borrowing to weather tough economic times isn't new to the municipal-bond market, though Chicago this year backed away from using so-called "scoop-and-toss" to extend debt payments for budget relief. Louisiana lawmakers last week asked for any refinancing of state debt to put the savings in the current and next fiscal year for relief from nearly $3 billion of deficits. Alaska, on the other hand, which faces a $3.6 billion spending gap, will rely on reserves to cover shortfalls, said Devin Mitchell, debt manager, in an e-mail.

Prior Recession

Oklahoma borrowed to manage itself through the last recession, using scoop-and-toss to extend debt payments for budget relief, said Joseph, the bond adviser. The state sold $132 million of bonds through the Oklahoma Capital Improvement Authority in 2010 "to provide budgetary relief by extending and restructuring debt service," rather than provide savings, according to bond documents.

Now, because the state has used pay-as-you-go financing for so many of its previous projects, it has capacity to borrow for capital projects, he said. It wouldn't be scoop-and-toss if the state did it because the state would be bonding for capital projects rather than pushing out payments. The state typically pays back 40 percent of new borrowings within five years, and some debt will be coming off the books soon, said Joseph.

"The idea is to take money that is going to projects and bond it," Joseph said. "It's perfectly appropriate to borrow for capital projects to free up cash."

Bloomberg Business

by Darrell Preston

March 6, 2016 — 9:00 PM PST Updated on March 7, 2016 — 10:50 AM PST

Experts to Convene to Discuss Federal Scoring Solutions.

Restrictive budgetary rules that make it difficult for the federal government to negotiate real estate leases and public-private partnerships will be explored in-depth during NCPPP's Federal P3 Summit in Washington, D.C.

Federal scoring makes such projects very expensive for agencies to pursue because Appendix B of Circular A-11, issued by the Office of Management and Budget (OMB), treats as a capital lease any lease that ends in government ownership of the developed asset. An agency must record, or "score," in its budget the entire cost of a capital lease the year the agency enters into it. Operating leases, on the other hand, can be scored year by year, explained Dorothy Robyn, former head of the U.S. General Services Administration's Public Buildings Service in a Brookings Institution blog.

"OMB and the Congressional Budget Office (CBO) have gradually extended the reach of A-11 to preclude most public-private ventures aimed at financing federal acquisition of capital assets," noted Robyn.

NCPPP will hold two sessions on federal scoring during the Summit. The first will provide an introduction to the issue and set the stage for the second session during which Robyn and several other experts will discuss the merits of potential solutions and the extent to which they are likely to be implemented.

The introductory session will be moderated by Sandy Hoe, Senior of Counsel at Covington & Burling LLP, and feature:

- Jay Brown, Managing Director, Alvarez & Marsal Public Sector Real Estate Services
- Sinclair Cooper, President, Public Infrastructure Development, Hunt Companies

- Anita Molino, Principal, Bostonia Partners LLC
- Domenic Savini, Assistant Director, Federal Accounting Standards Advisory Board

The second session, “Point/Counterpoint Debate on Federal Budget Scoring Issues,” to be moderated by George Schlossberg, Partner at Kutak Rock LLP, will feature views from Robyn and panelists:

- David Haun, PT-GPS Director, Grant Thornton LLP; and former Deputy Associate Director, Office of Management and Budget
- Jill Jamieson, Managing Director, Public Institutions Group, JLL

To help develop solutions to the obstacles federal scoring imposes, NCPPP will use the discussions held during these sessions in a federal scoring research project it is conducting with the Urban Land Institute’s (ULI) Public Development Infrastructure Council, which is funding this effort. ULI also will discuss this issue during an expert’s roundtable at its spring meeting.

The Federal P3 Summit will be held March 17-18 at the FHI 360 Conference Center in Washington, D.C. For more information about this event and to register, visit the event website.

NCPPP

By March 4, 2016

CDFA & USDA Launch Community Facilities Infrastructure Toolkit.

—Toolkit Released to Guide Rural Infrastructure Development—

Columbus, OH — The Council of Development Finance Agencies (CDFA) and the United States Department of Agriculture (USDA) are excited to announce the release of the Community Facilities Infrastructure Toolkit (CFIT), a guide which was developed in collaboration over the past year. The CFIT contains best practices for planning, designing, developing and financing rural essential community facilities that can be used by nonprofits and public entities.

“The Community Facilities Infrastructure Toolkit is an excellent resource for rural organizations and community leaders,” said CDFA President & CEO Toby Rittner. “We’re happy to have collaborated on a product that will provide such a wide breadth of knowledge to a large audience. The creation of this Toolkit, will allow rural communities to connect their potential projects with development finance professionals in order to facilitate sustainable rural development.”

“The Community Facilities Infrastructure Toolkit is a resource designed for stakeholders championing sustainable economies through infrastructure development in Rural America,” said USDA Rural Housing Service Administrator, Tony Hernandez.

“This Toolkit incorporates best practices and lessons learned in an effort to accelerate construction projects such as schools, hospitals and public safety buildings all of which improves the quality of life in Rural America. The Community Facilities Infrastructure Toolkit identifies important synergies needed for success and encourages collaboration through the use of Public Private Partnerships.”

The process of building a new community facility can be challenging for any size organization. However organizations that are well informed of the due diligence needed for success are better prepared to meet the challenges of building a new facility. The Community Facilities Infrastructure Toolkit is intended to provide guidance through the Concept Development, Planning, Design, Environmental Compliance, Finance, and Construction phase of project completion. The information contained in this guide can be applied broadly across varied size organizations participating in different industries.

By following the Community Facilities Infrastructure Toolkit, community leaders will be better informed and prepared for project success. Rural communities seeking further assistance should contact their local USDA Rural Development Office. USDA staff is always available to assist rural communities and connect communities to development professionals.

The Community Facilities Infrastructure Tool Kit is available electronically on the USDA Community Facilities Programs Home Page.

The USDA Rural Development has a mission to improve the quality of life in rural areas by providing loans and grants for rural housing, utilities, broadband, local food systems, community facilities, bio-energy facilities, and small businesses. For more information about USDA Rural Development, visit www.rd.usda.gov.

The Council of Development Finance Agencies is a national association dedicated to the advancement of development finance concerns and interests. CDFA is comprised of the nation's leading and most knowledgeable members of the development finance community representing public, private and non-profit entities alike. For more information about CDFA, visit www.cdfa.net.

BDA Submits Letter to MSRB on Rule G-12, Modernizing Close-Out Procedures.

The BDA submitted a comment letter to the MSRB on the proposed amendments to Rule G-12, to modernize close-out procedures. You can view BDA's letter here.

The proposed amendments to MSRB Rule G-12 would require open inter-dealer transactions in municipal securities to be closed-out. Currently, there is no MSRB rule that requires a transaction to be closed-out.

The proposal seeks to:

- Require municipal securities transactions be closed-out no later than 30 calendar days after settlement
- Resolve all outstanding inter-dealer fails during a 90-calendar day grace period

Specifically, the BDA letter to the MSRB includes the following:

- A recommendation to improve upon the MSRB's three proposed options for closing out an open transaction
- Guidance for the operational and implementation requirements of the proposed amendments
- A 180-calendar day grace period for current outstanding inter-dealer fails

Additional information:

- You can view BDA's summary of the proposed amendments here.

- You can view MSRB's regulatory notice here.

03-04-2016

MSRB: Muni Trading Volume Continues to Fall in 2015.

WASHINGTON — Municipal bond trading volume fell 13% during 2015 while the overall number of trades remained relatively stable, continuing a pattern that stretches back to 2007, according to data released Thursday by the Municipal Securities Rulemaking Board.

The 2015 level of $2.42 trillion in total par amount of bonds traded was down from about $2.77 trillion the year before and a significant decrease from the peak of $6.7 trillion in 2007. The MSRB's data for the third quarter of 2015 showed the trading volume was the lowest it has been since at least 2005, when the self-regulator began recording market statistics.

The decrease can mostly be attributed to the continued fall of the total par amount traded for variable rate securities, the board said. The volume of variable rate trades dropped 40% year over year in 2015 while the par amount traded for fixed rate securities grew nearly 5% in 2015 when compared to the year before.

Despite the falling trading volume, the actual number of trades rose in 2015 to about 9.26 million from roughly 8.91 million in 2014. The number of trades has ranged between 8.91 million and about 10.6 million since 2007. The combination of lower trading volume and stable numbers of total trades suggests there has been a drop in average trade size over time.

The data also shows that customer trades, as a part of overall trading volume, has also slipped slightly over the last few years, falling to 77% in 2015 from 84% in 2011. Interdealer trades as a percentage of trading volume, in turn, grew every year during that span, rising to 24% of the volume in 2015 compared to only 16% in 2011.

Puerto Rico bonds and New Jersey transportation bonds topped the most traded bond lists. A Commonwealth of Puerto Rico bond with a 2035 maturity and an 8% coupon led with a trading volume of $7.48 billion in 2015 and a New Jersey State Transportation Fund Authority bond with a 2044 maturity and 4.25% coupon had the most number of trades, at 6,741.

The Fact Book also tracks the number of continuing disclosure documents issuers have submitted over the past few years. Overall disclosures declined about 6% in 2015 from 2014, but are still about 12% higher than they were in 2013, according to the board.

The large spike in disclosures in 2014 coincided with the Securities and Exchange Commission's introduction of its Municipalities Continuing Disclosure Cooperation initiative in March of that year. The initiative allows issuers and underwriters to get more lenient settlements from the SEC for self-reporting any time during a five-year period that an issuer said it was in compliance with its continuing disclosure obligations, when it was not. Municipal market participants have credited MCDC with improving their continuing disclosure compliance.

While many of the breakdowns explaining the different financial documents that were submitted remained similar between 2014 and 2015, the number of filings to disclose a failure to provide annual financial information decreased 22% to 5,716 from 7,323 the year before.

Many of the document submissions for event notices also stayed relatively similar year over year, but the MSRB data shows there were 21 documents filed to disclose an adverse tax opinion or event affecting tax-exempt status compared to nine in 2014. There were also 33 fewer notices filed because of bankruptcies and receiverships and 53 fewer documents filed because of non-payment related defaults.

The MSRB's Fact Book is compiled using information dealers and issuers submit throughout the year that is posted on the self-regulator's EMMA system, the sole repository for required disclosures in the muni market.

THE BOND BUYER

BY JACK CASEY

MAR 3, 2016 3:14pm ET

SC Proposed Bill Forbids Eminent Domain By Pipeline Companies.

SC is considering a bill that would prevent the use of eminent domain for the Palmetto Pipeline petroleum line. A state Senate subcommittee approved a bill barring the use of eminent domain by a "private, for-profit pipeline company, including a publicly traded for-profit company, that is not a public utility." The bill would also create a study committee to consider a number of issues raised that property owners.

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

Last Updated: March 1 2016

Article by David B. Snyder

Fox Rothschild LLP

Missouri Municipal Entities Must Follow Statutorily-Required Steps Before Executing Settlement Agreements, Consent Orders.

An often overlooked legal issue can cause significant adverse consequences for clients and lawyers alike when dealing with municipal entities. Missouri law requires municipalities to follow certain statutorily-required procedures before entering into any contract, including settlement agreements and certain consent orders. See § 432.070, RSMo. (2007). If the requisite procedure is not followed, the agreement with the municipal entity is void, not merely voidable. See Moynihan v. City of Manchester, 265 S.W.3d 350, 354 (Mo. App. E.D. 2008).

In the environmental context, it is important to keep the requirements of section 432.070 in mind when entering into a settlement agreement or consent order involving a municipal entity. If the mandatory procedure is not followed, the municipal act, settlement agreement, or consent order potentially can be declared null and void. That could mean that clients will not be paid for work or that the settlement will cease to exist.

Pursuant to Section 432.070, an agreement entered into by a municipal entity must be:

(1) within the scope of the municipal entity's powers or expressly authorized by law;
(2) made upon a consideration wholly to be performed or executed subsequent to the making of the contract;
(3) in writing, including consideration;
(4) dated when made;
(5) subscribed by the parties thereto, or their agents authorized by law and duly appointed; and
(6) authorized in writing (i.e., the authority to sign the contract must be in writing).

Whether a municipal action meets these criteria has been litigated. It is unlawful for a Missouri municipality to incur a liability in the nature of a contractual obligation that is not within the scope of its corporate powers. City of Kansas City v. Southwest Tracor Inc., 71 S.W.3d 211, 215-16 (Mo. App. W.D. 2002); see, e.g., Riney v. City of Hannibal, 712 S.W.2d 49 (Mo. App. E.D. 1986) (violation of city charter made contract void). The written authority allowing a public official (often the mayor) to execute the contract cannot be "vague and uncertain" but must be "specific and definite, and must include an outline of the terms of the proposed contract." Moynihan, 265 S.W.3d at 355.

To avoid problems, prior to the execution of any agreement or consent order with a municipal entity, great care should be taken. Counsel should be engaged to ensure that the municipality passes specific ordinances/resolutions and memorializes its approval in recorded minutes. The best approach will be dependent upon the municipal entity involved and the proposed action to be taken.

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

Last Updated: February 25 2016

Article by Thompson Coburn LLP

EXEMPT FACILITIES - NEW YORK

Community Humanitarian Ass'n, Inc. v. Town of Ramapo

Supreme Court, Appellate Division, Second Department, New York - March 2, 2016 - N.Y.S.3d - 2016 WL 802981 - 2016 N.Y. Slip Op. 01458

Non-profit corporation that provided residential housing for low-income families filed action seeking declaratory judgment that real property owned by the corporation was fully exempt from property taxes. The Supreme Court, Rockland County, granted summary judgment in favor of town. Owner appealed.

The Supreme Court, Appellate Division, held that:

- Alleged violation by non-profit corporation of zoning ordinance could not support denial of property tax exemption for use of property for charitable purposes, and
- Fact issue barred summary judgment.

Alleged violation by non-profit corporation of village zoning ordinance, by exceeding certificate of occupancy for building corporation owned which allowed only two residential apartments, could not, without more, support denial of property tax exemption for use of property for charitable purposes.

Genuine issue of material fact as to whether or not non-profit corporation that provided residential housing for low-income families used its real property in a manner consistent with a charitable purpose precluded summary judgment, in corporation's action seeking declaration that its property was fully exempt from property taxes as property used for charitable purposes.

TAX INCREMENT FINANCING - CALIFORNIA

Macy v. City of Fontana

Court of Appeal, Fourth District, Division 1, California - February 23, 2016 - Cal.Rptr.3d - 2016 WL 702297

Resident and community organizations petitioned for writ of mandate challenging redevelopment agency's, housing authority's, and city's alleged failure to use 20 percent of city tax increment revenues in support of low- and moderate-income housing under the Community Redevelopment Law (CRL). The Superior Court sustained demurrer without leave to amend. Resident and organizations appealed.

The Court of Appeal held that:

- CRL did not subject city to its redevelopment agency's statutory duty to use tax increment revenues for affordable housing;
- Redevelopment agency dissolution law did not subject city to its redevelopment agency's statutory duty to use tax increment revenues for affordable housing; and
- City's agreement to receive tax increment revenues from redevelopment agency did not require city to use the revenues for affordable housing.

Nothing in the Community Redevelopment Law (CRL) itself makes a municipality responsible for the obligations of a redevelopment agency.

.The redevelopment agency dissolution law did not subject city to city redevelopment agency's statutory duty to use 20 percent of redevelopment agency's tax increment revenues in support of low- and moderate-income housing, even though city was the successor agency to the redevelopment agency.

The redevelopment agency dissolution follow-up audit legislation does not expressly or by implication expand the liability of municipalities to include redevelopment agency's statutory duty to use 20 percent of redevelopment agency's tax increment revenues in support of low- and moderate-income housing, even though it included an expanded definition of "cities" and "counties" for purposes of the audits

City's role as a party to an Owner Participation Agreement (OPA) requiring city redevelopment agency to pay part of its tax increment revenues to developer and part to the city did not subject city to redevelopment agency's statutory duty to use 20 percent of redevelopment agency's tax increment revenues in support of low- and moderate-income housing, even though the OPA expressly required that the city and the agency do nothing that would adversely impact developer's right to receive the pledged tax increment revenue, and even though the Community Redevelopment Law (CRL) was amended to more strictly limit the ways in which a redevelopment agency could meet its low- and moderate-income housing obligations after the agency and the city brought their successful validation action approving the city's participation in the OPA.

[ABA Endorses FTN Financial's Municipal Credit Review Platform.]

Through its Corporation for American Banking subsidiary, ABA today endorsed FTN Financial's platform for municipal credit review and monitoring. FTN Financial's proprietary solution is designed to help bankers monitor the overall credit exposure in their municipal portfolios and meet regulatory expectations.

"As the banking industry addresses the new regulatory requirements regarding the pre-purchase analysis and ongoing credit monitoring of municipal bonds held in their portfolios, our council identified a need to support banks with specific municipal credit expertise," said Bryan Luke, chairman of the ABA Endorsed Solutions Banker Advisory Council and president and COO of Hawaii National Bank in Honolulu.

"Municipals are a critical part of the investment portfolio for thousands of banks," added FTN Financial president Michael Kisber. "And most banks have dozens if not hundreds of line items to monitor for credit developments. Those volumes require a comprehensive, systematic approach that applies the specialized analysis needed by each type of municipal security."

March 1, 2016

[Pension Fears Cloud U.S. Municipal Debt Market.]

On the Boardwalk in Atlantic City, just across from the hot dog stands and thrill rides on the old Steel Pier, sits the Trump Taj Mahal. Opened in 1990, it went bust a year later. Two other casinos carrying the name of Donald Trump went the same way over the following years. The Taj — which failed again in 2014 — was sold last week to Carl Icahn after emerging from bankruptcy protection.

But Mr Trump — the frontrunner in the race for the Republicans' pick for president — is not the only one to have struggled in this rundown gambling resort in the south of New Jersey. The city itself is on the verge of running out of money, laid low by years of duff investments, plunging property tax receipts and competition from a new crop of casinos across the north-east.

Serious trouble could still be averted. State governor Chris Christie — now a potential running mate for Mr Trump — could come up with a rescue package acceptable to the city before April, which is when cash flows turn negative, on Standard & Poor's projections. But in the meantime, the fate of the city's debt is weighing on America's $3.7tn municipal bond market. Investors know that when it comes to the crunch, pensioners tend to do better than bondholders.

That was the case in Detroit, the biggest ever collapse three years ago, which inflicted losses on holders of its "general obligation" bonds. Such instruments are not attached to any particular stream of revenue but were nonetheless thought to be rock-solid, as they are backed by a full faith and credit pledge and the unlimited taxing authority of the city. Even so, investors in Detroit's GO bonds took big hits as the city restructured its balance sheet — just as investors in other classes of bond did after the bankruptcies of Stockton, Vallejo and San Bernardino, all within the past few years.

The threat of more battles between retirees and bondholders is bothering Peter Hayes, who oversees $110bn of state and local debt as the head of the municipal bond group at BlackRock, the world's biggest asset manager. Everyone is anxiously eyeing Chicago's $20bn unfunded pension liability —

in particular, he says, conscious of the mismatch between the short horizon of the typical term of political office and the very long horizon of pension obligations. Time and again, politicians have shown that they'd rather protect voters than investors.

Detroit "set a fairly dangerous precedent" for GO bondholders, he says. "Politics seemed to trump the rule of law."

Some lobby groups are urging authorities to cut pensions benefits, as persistently low interest rates increase the present value of their future burdens. In Philadelphia, for example, a watchdog has urged the mayor, the city council, the pensions board and union groups to combine to put its $4.8bn pension fund on a firmer footing.

What credit rating agencies want to see from all municipalities is some kind of plan, says Jane Ridley, a senior director in the US public finance team at S&P in New York. It does not particularly matter what the plan looks like, or what kind of assumptions authorities are using. But a plan gives some comfort that they are not simply hoping that the problem goes away.

"Are they aware of it?" she asks. "What do the rising costs look like? What would they need to address over time to meet their obligations?"

Munis remain a haven, amid choppy fixed-income markets. There are still 336 triple-A American municipalities, on S&P's count, from Acton Town in Massachusetts to Yorba Linda, California — all with solid economies, tight budgets, stable institutions and good liquidity. This week investors digested about $12bn of new issuance across the market, an unusually high amount, without much drama.

Even Chicago is still selling debt at reasonable rates. In January the city sold $500m of GO bonds with a 5 per cent coupon, yielding 229 basis points more than the benchmark rate for the best-rated borrowers. That was less than a 252 bps spread in a similar sale last July, shortly after Moody's had downgraded the city's credit rating to junk.

But a triple-C borrower like Atlantic City — which was rated single-A until 2012 — is a reminder of how quickly things can turn.

And when they do, investors are unlikely to emerge with the swagger of a Mr Trump.

"Stop saying I went bankrupt," he tweeted last June. "I never went bankrupt but like many great business people have used the laws to corporate advantage — smart!"

Financial Times

by Ben McLannahan

Last updated: March 4, 2016 12:42 pm

ben.mclannahan@ft.com

[UBS Beats Back $3.5M Arbitration Claim from Client's Estate.]

UBS won an arbitration case in which the estate of a deceased client had sought $3.5 million in damages related to the firm's sale of Puerto Rico closed-end funds and bonds.

The arbitration panel's decision made it the latest in a series of cases in which UBS has had to defend itself against claims from clients alleging improper sales practices.

In this arbitration, the former client, Gabriel Cadenas, died in 2012, according to Francisco Pujol, his attorney.

In March 2014, Cadenas' estate filed a claim for $3.5 million plus additional punitive damages for breach of contract, negligence and unsuitability among other misconduct, according to a copy of the arbitration award.

At the close of the arbitration hearings, his estate reduced the claim to $1 million plus attorney fees. Cadenas' estate also dismissed its own claims against three UBS employees, records show.

For its part, UBS rejected the allegations and asked the panel to dismiss all claims, according to the arbitration award.

The panel of three arbitrators conducted 12 hearing sessions in January 2016, and came to their decision last month, siding with UBS, but splitting the costs of the hearings – $15,600 – between the two parties.

"UBS is pleased with the arbitrators' decision in this matter" a spokesman for the firm said.

Pujol, the attorney, could not be reached for additional comment. He has pursued and won other cases on behalf of ex-UBS clients seeking damages related to the sale of closed-end funds.

ONGOING PROBLEM

UBS has been engaged in a number of arbitration cases related to the firm's sale of closed-end funds of Puerto Rico bonds.

Beginning in 2013, prices of Puerto Rico municipal bonds fell, leaving the island commonwealth plagued by fiscal troubles in the years that followed. Meanwhile, many clients have claimed that their UBS advisors over-concentrated their portfolios in the funds and other Puerto Rico municipal bonds, leaving them exposed when prices plummeted.

UBS has previously noted that the funds have historically performed well and that there were significant tax advantages for clients to invest in them.

Still, the firm is facing a bevy of complaints in arbitration. UBS noted in its recent earnings report that total aggregate claims from clients have reached $1.5 billion. Some of those cases have already been won, lost or settled.

Last month, an arbitration panel ordered UBS to pay a former client $1.5 million. The client had originally sought about $2 million in damages.

OnWallStreet

By Andrew Welsch

March 3, 2016

Biggest Muni Deals of Year So Far Swell Issuance to $9 bln Next Week.

The two biggest U.S. municipal bond deals so far this year, from the state of California and New York state's development agency, will make up almost a third of the nearly $9 billion in total issuance in the muni market next week.

The week will be the third straight week of issuance in the $9 billion to $10 billion range and bring total issuance so far this year to around $74 billion compared to $81 billion during the same period last year, according to Thomson Reuters data.

California will dominate the calendar next week, issuing state general obligation bonds worth $2.05 billion, the single biggest deal so far this year. The lead underwriter is Citigroup.

New York's Empire State Development Corporation will issue $1.23 billion in state income tax revenue bonds. The issue is being used to refund other state-supported debt. Bank of America Merrill Lynch is the lead underwriter on the sale.

Of the $8.96 billion of new issuance slated for next week, $7.63 billion is through negotiated deals. The total figure includes issuance of notes as well as bonds.

REUTERS

NEW YORK, MARCH 4

(Reporting by Edward Krudy; Editing by James Dalgleish)

Chapter 9 – Five Proposals for Meaningful Reform.

When the next recession occurs there probably will be other municipalities in severe fiscal distress that opt to file under chapter 9. Now is a good time for capital market participants to focus on changes to chapter 9 that address the lessons from the most recent round of municipal bankruptcies.

The most significant lesson is that chapter 9 is unclear in many respects such that judges, with little or no municipal experience, have the leverage to achieve settlements often unsatisfactory to the capital markets. Settlements are often agreed to as a means of avoiding the risk of creating bad legal precedent. To address the lack of clarity of chapter 9 and to root it in municipal realities, we suggest the following as the top five critical changes that should be made to protect the capital markets.

1. Restricted Funds Should Be Treated in the Same Manner as Special Revenue

In the municipal world, bonds may be payable from a specified revenue stream that may not be used for any other purpose or that must be used to pay the bonds before being used for any other purpose. The restricted revenue stream is typically deposited into a special fund on behalf of bondholders. Substantively the restricted use serves a similar function as a lien.

An undecided issue in chapter 9 is whether the owners of bonds payable from restricted funds have a property interest in these funds that will be protected in the event of a bankruptcy filing.

This issue was raised but not decided by the court in the Detroit bankruptcy. Chapter 9 should be amended to provide that bonds backed by restricted funds are protected in the same way as special revenue bonds. The same principles apply – the bondholders are taking the risk of a specified revenue stream and this risk should not be impacted by a bankruptcy filing.

2. Intercept Structures Should Be Immune from a Chapter 9 Filing

In municipal finance, bonds are often paid from monies due from a State to a municipality. These monies are intercepted and paid directly to the trustee on behalf of bondholders. A lien is typically not granted on these State payments, but the intent is to provide special protection to bondholders so that these credits are evaluated based on the likelihood of the State payments being made.

An open issue in chapter 9 is whether these State payments are property of the municipality. If they are property of the municipality, the automatic stay applies. This issue was litigated but not decided by the court in the Vallejo bankruptcy. Chapter 9 should be amended to provide that

State aid intercepts are not property of the municipality. This would allow bonds backed by these

State payments to continue to be paid during the bankruptcy case, thereby preserving the basic credit risk intended when these bonds were issued.

3. Special Revenue Bonds Should Not Be Subject to Cram Down

Another unresolved issue in chapter 9 is whether special revenue bonds may be crammed down.

This issue was litigated but not decided in the Detroit bankruptcy.

The cram down provisions allow a secured creditor class to be bound by a plan even if this class

does not vote in favor of the plan so long as at least one impaired class votes for the plan and the secured creditor receives treatment based on the court-determined value of the property securing the debt and/or an adequate rate of interest. A cram down could, therefore, result in the lowering of the principal amount of the bonds or a lowering of the interest rate.

Chapter 9 incorporates the chapter 11 cram down provisions. However, the structure and intent of special revenue bonds is that they not be impacted by a bankruptcy filing. This creates an ambiguity in the Code that should be rectified. Chapter 9 should be amended to provide explicitly that special revenue bonds and bonds payable from restricted funds cannot be crammed down.

4. The `Best Interests of Creditors' Test Should Be Defined and Rooted in Municipal Realities

In chapter 11, a plan must satisfy the best interests of creditors test by providing each group of creditors, as well as creditors as a whole, with at least as great a recovery as would have occurred in the event of a hypothetical liquidation. The test sets a minimum bar for class and aggregate creditor recoveries.

Because municipalities cannot liquidate, the chapter 11 liquidation test does not work in a chapter 9. Consequently, courts have compared plan recoveries with recoveries that would have occurred in the event the case were hypothetically dismissed. But in doing so, several courts have held that a dismissal would lead to a death spiral, and therefore invariably conclude that the best interests of creditors test has been satisfied no matter what the level of class and aggregate recoveries. This interpretation of the test renders it ineffective to protect creditors.

To address this inadequacy, chapter 9 should be amended to provide that the best interests of creditors test means:

A. Since in any dismissal certain claims would have stronger legal rights under State law, a plan must provide that any unsecured class that benefits from a state constitutional or statutory provision requiring superior payment of such obligations will be treated materially better than other unsecured claims. Superior claims would include (i) general obligation bonds backed by full faith and credit with no statutory limit on the ability to raise taxes to provide payment, (ii) pension payments with constitutional protections requiring payment under all circumstances, and (iii) obligations provided with an explicit constitutional or statutory first priority of payment.

B. In order to maximize aggregate creditor recoveries in a manner reasonable under the circumstances, a plan must provide that (i) the number of municipal employees, as well as their salaries and benefits, are comparable to those in municipalities of similar size, wealth and geographic area, (ii) taxes are raised as high as possible without causing a counterproductive economic impact, and (iii) the municipality maximizes the value of assets used for a proprietary rather than a public purpose, including monetizing such assets.

5. The Unfair Discrimination Test Should be Objective and Straightforward

Similarly situated classes of creditors may be treated materially differently only if there is no unfair discrimination. Courts have varied in their views of the meaning of unfair discrimination.

The court in Detroit held that discrimination is not unfair so long as the disparity does not violate the moral conscience of the court. This standard is totally subjective.

Chapter 9 should be amended to provide for an objective definition of unfair discrimination.

Materially different treatment between similarly situated classes should be considered fair only if either:

A. The class provided the better treatment has contributed equivalent new value to the municipality.

B. State law provides for materially better treatment for the class receiving the superior treatment.

This definition would be objective and similar to that used by many courts in chapter 11. The definition would provide a continuity of expectation based on State constitutional and statutory provisions designed to protect designated creditors.

These five proposed changes to chapter 9 would clarify the treatment of creditors and provide clearer guidance for the expectations of market participants. All of the changes are consistent with basic principles of municipal finance and should be integrated into chapter 9.

THE BOND BUYER

DAVID DUBROW

MAR 3, 2016 10:49am ET

David Dubrow is a partner at Arent Fox LLP in New York.

State-By-State Trends In U.S. Public Finance, 2015.

While upgrades far outnumbered downgrades in U.S. public finance (USPF) in 2015, the positive movement was not spread equally across the country. Some states experienced significant upward movement, while others saw more downgrades, and the reasons for the rating changes in 2015 varied. These same patterns could repeat in 2016, but changes in the economic environment of certain states could alter the reasons for rating changes and the general trend in rating movement. (Watch the related CreditMatters TV segment titled, "Why U.S. Public Finance Rating Trends Could Vary By State This Year," dated March 2, 2016.)

Overview

- California, Texas, and Puerto Rico accounted for more than one-third of USPF rating changes in 2015.
- Upgrades for economic reasons were most concentrated in California and Texas.
- Upgrades for real-estate strength were most concentrated in California, Texas, and Florida
- Economic and housing price growth is expected to taper off in 2016 among states with disproportionately high numbers of economic and real estate upgrades in 2015.

Continue reading.

02-Mar-2016

IRS Disputes Tax-Exempt Status of Solid Waste Bonds in S.C.

WASHINGTON – The Internal Revenue Service is preliminarily challenging the tax-exempt status of bonds issued in December 2010 by the Three Rivers Solid Waste Authority in South Carolina to provide permanent financing for a system to treat and deliver methane gas from a landfill site to Kimberly-Clark Corp.

The authority, which sells the gas to Kimberly-Clark for its manufacturing facility in Beech Island, S.C. under an agreement according to the official statement for the bonds, described the dispute with the IRS in its audited financial statement for the year ending on June 30, 2015. The audit was opened in the authority's fiscal 2015, according to that document.

"The IRS has preliminarily asserted in an 'Information Document Request' that the 2010 bonds do not satisfy the federal tax requirements on 'solid waste disposal facilities' because the [gas] conveyance system, which comprised the majority of the project, was not part of a solid waste disposal function," the authority said in its financials. "If the IRS is correct, the conveyance system would not be permitted to be financed with tax-exempt bonds."

Based on that description, the IRS appears to be questioning how tax-exempt bonds could be issued to finance a treatment and pipeline system designed to deliver landfill gases the authority is selling to a private company. The authority said that it and its legal counsel "disagree … with the conclusions reached by the IRS" and that "management is preparing a response to the IRS rebutting its claims."

Tim Fox, general manager for the authority said on Monday that, "We're optimistic that we've moved through that situation." But he referred questions about the dispute to the authority's tax controversy counsel, Mike Larsen, a partner at Parker Poe in Charleston. Larsen could not be reached for comment.

The $11.21 million of December 2010 solid waste disposal facilities refunding revenue bonds were used in part to refund $11.25 million of lease revenue bond anticipation notes that also were sold in 2010. The BANs, in turn, were used to refund solid waste disposal facilities tax-exempt certificates of participation that were issued in 2007 to finance the development of the treatment and conveyance system from the landfill to Kimberly-Clark's manufacturing facility.

The landfill consists of 1,378 acres on the U. S. Department of Energy's Savannah River Site in Aiken County, S. C. There is a memorandum of understanding, a permit agreement, and a business agreement between the authority and DOE. But the involvement of the federal government does not appear to be an issue in the audit, based on the authority's description of it.

The dispute has its roots in a series of actions that took place in the 1990s, according to the official statement for the bonds. In May 1991, the governor of South Carolina signed into law the Solid Waste Policy and Management Act, which, in an effort to stop disposing of waste in unlined trenches throughout the state, toughened regulations and resulted in the closing of many landfills. The act encouraged the development of regionalized efforts to deal with waste and charged the state's counties with the responsibility for the waste generated within their jurisdictions.

The counties formed a solid waste authority and tasked it with coming up with a comprehensive solid waste plan for them. At that time, DOE was investigating several locations to site a landfill and wanted to explore partnerships with private or public entities. That led to the agreements between DOE and the Three Rivers Solid Waste Authority.

Under the 50-year permit agreement, DOE will not incur any costs in the construction, operation, maintenance, closure or monitoring on the premises or of any authority facilities or structures without DOE's written consent. DOE agrees to provide water, sewer, leachate treatment and other services. Under
the business agreement, the authority must ensure landfill activities comply with all applicable federal and state laws and regulations. The authority agreed to contribute $1.00 per ton of municipal solid waste received at the landfill to an escrow account for the Solid Waste Technology Center for as long as the
landfill is in operation.

The authority began solid waste disposal operations in July 1998 after completion of the first of 11 cells of the landfill. It has agreements to take solid waste from nine counties.

Initially, the authority had proposed to deal with the methane generated from the landfill by flaring it into the atmosphere. But the authority decided that the most economically-feasible method of disposing of the landfill gas would be to sell it to Kimberly-Clark for its manufacturing facility. Bond counsel and disclosure counsel for the 2010 refunding revenue bonds was Howell Linkous & Nettles in Charleston.

Underwriters counsel was Drinker Biddle & Reath in Philadelphia. The Mosteller Law Firm in Barnwell, S.C. was counsel to the authority.

Municipal Advisors Group of Boston, Inc., in North Scituate, Mass. was financial advisor to the authority. The bonds were underwritten by Oppenheimer & Co. and Morgan Keegan.

The Bond Buyer

by Lynn Hume

Feb 29, 2016 12:30pm ET

P3 Model Seen as Fix for National Parks' Infrastructure Woes.

DALLAS — The National Parks Service should use a public-private partnership model to repair and maintain the crumbling infrastructure in its vast network of parks, according to a recent report from a free-market environmental advocacy group.

The NPS estimated in a 2015 report that it has an $11.9 billion backlog of deferred maintenance that includes nearly half of the roadways and dozens of bridges in the parks, the Property and Environment Research Center said in its report.

The NPS said last year that it needs $700 million per year just to keep the backlog from growing, but maintenance appropriations from Congress over the past 10 years have averaged only about $521 million per year.

Tapping private sector capital and expertise would allow the parks service to reduce its infrastructure backlog by outsourcing maintenance projects to the private sector at a lower cost, Leonard Gilroy, director of government reform at the Reason Foundation, said in the report.

“The National Park Service can look to states and local governments for inspiration on how to deal with their infrastructure challenges,” Gilroy said.

“Over the past several decades, state and local governments have turned to public-private partnerships to tap into private-sector capital and expertise. This allows them to stretch limited tax dollars further.”

The authorizing legislation for the NPS and its policies should be amended to remove limitations on how P3s are used to give the parks service more flexibility in dealing with infrastructure issues, Gilroy said.

The report cited Pennsylvania’s $899 million bridge-replacement P3 as an example that the NPS should follow. A private consortium is financing, designing, building, and maintaining the new bridges in the state for 25 years under a single contract.

“Although public-private partnerships cannot solve every problem, they can play an important role in improving infrastructure and reducing the backlog in our national parks,” Gilroy said. “Given the current state of disrepair, all solutions should be on the table.”

The backlog consists of $5.97 billion of deferred maintenance on paved roads and structures in the parks and $5.95 billion for other facilities, including $693 million needed to address water and wastewater system issues, NPS director Jonathan Jarvis said early last month when the latest maintenance statistics were released.

The $11.93 billion nationwide backlog is $440 million more than the total in the 2014 report, Jarvis said. Aging facilities, increasing use of the parks, and scarce resources contribute to the growing backlog, he said.

"While Congress provided increases this year, the annual bill for maintenance in America's national parks is still almost twice as much as is appropriated," Jarvis said.

Nearly every unit in the National Park System has maintenance items that have been deferred, he said, noting that the current backlog is almost three times as much as the $4.34 billion requested for the NPS in President Obama's proposed fiscal 2017 budget.

A leaky wastewater system in Yosemite National Park has caused raw sewage to spill into the park's streams, Jarvis said, while frequent breaks in an 83-year-old water distribution system in Grand Canyon National Park cause facility closures.

The recently enacted five-year Fixing America's Surface Transportation (FAST) Act provided the NPS with $268 million for transportation projects in fiscal 2016, an increase of $28 million from fiscal 2015. The allocation goes up by $8 million a year, reaching $300 million in fiscal 2020.

Sen. Maria Cantwell, D-Wash., introduced the National Park Service Centennial Act (S. 2257) in November. The bill would allocate $900 million over three years to park infrastructure upgrades and repairs.

The Bond Buyer

by Jim Watts

March 2, 2016 1:49pm ET

Muni Finance Caucus Launched in House.

WASHINGTON – Reps. Randy Hultgren, R-Ill., and Dutch Ruppersberger, D-Md., have launched a Municipal Finance Caucus made up of House members from both political parties who will fight to protect the tax-exempt status of municipal debt and ensure there is a robust market for municipal securities.

The new caucus was announced on Tuesday by the two representatives and they talked about it while they were speaking on a panel at the National Association of State Treasurers' annual meeting here.

The caucus is designed to be a place to discuss opportunities and challenges for state and local governments to independently fund initiatives as well as to advocate for bipartisan policies to enhance the entities' access to the capital markets, the two lawmakers said.

"We need a voice coming together in Congress," Hultgren said, adding that "what's unique about what's happening is we're taking it on before it really becomes an issue."

While the two legislators have just begun soliciting members to join the caucus, they said they are confident a number of the nearly 120 representatives that signed a 2015 letter opposing a proposed cap to the muni tax exemption would be interested in joining.

NAST partnered with the two representatives to create the caucus and plans to send letters, co-signed by four other groups including the Government Finance Officers Association and more than 600 state and local officials, to leadership on the House Ways and Means Committee and Senate Committee on Finance. NAST members also will meet with legislators during a planned “Hill Day” Wednesday to advocate on muni bonds and other state and local issues.

Hultgren said during the meeting that the caucus responds in part to recent proposals and rulemaking that shows the various authors either do not fully understand municipal securities or did not think through the proposals’ likely impacts on the market.

The caucus’ planned advocacy on protecting municipal debt’s tax-exempt status responds primarily to a proposal President Obama has included in several of his past budgets to cap the value of the muni tax exemption at 28%. Former House Ways and Means Committee chair Dave Camp, R-Mich., had also proposed a 10% surtax on municipal bond interest for high earners.

The legislators and treasurers attending the meeting said that while tax reform is not likely to come until after the presidential election, such proposals would drive up the cost of issuing debt and hamper infrastructure development across the country.

NAST’s letter says an American Society of Civil Engineers study from 2013 predicted the country would have to spend $3.6 trillion by the year 2020 to meets infrastructure needs and warns that any change to the tax status of munis would inhibit state and local governments’ ability to meet that goal.

“Proposals to change this commitment to tax-free municipal bonds would not only be costly for state and local taxpayers, but also would result in fewer projects, fewer jobs, and further deterioration of our infrastructure,” NAST said in its letter.

Ruppersberger said that municipal bonds are the most important tool in the country for financing developments like new roads and schools, adding he is excited to be a founding member of the bipartisan caucus.

Steve Benjamin, the mayor of Columbia, S.C. and chair of the Municipal Bonds for America Coalition, said MBFA greatly appreciates the lawmakers’ efforts and has plans to work closely with them as the caucus grows. MBFA is a coalition of municipal market professionals launched in 2012 that represents dealers, issuers, and local leaders, and is committed to protecting munis’ tax exempt status.

“In meetings on Capitol Hill in the past several years, the MBFA has seen a surge of interest in understanding municipal bonds, the benefits of the municipal exemption, and learning how potential legislation could impact the ability of state and local governments to finance critical infrastructure projects,” Benjamin said.

In addition to focusing on tax-exemption, the group also plans to address concerns with banking liquidity rules passed in 2014 that do not treat municipal securities as high quality liquid assets, Hultgren said.

Rep. Luke Messer, R-Ind., authored a bill last year that would treat investment grade and readily marketable municipal securities as HQLA under the liquidity rule. The bill passed the House in February on a voice vote but has not moved in the Senate, despite efforts from Messer and others to get sponsors in that chamber.

Hultgren, who co-sponsored Messer’s bill, said the liquidity rules are an example of the regulators not understanding the reality of municipal bonds, specifically the frequent serial structure of the their issuances.

“If you go into Senate offices tomorrow, please encourage them to take this up,” Hultgren told NAST members listening to the panel. “Municipal bonds fit every [qualification] to a tee. If we fail to correct this, it’s going to drive up issuance cost.”

Hultgren also said the caucus may work to update the number of projects that could be financed by qualified small issue manufacturing bonds, a type of private-activity bond whose proceeds can be used to finance manufacturing facilities for small- and mid-sized manufacturers. The tax code provisions on small industrial development bonds have not been changed since the 1980s, he said.

THE BOND BUYER

BY JACK CASEY

MAR 1, 2016 2:59pm ET

Congress Creates Bipartisan Municipal Finance Caucus.

The group’s top priority will be preserving the tax-exempt status of municipal bonds, which President Obama wants to reduce for higher earners.

State and local governments have a new bipartisan set of advocates for their interests on Capitol Hill. This week, two congressmen launched the Municipal Finance Caucus to protect the municipal bond market.

U.S. Rep. Randy Hultgren, an Illinois Republican, and Rep. Dutch Ruppersberger, a Maryland Democrat, announced the formation of the caucus on Tuesday at the annual legislative meeting for the National Association of State Treasurers in Washington, D.C. They didn’t say how many members they’ve recruited, but both have regularly rallied support on municipal finance issues from more than 100 of their Democratic and Republican colleagues.

“Our primary focus will be on telling the story of how important the current tax [status] of municipal finance is, and how risky, damaging and how harmful a change would be,” said Hultgren. “So we’re going to be very active, very vocal in telling these stories.”

The development comes as President Barack Obama’s budget once again aims to limit the tax-exempt status of municipal bonds.

It’s a proposal fiercely fought by state and local government associations because it would likely lead to higher interest rates. States and localities sell bonds to raise capital, mostly for infrastructure and school projects. Because the investors that buy them don’t get taxed on the interest, governments can offer a lower interest rate (as much as 30 percent lower), meaning it costs less for them to finance their projects.

Over the past five years, Obama has urged federal lawmakers to cap the tax-free interest of higher earning investors. Aimed at individuals declaring more than $200,000 in taxable income and couples declaring more than $250,000, the president’s current proposal would cap the deductions those individuals can make to 28 percent of their income.

Currently, if a couple makes more than $250,000 — $100,000 of which is from muni bond interest — they don't pay taxes on that income from interest, which amounts to a $35,000 tax break. But under the administration's proposal, the couple would only get a break on 28 percent of that income, or $28,000. They would owe the federal government the remaining $7,000 in taxes.

Although the Obama administration argues that the proposal would only affect the nation's wealthiest earners — who theoretically could afford to pay more in taxes — government finance officials caution that states and localities would likely make up for the higher costs by raising sales and property taxes. That, in turn, would more adversely impact middle- and lower-income earners.

Alternatively, governments could simply invest less in infrastructure projects. That's equally concerning, as some estimate that state and local governments are behind by as much as $3.6 trillion in infrastructure investments.

At a speech to the treasurers group later on Tuesday, Jason Furman, who chairs the White House Council of Economic Advisers, conceded that they have "completely legitimate" concerns about who would end up paying for higher muni bond interest costs. But he also reminded them that Obama has asked for the interest cap only as part of a larger proposal that would ultimately increase infrastructure investment. For example, the president's budget calls for a new $10-per-barrel fee on oil companies, which would help pay for $300 billion in new infrastructure investments.

"If you pick and choose a combination that would ultimately result in less infrastructure," said Furman, "that's not something the president would ultimately support."

In reality, neither proposal stands much of a chance in a Congress that remains resistant to raising oil costs and has never debated the municipal tax exemption outside of committee.

Regardless, Hultgren warned that it would be wiser for state and local officials to continue actively lobbying against limiting the tax exemption.

"My fear always is what happens at two in the morning, and they're drafting a bill and say, we need to find this much money to pay for this," he said. "So it gets thrown in there, it gets rolled out and how do we roll it back?"

GOVERNING.COM

BY LIZ FARMER | MARCH 2, 2016

[BlackRock, Citi Say Buy Munis as Yields Climb From 50-Year Low.]

Just weeks removed from the lowest municipal-bond yields in 50 years, BlackRock Inc. and Citigroup Inc. are imploring investors to buy.

Their recommendation stems from a confluence of factors, ranging from depressed yield levels worldwide to an imbalance of supply and demand in the $3.7 trillion municipal market. Though 10-year yields have climbed in March in six of the past seven years, now might be the best chance to buy tax-exempt debt, according to Vikram Rai, head of muni strategy at Citigroup in New York.

"This year, we expect that the cheapness could be relatively short-lived and we strongly recommend that investors utilize this temporary cheapness as buying opportunities before yields plummet again," Rai said in a Feb. 29 report. "This is not the time to sit on the sidelines."

Fixed-income investors have had to re-calibrate their expectations in 2016 as China's economic slowdown and plunging oil prices have buffeted global equity markets, spurring demand for the safest assets. In the U.S., yields have plunged even though the Federal Reserve raised its target for the first time since 2006. That's made muni buyers wary of calling a bottom to rates.

BlackRock, the world's largest money manager, shares Citi's view of taking advantage of increased yields.

Supply is building in the coming weeks, making it tougher for states and cities to borrow at current levels. They may have to offer investors better deals.

"Seasonal weakness, when we see that, is often a good opportunity to buy at better value, so look for that coming up in the near-term," said Peter Hayes, who oversees $110 billion of state and local debt as the head of BlackRock's muni group.

Here are four charts that show what BlackRock and Citi see in the market.

Absolute Advantage

Benchmark 10-year muni yields have climbed from near-record lows, making them more appealing to fixed-income investors. At 1.76 percent, the Bloomberg index is the highest since January and up 0.2 percentage point from Feb. 11.

Before the yield increase, some individual investors were in "rate shock," Rai said.

"It's really nothing more than the market hitting resistance," said Sean Carney, head of muni strategy at BlackRock. "It's a pullback in a market that has come a long way and is going to assess the next move."

Supply Glut

An increase in municipal-bond supply gave investors the opportunity to be more picky in their purchases, leading to higher yields. Long-term fixed-rate issuance reached $9.8 billion in the week through Feb. 26, the highest since November, data compiled by Bloomberg show.

"Some of the more recent deals have been met with a little bit more resistance," Hayes said. "Supply is likely to pick up — especially given the fact that rates are so low."

Crowded Market

State and local governments have scheduled about $15 billion of bond sales in the next 30 days, the largest slate since November, Bloomberg data show. The figure tends to underestimate the amount of offerings because some are announced just days in advance.

That's a trend muni investors usually encounter. Issuance in March has exceeded that in January and February each year since 2012, Bloomberg data show. That contributes to benchmark yields typically increasing during the month.

What could offset that this year is if non-traditional muni investors consider the bonds with global yields near record lows, Rai said. While corporate debt seems cheap to state and local securities, munis benefit from the flight to safe assets that has pushed U.S. Treasury yields lower and 10-year

debt from Japan and Switzerland to below-zero rates.
Relatively Cheap

The 1.76 percent yield on benchmark 10-year munis compares with 1.75 percent on similar-maturity Treasuries, Bloomberg data show. The ratio is a measure of relative value between the asset classes. It climbed to 101 percent on Monday, the highest since October, signaling that tax-free bonds are cheap relative to their federal counterparts.

Investors who don't benefit from tax-exempt interest will occasionally cross over and add munis when their absolute yields increase. Over the past 10 years, the ratio has averaged 97.6 percent. For an individual in the top federal income-tax bracket, the muni yield is equivalent to 3.1 percent on taxable securities.

Munis overall have returned 1.2 percent this year, compared with 3.2 percent for Treasuries, Bank of America Merrill Lynch data show. For tax-exempt debt, coupon payments have driven most of the gains, rather than a jump in bond prices.

The underperformance to Treasuries hasn't yet turned muni mutual fund flows negative. Rather, they've seen money pour in for 21 straight weeks, the longest stretch since December 2014, Lipper US Fund Flows data show.

"We're going to tend to underperform when rates fall, as they're doing now, particularly in this flight to quality we're seeing in U.S. rates," Hayes said. "But when rates do rise, we tend to outperform."

Bloomberg Business

by Brian Chappatta

February 29, 2016 — 9:00 PM PST Updated on March 1, 2016 — 5:48 AM PST

States Losing Ability to Borrow at Record Lows as Issuance Rises.

States from California to Massachusetts are paying the highest premiums in three months when selling bonds as a flurry of tax-exempt debt issuance is met with slowing inflows into municipal mutual funds.

Municipal issuers plan to sell $10.6 billion of long-term fixed-rate debt this week, more than any five-day period since Nov. 16, data compiled by Bloomberg show. Massachusetts sold $1.1 billion Thursday, in the second-biggest deal of the week.

"When the new issue guys start making calls, they don't get as a receptive of a phone call as when the market's running hot and when the funds are getting a ton of cash," said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which oversees $4 billion of municipal bonds.

The spread, or extra yield, investors demand on Massachusetts debt above AAA rated bonds is 0.22 percentage point, or 0.065 percentage point more than the three-month average, according to data compiled by Bloomberg. Last week, California spreads reached a three-month high of 0.31 percentage point.

Yield premiums on state general-obligation bonds are rising as investors pay closer attention to growing pension deficits and retiree health care liabilities, according to Bob DiMella, co-head of MacKay Municipal Managers at the investment advisory firm MacKay Shields LLC.

U.S. state pensions had 74 percent of assets required to meet obligations to retirees in fiscal 2015, down from 77 percent in the prior year, Wilshire Consulting said Tuesday. On top of that, new government accounting standards may reveal that state and local governments that previously addressed pension funding still face risks or remain underfunded.

Negative Outlook

Massachusetts, which ranks second behind Connecticut for the highest per capita income, had its credit-rating outlook changed to negative by Standard & Poor's in November because the state was drawing down reserves even as the economy was recovering from the Great Recession. Reserves have declined as spending has outpaced revenue. S&P rates Massachusetts' general obligation bonds AA+, the second-highest investment grade.

Massachusetts is projecting reserves of $1.35 billion for the fiscal year ending June 30, about $220 million less than the previous year, according to S&P. The state has also suspended transfers of excess capital gains tax revenue to a budget stabilization fund.

"In general, we expect states to set aside during good times, extra revenues into a budget stabilization fund for use during the downturn," said S&P analyst David Hitchcock "The concern is here, they're having strong growth in revenue and they're not building up reserves for the bad times."

Fund Flows

In February, municipal bond mutual funds netted $4.8 billion, a $200 million decline from the previous month, according to Lipper US Fund Flow data. Money has flowed to muni mutual funds for 21 straight weeks.
"Over the month of February that money has been placed so things are slowing down a little bit, which has caused spreads to widen," Dalton said. "There's still cash and cash is still coming in, but it's not piling up like it was," Dalton said.

In a Wednesday order period for individual investors, Massachusetts sold at least $160 million of the bonds, said Assistant Treasurer Sue Perez. The commonwealth was expecting retail orders of $120 million to $150 million, she said.

The higher premiums were reflected in the prices set Thursday after mutual funds and other big buyers submitted orders. The 10-year bonds were sold for yields of 2.08 percent, or 0.32 percentage point more than top-rated bonds with the same maturity, according to data compiled by Bloomberg. Thirty-year callable bonds were priced to yield 3.02 percent.

Supply next will be lighter than initially anticipated, she said. As of Wednesday, states and local governments plan $6.4 billion in long-term bond sales, according to data compiled by Bloomberg.

"That may actually work to our favor," said Perez.

Massachusetts Governor Charlie Baker, a Republican, proposed a $39.6 billion budget in January that deposits $206 million of excess capital gains tax revenue into the budget stabilization fund, a positive development, according to S&P. The amount is $150 million less than the $356 million that would have been deposited under a state formula.

“It wouldn’t be the full amount but it would be at least an increase that they haven’t seen for three years,” Hitchcock said.

Massachusetts’ economy, anchored by higher education, health-care and technology sectors, is performing better than the nation as a whole. The state’s unemployment rate was 4.7 percent in 2015 compared with 5 percent for the U.S.

Even so, the commonwealth is burdened by a growing debt service and pension costs. The pension fund had 61 percent of assets required to meet obligations to retirees in 2015 compared with 78.6 percent in 2008, according to S&P.

Bloomberg Business

by Martin Z Braun

March 2, 2016 — 9:00 PM PST Updated on March 3, 2016 — 11:59 AM PST

Bloomberg Brief Weekly Video - 03/03

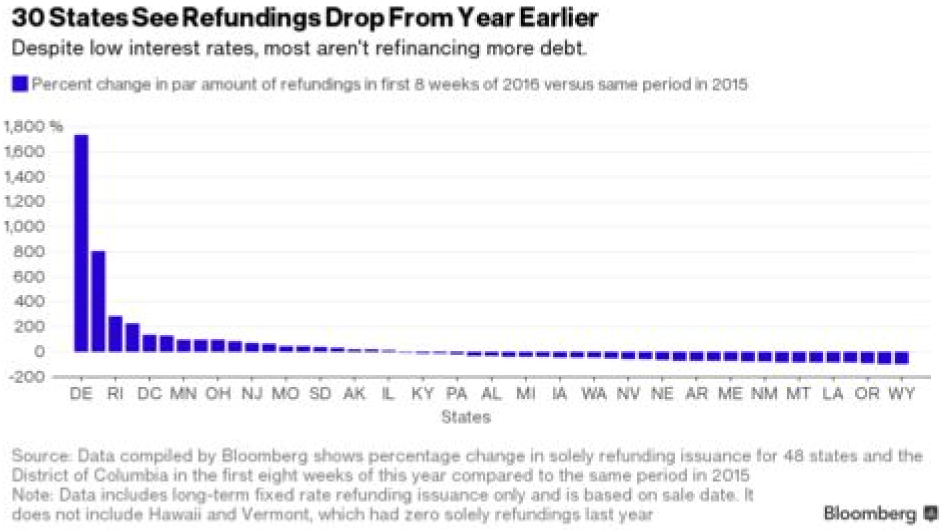
Taylor Riggs, a contributor to Bloomberg Briefs, talks with reporter Joe Mysak about this week’s municipal market news.

Watch the video.

March 3, 2016

Municipalities Risk Missing Refinancing Window as Issuance Slows.

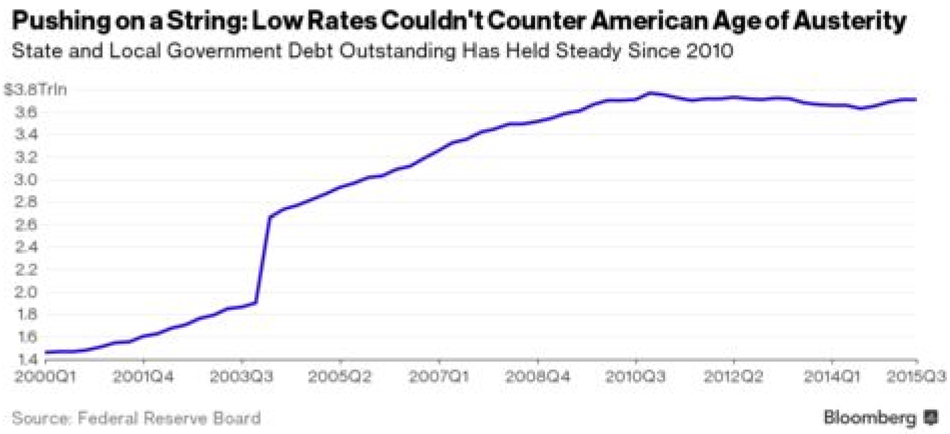
State and local governments in 30 U.S. states borrowed less for the sole purpose of replacing higher-cost debt than they did during the same period in 2015, causing them to miss out on an unexpected persistence of cheap money that may not last. They were slow to take advantage of interest rates that touched five-decade lows in February amid volatility in financial markets, only to edge back up as stocks rallied.



"2016 has produced something of a surprise for a lot of bankers, and I think it takes a while to crank up the machinery to do the refundings," said James Dearborn, who oversees $29.5 billion as head of municipal bonds in Boston at Columbia Threadneedle Investments. "Maybe what we're seeing is just that delay from the outset of the year."

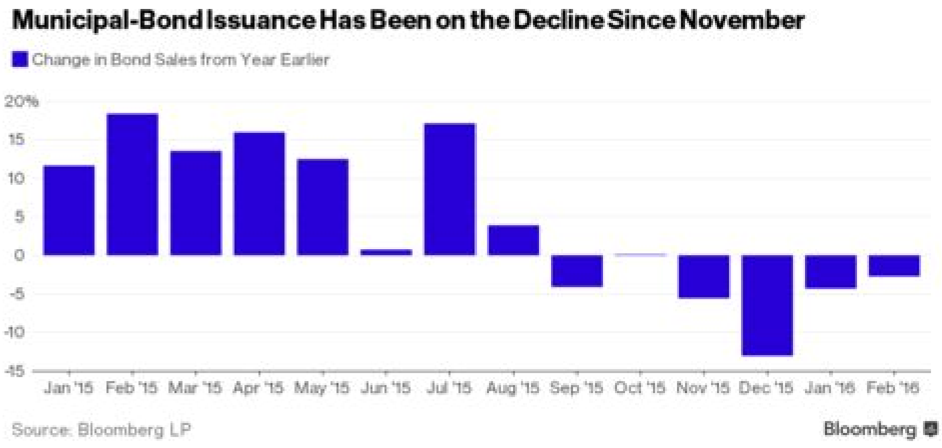
Local governments raced to refinance last year before the Federal Reserve increased borrowing costs for the first time since 2006, easing away from the near zero interest rates that had been in place since the worst of the credit crisis. After the Fed's initial jump in December, turmoil in the global equity and credit markets has dashed most forecasts for higher rates this year. Investors now project a 10 percent probability the central bank will tighten monetary policy at its March 16 meeting, down from 50 percent at the end of 2015, according to pricing in interest-rate futures markets.

The slowdown in bond sales follows a years-long push by states and cities to cut costs because of the financial effects of the recession, which left officials hesitant to run up new debts. As a result, the $3.7 trillion municipal market is smaller than it was at the end of 2010, according to Fed data.



While issuance climbed in the first eight months of 2015, bond sales dropped each month since November compared with a year earlier, according to data compiled by Bloomberg. Municipalities sold about $27 billion of bonds for the sole purpose of refinancing during the first eight weeks of this year, compared with about $32.5 billion at the start of 2015, according to data compiled by Bloomberg.

There are about $15 billion of bond sales scheduled over the next 30 days, the most since November, Bloomberg data show. The actual amount may be even higher as some deals are made public only days ahead of time. The governments may have missed out on the best time to borrow: Yields on top-rated 10-year bonds have climbed to 1.77 percent from as little as 1.57 percent on Feb. 11, according to Bloomberg indexes.



Analysts and investors predict that the pace may pick up. Phil Fischer, head of municipal research at Bank of America Merrill Lynch, forecasts that there will be about $440 billion of municipal bonds issued this year, up from about $403 billion in 2015.

“We’re expecting a pretty hefty year of issuance,” Fischer said. “We’ve got more bonds to issue and rates are even lower now than they were last year.”

Issuance should be higher now, given how low rates are and the demand from investors for new securities, according to Dan Solender, head of municipals at in Jersey City, New Jersey for Lord Abbett & Co., which manages $18 billion of the debt.

“Going forward, if it’s in the money to do the refunding, you’d expect them to happen because the demand is pretty strong in the market,” he said. “And there’s plenty of room for more supply.”

Bloomberg Business

by Elizabeth Campbell

March 1, 2016 — 9:01 PM PST Updated on March 2, 2016 — 5:47 AM PST

[Buying Cigarettes With Gas Money Keeps Tobacco-Bond Rally Aflame.]

Lower-for-longer oil prices might mean higher-for-longer prices on municipal tobacco bonds.

Tobacco securities, which are repaid from legal-settlement money that states and localities receive from cigarette companies, have been a top-performer over the past two years. That's because — for the first time in a decade — Americans aren't giving up smoking. Instead, as gasoline costs plummet to the lowest level since 2009 along with oil prices, they're spending their savings on cigarettes. And the more the companies sell, the more governments get.

High-yield tobacco debt has gained 2.8 percent in 2016, compared with 1.5 percent for all speculative-grade obligations and 1.1 percent for munis as a whole, Barclays Plc data show. Some securities are at the highest prices since 2013 after the segment of the market posted double-digit returns in each of the last two years.

"One of the benefits of low energy prices is when people go and buy their cigarettes, instead of getting the no-frills brand, they can actually buy the major manufacturers, which is good for our tobacco bonds," said Jim Schwartz, the head municipal credit analyst at BlackRock Inc., which oversees $110 billion of state and local debt.

Across the U.S. tobacco industry, cigarette shipment volumes were little changed in 2015 compared with a year earlier, according to regulatory filings from Reynolds American Inc. The company, along with Lorillard Inc. and Philip Morris USA, agreed in a 1998 settlement to make annual payments to states in perpetuity to settle liabilities for health-care costs tied to smoking.

Reynolds, the maker of Camel and Pall Mall cigarettes, shook up the tobacco industry last year when it paid $25 billion to acquire Lorillard, whose biggest product is the Newport menthol line. With the new brand, Reynolds's shipment volume grew 17 percent year-over-year. In a conference call, Debra Crew, president of R.J. Reynolds Tobacco, cited lower gasoline prices as a reason for higher sales.

The resilience of cigarette purchases is a departure from the trend over the past decade, when tobacco companies saw demand decline in the face of anti-smoking campaigns, higher taxes and the growth of e-cigarettes. From 2007 to 2014, shipments fell an average of 4.7 percent annually, according to the National Association of Attorneys General. The 0.1 percent decline last year was the least since 2006.

Tobacco debt has rarely had a bad day in 2016, gaining in 32 of 41 trading sessions, according to data from S&P Dow Jones Indices.

"The market is catching up to how large of an impact near-term consumption declines can have to long-term bond valuations," said David Hammer, who oversees about $40 billion as co-head of the muni portfolio team at Pacific Investment Management Co.

The largest single tobacco bond, a Ohio obligation with a June 2047 maturity, climbed to an average 90.4 cents on the dollar on March 1, the highest since May 2013, data compiled by Bloomberg show. That's equivalent to a 6.6 percent tax-free yield. The debt is rated six steps below investment grade by Moody's Investors Service and Standard & Poor's.

Most tobacco securities are considered junk because when governments first sold them more than a decade ago to get advances on their legal settlements, they didn't anticipate how quickly Americans would give up smoking. Moody's projects that a 4 percent annual decline in cigarette shipments would cause 80 percent of the bonds to default.

"We continue to use a more severe consumption decline scenario than what we've experienced historically as our base case," said Hammer, whose high-yield municipal fund has outperformed 99 percent of peers in the past year. The top three holdings are tobacco securities. "But we have acknowledged the recent trend that consumption declines have slowed, which makes a big difference on tobacco bonds as a whole."

The bonds are different than most in the $3.7 trillion municipal market because they'll continue to pay in perpetuity, even if there's not enough money to make full payments and they default. Tobacco securities are also among the most frequently traded because sometimes taxable buyers will step in and purchase the obligations if they get too cheap.

That probably hasn't been the case lately, because the taxable high-yield market has been dragged down by energy companies, making corporate debt cheap relative to municipal tobacco bonds.

"If you're a corporate high-yield buyer, it's the most expensive you've seen them since the financial crisis," said Guy Davidson, director of municipal fixed-income in New York at AllianceBernstein Holding LP, which oversees about $32 billion of state and local debt. "I'd bet most of the buyers in the last year have been muni buyers and the sellers have been largely taxable ones."

With Puerto Rico tied up in a restructuring battle, speculative-grade muni investors have few alternatives to buy, meaning tobacco bonds could continue to climb, Davidson said. He helps run a $2.3 billion high-yield fund that has four of its five largest holdings in tobacco. It beat 95 percent of peers in the past year.

Individuals have poured money into high-yield municipal funds for 21 straight weeks, adding $4.2 billion over the period, Lipper US Fund Flows data show.

It also helps that gasoline remains below $2 a gallon and the national unemployment rate is the lowest since February 2008. Neither metric shows signs of changing soon.

"People have more money in their pockets and they seem to be buying cigarettes," Davidson said. "We think tobacco bonds are still attractive. We wouldn't underweight them, even though they've had a good run."

Bloomberg Business

by Brian Chappatta

March 3, 2016 — 9:01 PM PST Updated on March 4, 2016 — 4:48 AM PST

Puerto Rico Utility May Pay Contractors Before Debt, Filing Says.

Puerto Rico's main water utility may not have enough money to repay certain bonds if it needs to redirect funds to pay contractors, according to a filing on the Municipal Securities Rulemaking Board's website.

The Puerto Rico Aqueduct and Sewer Authority's board on Feb. 16 approved an alternative plan to divert money to pay contractors if the agency fails to obtain another source of funding by June 30, according to the March 4 filing posted on MSRB's website, called EMMA. Prasa wants to create a new entity that would sell $750 million of debt backed by dedicated revenue, called a securitization bond, to finance capital projects and repay outside workers and businesses. Island lawmakers are working on legislation that would allow the transaction.

Without the bond sale, Prasa may need to use its available cash to pay contractors rather than make monthly interest and principal payments on certain debt, including state revolving fund loans, rural development bonds and a note held by the Puerto Rico Public Finance Corp, according to the EMMA notice.

“Such insufficiency will reduce the amount available to pay the interest accrual and principal accrual on certain commonwealth guaranteed indebtedness and commonwealth supported indebtedness,” according to the filing.

Bonds that still would have sufficient funds for repayment include Prasa’s 2008 Series A and Series B revenue bonds guaranteed by the commonwealth, according to the notice.

Prasa had $4.7 billion of debt as of Sept. 30. The bonds carry junk ratings from the three largest credit-rating companies.

Bloomberg Business

by Michelle Kaske

March 4, 2016 — 2:31 PM PST

Fitch: Rates Key for California Water Utilities Amid Continued Conservation.

Fitch Ratings-San Francisco-04 February 2016: California’s water and sewer utilities will see weaker financial margins in Fiscal 2015 and 2016 as the state’s mandated conservation targets hit water sales, says Fitch Ratings. Many utilities will opt for rate increases or alternate rate structures in the next several years to mitigate the financial impact of lower demand.

“Capital-intensive issues like infrastructure investments and regulatory mandates don’t dissolve in a drought, so even if mandated conservation ends tomorrow, many of California’s water utilities still have important questions to answer regarding how they generate revenue,” said Shannon Groff, Director in Fitch’s U.S. Public Finance group.

On Feb. 2, 2016, the State Water Control Resources Board extended the state-wide conservation mandates through Oct. 31, 2016.

Utilities that already have flat rate structures in place or are quick to adopt them will be better positioned to adjust to lower demand, especially given uncertainty around the drought’s length. Fitch believes many utilities will implement rate changes by Fiscal 2017, which will help their financial metrics recover from the expected dips in Fiscals 2015 and 2016.

Historically, California’s water and sewer sector has enjoyed healthy margins and strong credit quality, supported by political and public support for rate adjustments. However, this flexibility continues to be tested as rates move higher.

Fitch downgraded three California utilities – Millbrae, Fresno and Contra Costa Water District – over the past two years due to a combination of lower water sales, large capital programs and reduced rate flexibility. However, upgrades still outpaced downgrades, while the majority of ratings remained stable.

In addition, Fitch has released its Fitch Analytical Comparative Tool (FACT) for the Water and Sewer Sector. FACT is an interactive Excel-based analytical tool for comparing an institution's key financial metrics to median calculations on a notch-specific rating basis, compared to entities rated within the same rating category and against Fitch's portfolio of credits.

The full report, 'California Water and Sewer Sector: 2016 Update,' and the FACT are available at www.fitchratings.com.

Fitch: January Air Traffic Should Lift Most U.S. Airports.

Fitch Ratings-New York-02 March 2016: US airports will likely see benefits from the continued increases in air traffic that were indicated by January's air traffic results, Fitch Ratings says. However, even with solid overall growth that follows 2015's impressive gains, a few air carriers are lagging the others, which may cause their shared hubs to underperform compared with other US airports. We expect some of the carriers' key airports to be at some near-term risk to maintain their recent growth given their relative tightness in expanding carrier capacity as well as capital development at their respective terminals and airfields.

The five largest US airlines reported that their January traffic and capacity numbers rose despite a northeast blizzard that cancelled an estimated 10,000 flights and closed airports from the Carolinas through New England. The median traffic growth rate rose 3.7% compared with January 2015.

In our view, January traffic numbers can be a leading indicator of annual momentum. Both economic conditions and carrier profitability can cause some deviation. Fitch expects 3.0%-3.5% passenger growth at US airports in 2016, following a nearly 5% gain in 2015. We expect major market airports to lead while performance at smaller airports and secondary hubs will see mixed results.

JetBlue and Southwest Airlines reported top growth consistent with prior periods, indicating that airports like Logan International Airport in Boston, Orlando International Airport, Fort Lauderdale-Hollywood International Airport and Tampa international Airport will benefit.

In contrast, growth at United Airlines and American Airlines was lower than that of the other major carriers in January, as it was in all of 2014 and 2015. Chicago O'Hare International Airport is unique in that it is a big hub for both carriers but is benefiting from infrastructure investments at the airfield to limit delays, increasing its attractiveness to travelers. O'Hare has other carriers serving the market that should help it rise to even higher levels this year. Newark Liberty International Airport, George Bush Intercontinental Airport, Dallas/Fort Worth International Airport and Charlotte Douglas International Airport also have United and American near their top.

Fitch: Flint, Chicago Lead Lawsuits Pressure Water Sector.

Fitch Ratings-New York-04 March 2016: Lawsuits filed against the city of Flint, MI and the city of Chicago could have a broad, long-term impact on the entire US water sector, Fitch Ratings says. Utilities are stepping up education efforts to bolster public confidence while also evaluating their existing treatment protocols to ensure ongoing water quality. Significant investment in service line replacement also may be forthcoming over the near term, particularly if the Environmental Protection Agency materially alters existing rules.

Various lawsuits filed against Flint and certain government officials allege that the water residents were using was unsafe. The city had changed water sources and the lawsuits state that the newer source had higher corrosive properties that eroded the pipes, leading to highly elevated lead levels in the water. Separately, certain Chicago residents filed suit against the city within the last several days alleging that repairs by Chicago to its water system allowed dangerous levels of lead to enter the drinking water supply and that the city did not sufficiently notify residents that they may have been exposed.

The EPA currently regulates drinking water exposure to lead based on its Lead and Copper Rule, which seeks to minimize lead in drinking water primarily through corrosion control of lead pipes. If corrosion control is not effective the rule can require water quality monitoring and treatment, corrosion control treatment, the removal of lead lines and public education. The EPA is considering strengthening the rule sometime later this year or next. In light of these lawsuits and the heightened public focus on possible lead contamination, Fitch expects any proposed rule revisions will likely move the industry toward removing all lead service lines.

Reprioritizing and accelerating lead pipe replacement would add significant additional capital needs to the sector and could compete with other critical infrastructure projects, including developing sufficient long-term water supplies and replacing aging infrastructure components other than lead lines. Some sources estimate over 6 million lead service lines exist across the US. Many of these are located in the Northeast, Midwest and older urban areas. We believe the capital costs to replace these lines could exceed $275 billion. The EPA's latest survey estimated the entire sector needs $385 billion in water infrastructure improvements through 2030 and this estimate includes the costs to only partially replace lead pipes. Either level of capital cost would likely be manageable for the sector as a whole if it is spread out over a time frame like the one in the EPA survey. However, implementation over a shorter time span may create stress for individual credits.

Hundreds of Local Officials Defend Municipal-Bond Tax Exemption.

WASHINGTON — The prospects for a tax overhaul this year are nil, yet hundreds of state treasurers, mayors and other officials are mobilizing to protect a cornerstone of the $3.9 trillion market for municipal debt: the tax breaks the bonds offer investors.

Some 600 state and local officials are calling on Congress to stay away from taxing the interest paid to municipal-bond investors, warning the municipal market is a vital mechanism for financing schools, roads, transit systems and other infrastructure projects that create jobs. They fear Congress may try to do just that in 2017.

"Proposals to change this commitment to tax-free municipal bonds would not only be costly for state and local taxpayers, but also result in fewer projects, fewer jobs and further deterioration of our infrastructure," the officials wrote in a letter they plan to send Wednesday to top lawmakers on the tax-writing committees of the House and Senate.

The letter, organized by the National Association of State Treasurers, reflects a heightened state of anxiety among officials in states and localities that Washington policy makers will move to limit or kill the exemption, after years of trying—and failing—to do so.

While no broad tax-code overhaul is expected this year, state and local officials are taking pre-emptive steps to protect their bonds' tax exemption from any deal that might materialize down the road.

President Barack Obama has repeatedly advanced the idea of capping the tax exemption on the grounds that too much of the roughly $30 billion a year in forgone federal tax payments from a century-old interest exemption goes to higher-income households. Top lawmakers in both parties have said they, too, are willing to consider curbing the bonds' tax-exempt status.

Investors are willing to accept lower yields for municipal bonds than corporate debt because their interest income is exempt from federal income taxes as well as taxes in the state in which the bonds were issued. In some high-tax areas, such as California, the bonds are also exempt from local income taxes.

By exempting municipal bond interest from federal taxes, the government creates an incentive for investors to buy them, which helps hold down the borrowing costs of the states, cities and other entities that issue them. Curbing the exemption would likely reduce demand for the bonds, pushing those borrowing costs higher, critics say.

Mr. Obama's proposal, floated several times since 2011 including in a budget he released last month, would place a 28% cap on the tax exemption for interest earned on municipal bonds. That means a wealthy household—in a top tax bracket of 35%—with $100,000 in previously tax-free municipal-bond interest income would have to pay 7% in taxes, reducing their income from the bonds to $93,000.

Capping or eliminating the tax-exemption would hurt taxpayers in every state, the officials wrote, because "municipalities will have to either curtail infrastructure projects or raise taxes on sales, property or income" to attract investors.

State officials said the harm is more than theoretical: In December 2012, the municipal market experienced a spike in rates as investors recognized a cap on exemption was under consideration, they said.

THE WALL STREET JOURNAL

By ANDREW ACKERMAN

March 1, 2016 6:00 a.m. ET

Write to Andrew Ackerman at andrew.ackerman@wsj.com

Washington Battles Over Munis: Safe or Hard to Sell?

WASHINGTON — Many investors flock to municipal bonds for security. But some federal regulators trying to shore up the banking system aren't convinced the bonds would be easy to sell in a crisis.

The contrast has led to an unusual showdown, with Wall Street, Congress and municipal officials—all of whom are vested in a robust muni-bond market—challenging bank regulators' skepticism toward municipal debt.

At issue are new rules aimed at ensuring banks can raise enough cash during a financial-market meltdown to fund their operations for 30 days. The requirements mean banks have to hold more cash or securities that are easily sellable.

The Federal Reserve and two other bank regulators decided debt issued by states and localities didn't make the cut, when they crafted the rules in 2014. Now, Republicans and Democrats alike are advancing legislation to mandate regulators include municipal securities among the rule's definition of "high quality liquid assets," a category that currently includes cash, Treasury bonds and debt sold by government-sponsored enterprises like Fannie Mae.

The House passed such a bill last month. Senators, led by Sen. Mike Rounds (R., S.D.), Charles Schumer (D., N.Y.) and Mark Warner (D., Va.), are working on related legislation.

"We shouldn't make it more expensive for local governments to finance essential investments such as school and road construction by making it harder to access capital markets," Mr. Warner said in a statement.

He added the Senate bill's provisions would be tailored to "appropriately address financial stability concerns while preserving states and municipalities' access to bond markets."

Regulators don't think it is the place of Congress to second guess how they size up securities. Fed Chairwoman Janet Yellen, at a congressional hearing Feb. 11, said legislation would "interfere with our supervisory judgments."

Big banks such as Citigroup Inc. and Wells Fargo & Co. have sprung into action in lobbying Congress, along with municipal leaders who fret the rules will diminish bank bond-buying which could raise borrowing costs on infrastructure projects.

Banks underwrite muni bonds, buy them as investments and sell them to clients. The lenders have played an increasingly central role in the thinly-traded, $3.7 trillion market.

Banks are the biggest buyers of municipal bonds, according to Matt Fabian of Municipal Market Analytics Inc., a research firm.

Since 2013, banks have collectively purchased about $11 billion of the bonds each quarter and now own about $500 billion of the securities, making them the third-largest holders after individuals and mutual funds, he said.

The Fed last summer tried to defuse the criticism by offering a concession, saying it would reconsider its earlier version of the rules, and include some investment-grade municipal debt.

Municipal officials retort that those adjustments would cover only a narrow sliver of the securities, and those that do qualify would still receive unfavorable treatment compared with debt issued by government-backed mortgage giants and Treasury debt.

Municipal officials also say legislation is necessary because the two other regulators involved—the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp.—have yet to make any changes themselves.

Officials at the OCC remain dismissive of including the muni bonds in the rule, according to people familiar with their thinking, while the FDIC is waiting until the rules go into effect next year before considering amending its version.

Some economists also say the legislation would weaken the bank-funding rule, by allowing banks to rely on thinly-traded securities that they worry won't be easy to sell in another crisis.

While default rates on municipal bonds are tiny, the majority of the debt doesn't trade much, according to a Securities and Exchange Commission report from 2004. It found that less than 1% of municipal securities traded more than one hundred times in a roughly 10-month period. Seventy percent of the bonds didn't trade at all.

Economists note that some of the most-traded municipal debt in recent months are securities issued by Puerto Rican borrowers. The island's unsustainable habit of running chronic deficits has left it with some $72 billion of debt it now says it can't repay—not what most regulators would consider a "high quality" asset.

"The Fed in its proposal went too far in allowing risky securities to be treated as safe, and the legislation would go yet further," said Phillip Swagel, a University of Maryland economist who served in the George W. Bush Treasury. He said Congress's moves illustrate the danger of letting political forces influence safety-and-soundness regulations. And he thinks the Fed should have stood its ground.

James McIntire, treasurer for the state of Washington, rejects arguments munis aren't safe or easily traded. Mr. McIntire, president of the National Association of State Treasurers, cited analysis conducted with the state's financial adviser showing Washington's general obligation debt is at least as liquid as top-rated corporate bonds, which are included in the rules.

Regulators have ignored or dismissed this data, which means Congress must act, he said.

"We really have no alternative," he said, but "to resort to some sort of legislative intervention."

THE WALL STREET JOURNAL

By ANDREW ACKERMAN

March 2, 2016 6:49 p.m. ET

Write to Andrew Ackerman at Andrew.Ackerman@wsj.com

Chicago Schools Fast Running Out of Cash as Standoff With Illinois Governor Worsens.

CHICAGO — Chicago's cash-starved public schools' district may be choked off from more loans and find itself unable to meet a $676 million pension payment in June because of a deepening legal dispute with Illinois' governor.

The state's school board, stocked with Republican Governor Bruce Rauner's appointees, is expected to declare Chicago's school system in "financial difficulty" as early as April under an Illinois law authorizing state takeovers of financially distressed school systems. Rauner, who is seeking to take over the schools' district, contends that finding would bar the nation's third-largest public school system from further borrowing.

Chicago Public Schools (CPS), which only just borrowed $725 million through a bond sale, says it is exempt from the law, thus keeping Rauner and his State Board of Education from dictating financial decisions involving the system, including its ability to borrow additional funds.

CPS plans to tap an existing $370 million credit line with Barclays Bank to help pay its June 30 pension obligation, according to Moody's Investors Service analyst Mark Lazarus. But that could also be in jeopardy because of Rauner's stance.

The district has indicated a need to sell more debt, but that seems unlikely now. "I'd say it's dangerous to issue it, and it would be more dangerous to buy it," said Richard Ciccerone, who heads Merritt Research Services, a Chicago-based municipal credit data company.

CPS already carries a $6.2 billion debt load, and its finances remain precarious after February's borrowing. In that bond offering, the system disclosed it expected to have only $24 million in operating revenue when its fiscal year ends June 30. Budget cuts announced by CPS CEO Forrest Claypool since then could grow that balance to as much as $118 million, according to Moody's.

Still, that wouldn't represent much of a cash cushion given that more than 40 percent of the cuts are not guaranteed and this is a schools' district with a $5.7 billion annual budget. CPS aims to save $65 million by reducing its contribution to teachers' pension payments by 7 percent but teachers have threatened to strike over the issue in April, likely leaving a state labor panel or the courts to decide the legality of that cut.

Since January, Rauner has staged a running attack on CPS and Chicago's Democratic Mayor Rahm Emanuel, who controls the school district. "They've misspent hundreds of millions of dollars, and they hurt their students and their teachers as a result," Rauner told reporters at a news conference in Chicago last month.

As justification for a state takeover, Rauner's office cited Illinois law permitting the State Board of Education to seize control of financially troubled school systems and to block new borrowing. Claypool insists CPS is exempt, but Rauner's office claims the exemption no longer exists because it is based on an obsolete part of the law.

"If it determined that any school district was in financial duress, the state board has the right, the legal authority, to block any debt offerings," Rauner said.

The dispute itself could prevent CPS from selling bonds, according to legal experts. That is because lawyers representing the system likely cannot issue a clean opinion on the district's debt offering as legal, valid and enforceable, a necessary assurance for investors.

Any plausible question about the validity of the debt would probably prevent attorneys from giving such an unqualified opinion, said Clayton Gillette, a professor of local government law at the NYU School of Law.

Without that, the bonds probably will not be marketable, he said. Even if the offering could be sold, investors would demand very high rates as compensation for the risk, Gillette added.

"So at the very least (CPS) is going to end up paying more," Gillette said.

Already, CPS has struggled in the bond market. The district pulled back an $875 million long-term junk-rated bond issue in January, ultimately selling only $725 million of bonds on Feb. 3. To attract investors, CPS needed to offer an 8.50 percent rate on most of the bonds, up from the 7.75 percent they were aiming for in January. The total cost to retire the bonds through maturity in 2044 is about $1.9 billion.

Nearly 80 percent of proceeds from February's bond issue was earmarked to boost operating cash – a troubling sign for bond investors.

“If an entity depends on market access to pay bills, that to us is effectively insolvent,” said Triet Nguyen, who tracks distressed municipal bond credits at financial services company NewOak Capital in New York.

Nguyen said that happened with Puerto Rico, which like CPS relied on bond sales for liquidity. The U.S. territory, which has not been able to sell municipal bonds since 2014, has defaulted on some debt and is seeking restructuring help from the U.S. Congress.

“There’s a high probability this could happen [in Chicago], particularly under the backdrop of such vocal criticism from the governor,” Nguyen said.

The district’s lack of market access could make banks wary of extending any new credit too, he said.

With uncertainty about its prospects rising, CPS also could hit a ceiling on the interest rate it can pay for its long-term borrowing. A state law forbids long-term public borrowing at a rate over 9 percent — just half a percentage point above the top rate in February’s bond sale.

“They don’t have much room for any future borrowing,” said Laurence Msall, president of the Civic Federation, a nonpartisan Chicago-based financial watchdog group that tracks CPS finances.

By REUTERS

MARCH 3, 2016, 1:15 A.M. E.S.T.

(Reporting by Dave McKinney and Karen Pierog; Editing by David Greising and Martin Howell)

RFC: GASB Research Projects.

Every year, the Governmental Accounting Standards Board (GASB) reaches out to poll Governmental Accounting Standards Advisory Council (GASAC) members (e.g., NFMA) about prioritizing their large volume of research projects.

NFMA gets to select six high priority and six medium priority research projects from the list on Attachment D. A description of each GASB research project is in Attachment A.

If you wish to submit your vote for any GASB research project as a high/medium priority project, email your choice to Gil Southwell at gsouthwe@wellscap.com by 3/25/2016.

National Federation of Municipal Analysts

Big Win for Marketplace Fairness Act in the Tenth Circuit Court of Appeals.

On February 22, 2016, the Tenth Circuit United States Court of Appeals upheld a Colorado law requiring remote sellers to provide Colorado purchasers with an annual summary of their purchases, and to send the same information to the Colorado Department of Revenue. Broadly, this important step taken by the Tenth Circuit upholds the constitutionality of use tax reporting requirements in any state. Reporting requirements are a step in the right direction until Congress acts on legislation that would allow states to enforce the collection of sales taxes on remote online vendors.

Since 2010, the State of Colorado has required remote sellers to provide Colorado purchasers with an annual summary of their purchases and to send the same information to the Colorado Department of Revenue. The Direct Marketing Association (DMA) sued Colorado in federal court, claiming the law was unconstitutional. In *Direct Marketing Association v. Brohl*, the Tenth Circuit disagreed. The court concluded the Colorado law doesn't discriminate against interstate commerce because DMA was unable to show that the notice and reporting requirements imposed on out-o--state retailers are more burdensome than the sales tax collection and administration requirements imposed on in-state retailers.

GFOA, along with "Big Seven" members of the State and Local Legal Center (SLLC), have filed amicus briefs in every stage of *DMA v. Brohl*, citing the devastating impact that the 1992 *Quill Corp. v. North Dakota Supreme Court* ruling has had on state and local governments in light of the rise of Internet purchases, Congress's failure to pass the Marketplace Fairness Act, and states' need to improve use tax collection through statutes like Colorado's. Justice Anthony Kennedy wrote a concurring opinion, upon considering DMA, which appeared to rely on the SLLC's brief; it stated that the "legal system should find an appropriate case for this court to reexamine Quill," the Tenth Circuit's opinion actually cited the SLLC's amicus brief, which provided an estimate of the very low rate of use tax compliance and also quoted Justice Kennedy's recent criticism of *Quill.*

GFOA continues to work with the SLLC to help communicate the necessity of states' ability to enforce the collection of use taxes already due to the Courts. We will continue to keep members up to date on any developments of this case, as well as the keeping the success of the Marketplace Fairness Act a priority in our legislative activities.

Government Finance Officers of America

Tuesday, March 1, 2016

MSRB Releases New Annual Fact Book of Municipal Securities Data.

Download the Fact Book.

- IRS Proposed Political Subdivision Rules Would Be Big Change for Munis.
- MSRB 2016 Compliance Advisory.
- George K. Baum FINRA Case Shows Excessive Fee, Bond Ballot Concerns.
- NABL Submits Additional Issue Price Comments.
- FINRA Approves Enhanced Price Disclosure to Retail Investors in Fixed-Income Securities.
- *Wheelabrator Bridgeport, L.P. v. City of Bridgeport* – Supreme Court of Connecticut holds that trial court's improper rejection – as a matter of law – of the cash flow approach to property valuation (a waste-to-energy (WTE) facility) required a new trial at which the court could exercise its discretion to determine the credibility of expert testimony regarding the appropriate valuation method and expert's calculations.
- *Lenox Barbeque and Catering, Inc. v. Metropolitan Transit Authority of Harris County* – Court of Appeals holds that landowner's conveyance of part of a tract of land used for a restaurant to transit authority, pursuant to a settlement of the authority's condemnation petition, operated as a release of any claim under the state constitution for lost profits based on the loss of the parcel taken by the

transit authority, even though there was no express release.

- *In re Lewis & Clark Public School Dist. #161 of Ward* – Supreme Court of North Dakota holds that catch-all provision of statute governing annexation of property permitting consideration of "all other relevant factors" was not unconstitutionally vague and did not amount to unconstitutional delegation of legislative authority to Board of Public School Education.
- And finally, we highly recommend that one tread very, very lightly when initiating conflict with any entity with the word "barbeque" in its name due to the enormous karmic implications. Conversely, knock yourself out with regard to any entity with the word "colon" in its name. Worst case karmic consequence there is just a colonoscopy. Which isn't the worst idea, particularly if you eat a lot of barbeque.

EMINENT DOMAIN - COLORADO

Town of Silverthorne v. Lutz

Colorado Court of Appeals, Div. VI - February 11, 2016 - P.3d - 2016 WL 611657 - 2016 COA 17

Town filed a petition in condemnation to acquire easement rights over strip of land to construct trial for nonmotorized transportation. After jury trial, the District Court awarded compensation. Landowners appealed.

Holdings: The Court of Appeals held that:

- Landowners did not waive any challenge to town's condemnation proceeding by failing to timely file an answer, but
- Existence of constitutional amendment forbidding a recipient of funds from the Great Outdoors Colorado Program (GOCO) from using its funds to acquire property by condemnation did not allow landowners to present evidence of source of funding for town's trail project.

Landowners did not waive any challenge to town's condemnation proceeding by failing to timely file an answer. Town did not explain how the relatively short delay caused it any prejudice, and landowners' jury demand, filed within the twenty-one day period for an answer, as well as the parties' long history of conflict concerning land that was subject of condemnation, placed town on notice that landowners intended to contest condemnation.

Existence of constitutional amendment forbidding a recipient of funds from the Great Outdoors Colorado Program (GOCO) from using its funds to acquire property by condemnation did not allow landowners to present evidence of source of funding for town's trail project, in a condemnation proceeding for construction of nonmotorized transportation trail by town which received funds under GOCO. Such collateral matters could not be heard in a condemnation proceeding.

Town's offer of $400,000 to landowners in pre-condemnation negotiations did not demonstrate bad faith on part of town in such negotiations, despite argument that offer was less than the $500,000 that town had received from Great Outdoors Colorado Program (GOCO) for trail project for which easement condemnation was sought, where offer exceeded actual value of easement rights as determined at trial.

NUISANCE - CONNECTICUT

Perry v. Town of Putnam

Appellate Court of Connecticut - February 2, 2016 - A.3d - 162 Conn.App. 760 - 2016 WL 307112

Municipality filed motion to strike homeowner’s amended complaint alleging nuisance. The Superior Court granted motion. Homeowner appealed.

The Appellate Court held that:

- Parking lot did not have a natural tendency to create danger and inflict injury on person or property;
- Use of public land as a parking lot was not unreasonable or unlawful; and
- Decision to locate, construct, and encourage parking in a parking lot located immediately adjacent to homeowner’s property did not constitute the type of affirmative act necessary for actionable nuisance.

Municipal parking lot located immediately adjacent to homeowner’s property did not have a natural tendency to create danger and inflict injury on person or property, thus precluding action for nuisance against municipality. The disruptive activity and sounds in the parking lot simply did not imbue the parking lot with a natural tendency to create danger and to inflict injury.

Municipality’s use of public land as a parking lot was not unreasonable or unlawful, thus precluding homeowner’s action for nuisance based on municipality’s construction of parking lot located immediately adjacent to homeowner’s property. Building a public parking lot on town land in the vicinity of athletic facilities simply was not an unreasonable use of the land, nor was it unlawful.

Construction of parking lot located immediately adjacent to homeowner’s property did not constitute the type of affirmative act necessary for actionable nuisance claim against a municipality. The acts giving rise to the annoyances of which homeowner’s complained were those of third parties, and such unpleasant and disruptive behavior by third parties was the proper bailiwick of police regulation and control, not of the law of nuisance.

IMMUNITY - KENTUCKY

Taylor v. Maxson

Court of Appeals of Kentucky - February 19, 2016 - S.W.3d - 2016 WL 675429

Petitioner who had filed records request under Open Records Act with Education and Workforce Development Cabinet filed suit against Cabinet’s policy advisor, seeking tort damages for emotional distress and other claims. The Franklin Circuit Court dismissed claims on basis of governmental and qualified official immunity. Petitioner appealed.

Commonwealth of Kentucky Court of Appeals held that:

- Limited waiver of governmental immunity for willful violation of Open Records Act did not extend to claim against policy advisor for tort damages for emotional distress;
- Suit for violation of Open Records Act could only be brought against Cabinet, and not against Cabinet policy advisor in his individual capacity;
- Policy advisor was entitled to qualified official immunity from liability for statements made to Attorney General related to petitioner’s records appeal; and
- Statements made by policy advisor to Attorney General were cloaked with absolute judicial

immunity.

ZONING - NORTH CAROLINA

Cherry v. Wiesner

Court of Appeals of North Carolina - February 16, 2016 - S.E.2d - 2016 WL 611074

Owners of lot in designated historic district appealed city Board of Adjustment ruling which rejected modernist design for home, which had been approved by city Historic Development Commission. The Superior Court reversed the Board's decision, and neighbor appealed.

The Court of Appeals held that:

- Neighbor failed to allege special damages and thus was not an "aggrieved party" with standing to challenge the decision;
- Neighbor had numerous opportunities to allege standing before Board of Adjustment; and
- Neighbor was not entitled to supplement the record before the trial court to include two affidavits addressing the issue of standing.

ANNEXATION - NORTH DAKOTA

In re Lewis & Clark Public School Dist. #161 of Ward

Supreme Court of North Dakota - February 18, 2016 - N.W.2d - 2016 WL 682970 - 2016 ND 41

Landowners sought judicial review of decision of Board of Public School Education denying petition to annex land from one school district to another. The District Court affirmed. Landowners appealed.

The Supreme Court of North Dakota held that:

- School district had standing to object to petition;
- Closed telephone proceeding between Board and its attorney following public hearing did not result in denial of fair hearing;
- Board properly considered amount of land to be annexed; and
- Catch-all provision of statute governing annexation of property from school district was not unconstitutionally vague.

School district had standing to object to landowners' petition for annexation of land from one school district to another. District, superintendent, and board members were members of public entitled to participate in annexation hearings to protect district's interests.

Telephone proceeding between Board of Public School Education and its attorney, during which Board and attorney discussed Board's decision regarding landowners' petition for annexation of land from one school district to another, and alleged failure to provide landowners with notice, did not result in denial of fair hearing. Board adopted prepared findings, conclusions, and order at a public hearing, and landowners cited no authority requiring that Board give parties notice or opportunity to comment on proposed orders after decision was made or before order was issued.

Board of Public School Education, in denying landowners' petition for annexation of land from one school district to another properly considered amount of land involved. Catch-all provision of statute governing annexation of property, which permitted consideration of “all other relevant factors,” was sufficiently broad to encompass amount of land.

Catch-all provision of statute governing annexation of property permitting consideration of “all other relevant factors” was not unconstitutionally vague and did not amount to unconstitutional delegation of legislative authority to Board of Public School Education. Legislature’s ability to retract delegation of authority provided adequate safeguard to deter arbitrary decision-making by the Board.

BONDS - OREGON

Yes On 24-367 Committee v. Deaton

Court of Appeals of Oregon - February 3, 2016 - P.3d - 2016 WL 430878

Political committee organized to support a local ballot measure that would have authorized a fire protection district to issue general obligation bonds to pay for capital projects brought action against distributors of a pamphlet opposing the measure for publication of false statement of material fact relating to candidate or measure. The Circuit Court struck the complaint pursuant to the anti-Strategic Lawsuits Against Public Participation (SLAPP) statute. Committee appealed.

The Court of Appeals reversed, holding that:

- Statement in pamphlet that tax assessments would double was a factual assertion, rather than opinion;
- Committee made a prima facie showing that distributors made a false statement of material fact; and
- Failure by committee to submit direct evidence of mental state of distributors was not fatal to its claim.

Statement in pamphlet opposing local ballot measure, which would have authorized a fire protection district to issue general obligation bonds to pay for capital projects, that proposed bond levy would have doubled the fire district tax assessment for the next 20 years was a factual assertion, rather than an opinion that would be protected by anti-Strategic Lawsuits Against Public Participation (SLAPP) statute from action for publication of false statement of material fact relating to candidate or measure. Statement expressed an assertion of objective, mathematical fact.

Political committee organized to support a local ballot measure that would have authorized a fire protection district to issue bonds to pay for capital projects made a prima facie showing in action by committee against distributors of a pamphlet opposing the measure for publication of false statement of material fact relating to candidate or measure that distributors made a false statement of material fact that proposed bond levy would have doubled the fire district tax assessment, where the bonds would have resulted in a property tax assessment of $0.49 per $1,000 in assessed value, the existing assessments were for $0.8443 and $0.49 per $1,000, and, thus, the assessments would have increased 37%, rather than doubled, and statement expressly referred to assessments in the plural.

Failure by political committee organized to support a local ballot measure that would have authorized a fire protection district to issue bonds to pay for capital projects to submit direct evidence of mental state of distributors of pamphlet opposing the measure was not fatal to committee’s action against distributors for publication of false statement of material fact relating to candidate or measure at stage of proceedings at which distributors moved under anti-Strategic Lawsuits Against Public Participation (SLAPP) statute to strike committee's complaint. Direct proof of a defendant's subjective state of mind was typically hard to come by, and intent, knowledge, and recklessness were often inferred from surrounding circumstances.

EMINENT DOMAIN - TEXAS

Lenox Barbeque and Catering, Inc. v. Metropolitan Transit Authority of Harris County

Court of Appeals of Texas, Houston (14th Dist.) - February 23, 2016 - S.W.3d - 2016 WL 720805

Landowner brought inverse condemnation claim against transit authority. The County Civil Court at Law granted summary judgment for transit authority. Landowner appealed.

The Court of Appeals held that landowner's settlement of transit authority's condemnation petition released any inverse condemnation claim for lost profits.

Landowner's conveyance of part of a tract of land used for a restaurant to transit authority, pursuant to a settlement of the authority's condemnation petition, operated as a release of any claim under the state constitution for lost profits based on the loss of the parcel taken by the transit authority, even though there was no express release, since the settlement agreement included an award of just compensation to the landowner for the taking, the alleged lost profits were damages that reasonably could have been foreseen and determined at the time of the settlement agreement, and neither the settlement agreement nor the warranty deed contained a reservation of a right to sue for lost profits.

ZONING - VERMONT

Brisson Stone LLC v. Town of Monkton

Supreme Court of Vermont - February 12, 2016 - A.3d - 2016 WL 555809 - 2016 VT 15

Commercial gravel extraction permit applicants filed for declaratory judgment claiming protracted review process caused their application to be deemed approved. In a separate appeal, applicants sought review of the development review board's denial of the application. In the second proceeding, adjoining landowner was granted intervenor status, and she moved for summary judgment arguing zoning regulation did not authorize crushing quarried ledge rock to create gravel. The Superior Court, Environmental Division, held that application could not be deemed approved, and subsequently granted summary judgment to intervenor. Applicants appealed and the appeals were combined.

The Supreme Court of Vermont held that:

- Environmental court's decision to deny the application was not clearly erroneous, arbitrary, or capricious, and
- Deemed-approval remedy does not foreclose an interested party's timely appeal on merits of the application.

Environmental court reasonably based its holding on plain language of zoning regulation, finding that the regulation permitted extraction of naturally occurring gravel, but not applicants' proposed method of blasting, drilling, and crushing ledge rock to produce gravel, and thus its decision to deny the application for a commercial gravel extraction permit was not clearly erroneous, arbitrary, or capricious.

Deemed-approval remedy, pursuant to statute providing that failure of a municipal panel to approve or disapprove requested development review application within 45 days after date of final public hearing shall be deemed approval, does not foreclose an interested party's timely appeal on the merits of the application.

COMMERCE CLAUSE - VIRGINIA

Colon Health Centers of America, LLC v. Hazel

United States Court of Appeals, Fourth Circuit - January 21, 2016 - F.3d - 2016 WL 241392

Out-of-state medical providers brought action against Virginia government officials, claiming that the requirement to obtain a certificate of need (CON) to establish or expand medical facilities and services violated the dormant aspect of the Commerce Clause. The United States District Court granted defendants' motion to dismiss for failure to state a claim. Providers appealed. The Court of Appeals reversed and remanded. On remand, the District Court granted summary judgment to defendants. Providers appealed.

The Court of Appeals held that:

- The CON requirement did not discriminate against out-of-state medical providers in its purpose;
- The CON requirement did not have a discriminatory effect on out-of state medical providers; and
- The burden of the CON requirement on interstate commerce was not clearly excessive to the putative local benefits.

The burden on interstate commerce of Virginia's statutory requirement for medical providers obtain a certificate of need (CON) to establish or expand medical facilities and services was not clearly excessive in relation to its putative local benefits, and thus the CON requirement did not violate the dormant Commerce Clause on Pike balancing, despite contention that the requirement reduced competition which allowed entrenched incumbents to exert market power and charge inefficiently high prices, where the State claimed that the CON requirement boosted healthcare quality, ensured underserved and indigent populations had access to medical care, and maintained a geographic distribution of health care facilities.

TAX - OHIO

Rural Health Collaborative of S. Ohio, Inc. v. Testa

Supreme Court of Ohio - February 16, 2016 - N.E.3d - 2016 WL 671433 - 2016 -Ohio- 508

Tax commissioner appealed decision of Board of Tax Appeals which granted a charitable-use property tax exemption to leased facility that provided dialysis services.

The Supreme Court of Ohio held that:

- Board's finding that healthcare provider lessor was a charitable organization was reasonable and lawful, but

- Board’s failure to fully consider whether dialysis clinic, as lessee, could qualify as a charitable organization, required remand.

Board of Tax Appeals’ finding that health care provider, which constructed and leased a dialysis clinic, was a charitable organization under charitable-purpose property tax exemption, was reasonable and lawful. The Board viewed the construction and leasing of the dialysis clinic within context of provider’s larger body of activities, obtaining grants for tobacco-cessation funding, pregnancy care and education, diabetes prevention and education, and managed-care planning, along with community-care initiatives such as blood drives.

Board of Tax Appeals’ failure to fully consider whether dialysis clinic, as lessee, could qualify as a charitable organization, in granting lessor’s application for charitable-purpose property tax exemption, required remand. Under provision of charitable-purpose tax exemption statute, both parties to a lease were required to qualify as a charitable institution in providing service to those in need, without regard to race, creed, color, or ability to pay.

S&P: Rating Structurally Enhanced Debt Issued By Regulated Utilities And Transportation Infrastructure Businesses.

1. Standard & Poor’s Ratings Services is updating its criteria for assigning issue credit ratings to structurally enhanced debt (SED) issued by regulated utilities and transportation infrastructure businesses. This update follows our “Request for Comment: Rating Structurally Enhanced Debt Issued By Regulated Utilities And Transportation Infrastructure Businesses,” published on Feb. 27, 2015. These criteria are related to the criteria “Methodology: Holding Companies That Own Corporate Securitizations And Structurally Enhanced Debt Transactions,” published on Feb. 24, 2016.

2. We define SED as debt that 1) is issued by a financing group that is delinked from its parent company (see chart 2), and 2) includes structural enhancements designed to reduce the likelihood that the financing group (including the related operating company) may default. For an operating company that experiences a moderate degree of underperformance, the enhancements provide a set credit remedy period (see glossary of terms) during which the company can take steps to stabilize its credit quality, or creditors can sell the company’s shares while it retains significant value. SED structures lack postinsolvency protection, unlike structures such as corporate securitizations.

3. The criteria partially supersede our “Methodology For Considering Pre-Insolvency Structural Protections In Europe,” published on Dec. 13, 2012, on RatingsDirect. It relates to the more general criteria articles “Principles Of Credit Ratings” published on Feb. 16, 2011, and “Corporate Methodology,” published on Nov. 19, 2013. The criteria explain how Standard & Poor’s applies its corporate methodology to SED and analyzes its specific features.

Continue reading.

24-Feb-2016

Don't Like It? Sue Me.

Tired of waiting for Congress to approve a tax on Internet sales, more than a dozen states — including Alabama, South Dakota and Utah — are moving to pass bills or change regulations in ways that deliberately invite lawsuits from Internet retailers. The goal? Landing the issue before the U.S. Supreme Court.

Alabama, for its part, will start enforcing an old law it says allows it to tax out-of-state sellers. The state will audit companies that don't file returns.

"We're confident that some remote sellers will not comply and therefore it will lead to litigation," Alabama Deputy Revenue Commissioner Joe Garrett told The Wall Street Journal. "We have been very open about what we're doing."

The move won instant praise from brick-and-mortar businesses, who say they can't compete with online retailers who don't collect a sales tax. A bill allowing states to collect sales taxes from online purchases has stalled in Congress for a half-decade. By some estimates, states are collectively missing out on more than $23 billion annually in potential online sales tax revenue.

"Despite the ways this disparity distorts the market, and despite pleas from Main Street retailers in every state, Congress continues to dodge the issue," said Stacy Mitchell, co-director of the Institute for Local Self-Reliance.

But online retailers and others argue that a universal Internet sales tax wouldn't level the playing field, as some hope. Large companies that have a presence in multiple states generally have the infrastructure in place to collect a sales tax. "But it's more challenging for smaller retailers that don't have the computer systems and accounting staff to ensure compliance with 10,000 nationwide tax jurisdictions and 46 state tax auditors," argue NetChoice, a trade association promoting e-commerce.

If the issue does make it to the nation's top court, it would challenge a 1992 Supreme Court decision, Quill Corp. v. North Dakota. Under the ruling, states can apply sales taxes only to companies with a physical presence in the state.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 26, 2016

Finding the Express Lane to a Successful P3.

Managed-lane projects are springing up all over. There are some key considerations to making public-private partnerships work for them.

Even with the enactment in December of the new five-year federal transportation law, the Highway Trust Fund will remain underfunded to meet our needs as many heavily travelled corridors continue to deteriorate at a rapid pace. Public authorities will continue to look for new ways to manage highway congestion, make the best use of limited capacity, and pay for rehabilitation and expansion of existing roadway infrastructure.

"Managed lane" projects refer to toll roads where the rates motorists pay vary depending on the level of traffic: the more traffic, the higher the tolls. Drivers choose to either pay the tolls or stay in the adjacent free lanes. Public-private partnerships (P3s) have become an important tool to help meet many of these projects' technical and financial challenges. But P3s have challenges of their own that sponsors of these kinds of projects will need to deal with.

A dozen managed-lane P3s have emerged across the country — including projects in Colorado, Florida, North Carolina and Texas — since the first one, the Capital Beltway Express Lanes project in northern Virginia, got underway in 2008, and several other jurisdictions are contemplating the use of P3s to deliver managed-lane projects.

Managed-lane projects are technically demanding, as they typically involve building or reconstructing busy highway corridors in densely-populated urban centers. They are also complicated in that they can require integration of active traffic management, variable-rate tolling, high occupancy vehicle enforcement and transit vehicles — or a blend of these — to improve overall traffic flow. These projects not only include the construction of new lanes but also the conversion of existing free or HOV lanes.

Historically, variations of the managed-lane concept have been attempted using conventional design-bid-build procurements financed with traditional techniques, such as tax-exempt bonds or toll revenue bonds, and paid for with associated toll revenues. Even using these conventional, well-understood project delivery methods, managed-lane projects are complex, and a P3 approach can take on added commercial and financial dimensions that can be even more difficult to navigate. To maximize the chances for success, there are three common factors that public project sponsors should consider:

• Establish a clear decision framework: The decision to deliver a managed-lane project as a P3 is often assessed using a value-for-money framework, which evaluates whether the public sponsor receives better value on a risk-adjusted basis for the life of the project through the P3 alternative than through a more traditional project-delivery and financing model. Having a clear decision framework that assesses risk factors such as financial feasibility, operations and maintenance, and design and construction is critically important. Such a framework supports defensible, well-informed decisions and allows public officials to communicate a project's benefits with confidence.

• Create innovative structures to fill the funding gap: All large infrastructure projects depend on a reliable funding plan — a particular challenge for managed-lane P3s, which tend to be among the largest and most costly highway projects in the market. Most of these projects are tolled, and the uncertainty of forecasting traffic demand and toll revenue makes their funding plans more difficult to analyze and structure.

To address this challenge, successful managed-lanes project funding plans must balance three major elements: payment mechanisms for private developers (that is, whether they get paid based on how many cars use the tolled lanes or a set amount each year depending on their performance in managing and maintaining the road); financial structuring (whether the public sponsor guarantees the amount of toll revenue) and tolling policies (such as whether HOVs ride free in the toll lanes and how tolls are adjusted over time). An approach that takes into account all of those elements will help sponsors to better address funding gaps.

• Incentivize high-performance infrastructure: One advantage of P3 structures is that commercial incentives for private-sector innovations can drive down costs, accelerate project completion and improve overall asset performance (the condition of the facility and its ability to function as intended) and corridor throughput (how many vehicles pass through the facility over time) . P3 contracts typically define the required performance standards for the private developer, and their payments are contingent on meeting those standards. P3s typically include contractual mechanisms that require the private developer to maintain a defined level of throughput or be subject to financial penalties. Private developers are strongly motivated to achieve these objectives when their own capital is at risk.

Ultimately when officials consider whether a managed-lane project should be developed as a P3 transaction, project owners must know what questions to ask in search of striking a correct balance between the public interest and a project's benefits to developers and investors. Finding this balance is not easy, but the right blend of private-sector creativity, innovation and risk transfer can deliver successful solutions.

GOVERNING.COM

BY ED CROOKS | FEBRUARY 25, 2016

Ed Crooks leads KPMG's Water and Wastewater Public-Private Partnerships activities in the United States. The views expressed are his alone and do not necessarily represent those of KPMG.

IRS Proposed Political Subdivision Rules Would Be Big Change for Munis.

WASHINGTON – The Internal Revenue Service is proposing new rules for political subdivisions issuing tax-exempt bonds that lawyers say will completely change the regulatory landscape and the way infrastructure has been financed in a number of states.

Under the proposed rules, which are slated to be published in the Federal Register on Tuesday, an entity is a political subdivision that can issue tax-exempt bonds if it meets a three-prong test. It must exercise sovereign powers, serve a governmental purpose, and be governmentally controlled. The requirement to be governmentally-controlled is new.

Historically, community development districts in Florida, metropolitan districts in Colorado, and rural utility districts in California and other states have been set up to issue tax-exempt bonds to finance public infrastructure such as roads, sewer and water systems for a variety of development projects. Initially the districts are controlled by developers, but as homes, business parks or shopping areas are built and irrigation systems are set up, that control is passed onto to users such as homeowners, businesses or farmers.

Now the IRS wants political subdivisions to be controlled by state or local governments or a group of elected officials that do not constitute a "private faction."

"This changing the landscape, it's such a change from how the rules were done before," said Vicky Tsilas, a partner at Ballard Spahr here and former associate tax legislative counsel at the Treasury Department. "But the good news is that they are only proposed and there's the ability to comment on them."

Tsilas noted that the proposed rules would restrict the financing of infrastructure at a time with the federal government is trying to promote it.

"This is a big shift in the law in many people's views," said Carol Lew a shareholder at Stradling Yocca Carlson & Rauth in Newport Beach, Calif. "Some of the tests – the three-prong test – are going to be difficult to apply, particularly for small districts such as small irrigation districts" where there may only be three famers that own the land.

“I think it will surprise the IRS as to how many districts are potentially affected by these,” said Perry Israel, a lawyer with his own practice in Sacramento, Calif. who represents the Village Center Community Development District in Florida in a current dispute with the IRS that served as the impetus for these proposed rules.

The proposed rules would take effect beginning 90 days after they are finalized. However, they would not apply to existing tax-exempt bonds or to refundings that do not extend the maturities of the underlying bonds. Also, there would be a three-year transition period, under which entities in existence “prior to 30 days after the proposed rules are published” could continue to issue tax-exempt bonds while restructuring to comply with the new rules.

Comments on the new rules and requests to speak at a June 6 public hearing are due by May 23.

Dee Wisor, an attorney at Butler Snow in Denver, said the transition rule might cause a “rush to market” to issue tax-exempt bonds or refunding bonds for existing political subdivisions. He said the infrastructure in these developments has been financed in part with five- to seven-year bank loans with the intent of replacing the short-term loans with longer term tax-exempt bonds. But this wouldn’t comply with the restrictions on refundings.

“If they’re saying a developer can’t form a district and issue tax-exempt bonds, that’s going to be a big deal,” Wisor said.

In a section of the proposed rules called “Possible Relief for Development Districts,” the IRS asked for public comments on whether development districts should be political subdivisions during an initial development period in which one or two private developers could elect the district’s governing body and no other government control exists.

“The Treasury Department and IRS recognize that the governmental control requirement may present challenges for [some] development districts,” the agencies said, adding that they are “concerned about the potential for excessive private control by individual developers, the attendant impact of excessive issuance of tax-exempt bonds, and inappropriate private benefits form this subsidy.”

Lawyers and other market participants have been seeking guidance on the definition of a political subdivision ever since the IRS issued a very controversial technical advice memorandum in 2013. The TAM concluded the Village Center CDD was not a political subdivision, and therefore could not have issued millions of dollars of tax-exempt bonds as it did from 1993 to 2004, because its board was and will always be controlled by the developer rather than publicly elected officials.

Lawyers argued that the notion that control by elected officials is necessary for an entity to be a political subdivision is a new requirement and that such changes should be made through regulatory proposals that can be commented upon rather than through a TAM. Historically, the determination of whether an entity was a political subdivision was based on whether it had the right to exercise substantial sovereign powers, such as the power to tax for services, they said. The IRS has since said the TAM would not be retroactively applied.

In its proposed rules on political subdivisions, the IRS would provide at least three benchmarks of rights or powers that constitute control. These would be the right or power: to both approve and remove a majority of an entity’s governing body; to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; and to approve or direct the significant uses of funds or assets of the entity in advance of those uses.

Aside from these three arrangements, the determination of whether a collection of rights and powers constitutes control would depend on facts and circumstances. Control of an entity by a small faction of private individuals, businesses or corporations, trusts, partnerships or other persons "is fundamentally not governmental control," the IRS said.

Therefore the proposed rules would generally require that control be vested in either a general purpose state of local governmental unit or in an electorate established under an applicable state or local law of general application.

The IRS provides two facts and circumstances tests that serve as brackets to determine if there is governmental control. On one hand, the number of private persons controlling an electorate "is always unreasonably small" if the combined votes of the three voters with the largest share of votes determine the outcome of an election, regardless of how the other voters vote, the agency said.

On the other hand, the number of private persons controlling an electorate "is never unreasonably small" if determining the outcome of an election requires the combined votes of more voters than the 10 with the largest share of votes. "For example, control can always be vested in any electorate comprised of 20 or more voters that each have the right to cast one vote in an election without giving rise to a "private faction," the IRS said.

The proposed rules would place more emphasis on the fact that an entity must serve a governmental purpose to be a political subdivision. "Arguably, this was there before," Israel said. "This puts more emphasis on it."

Finally, the rules would maintain the existing longstanding requirement that a political subdivision be empowered to exercise a substantial amount of at least one of three generally recognized sovereign powers: eminent domain, or the power to take private property for public use, as well as the powers to police and tax.

THE BOND BUYER

BY LYNN HUME

FEB 22, 2016 12:58pm ET

George K. Baum FINRA Case Shows Excessive Fee, Bond Ballot Concerns.

WASHINGTON – The Financial Industry Regulatory Authority ordered George K. Baum & Co. to pay $270,000 for charging a Colorado school district more than four times the firm's normal underwriting fee, partly to pay for costs associated with promoting bond ballot initiatives.

The Kansas City, Mo-based underwriter, without admitting or denying FINRA's findings that it charged the district $43 per $1,000 of bonds issued for a total fee of $416,173.59, consented to the $100,000 fine and the order to pay the school district $170,000 in ill-gotten gains.

Andrew Sears, executive vice president and general counsel for Baum, declined to comment on the matter.

FINRA found that Baum had told the district in a December 2010 memo sent before the February 2011 offering of $9.67 million of general obligation bonds that the typical fee for the offering was much lower, at between $7 and $9 per $1,000 of bonds issued.

FINRA said Baum violated the Municipal Securities Rulemaking Board's Rule G-17 on fair dealing for charging a fee that was "inappropriate" and "disproportionate," given the facts of the offering.

While FINRA did not name the school district in its action, EMMA documents suggest that it is Adams County School District 1 in Colorado, known as Mapleton Public Schools. Documents show the school district issued $9.67 million of GOs in February 2011 and that the bonds were underwritten by Baum, which took $416,173.59 in underwriting fees — the same information cited by FINRA. School district officials could not be reached for comment.

The path to the large underwriter discount Baum received for the deal began in December 2007 when the firm started assisting the district in obtaining voter approval for a proposed bond issue of $65 million. If voters approved the bond issue, the firm was to underwrite it. That issue and another one planned for June 2009 were voted down despite Baum's work with the district.

In an effort to get the desired financing, the school district eventually applied to a state program for financing and, in 2010, was able to get the state to agree to match funds the district raised. In November 2010, voters gave their approval for the school district to issue $31,705,000 in debt with $22,035,000 paid through the state program.

The district then selected Baum to underwrite the remaining $9.67 million of bonds and was charged the $43 per $1,000 of bonds issued fee.

In a memo to the district superintendent in December 2010, Baum gave multiple justifications for its high fee, including that it was appropriate because it had originally believed it would be underwriting $64 million instead of $9.67 million of bonds. The firm also cited its prior work on the unsuccessful ballot initiatives and took credit for the district's success in the 2010 bond election, even though that success was in part because of the district's participation in the state program, FINRA said. Additionally, Baum told the district that its higher fee was necessary because it was only serving as a co-manager on the state program financing and would have received higher compensation if it had been a senior manager.

FINRA found those justifications "were not appropriate given the facts and circumstances of the 2011 offering."

Muni market participants and regulators have been concerned for several years that some dealer firms are contributing to bond ballot campaigns in return for obtaining the underwriting business that results if voters approve the bonds.

At least a dozen Wall Street and other firms and some of their executives have urged the MSRB to severely restrict such contributions to prevent pay-to-play practices, much like it restricted dealer and muni advisor contributions to issuer officials under Rule G-37. But so far, the MSRB has only required dealers to disclose bond ballot contributions as well as the deals they underwrite.

The MSRB initially began collecting quarterly dealer disclosures detailing contributions to bond ballot campaigns in 2010. Changes to Rule G-37 required firms to disclose contributions over $250 made to political action committees that were formed to raise money for ballot initiatives in states like California where voter approval is required for bond sales.

In 2013, the SEC approved expanding G-37 to require dealers to make public the timing of their contributions, the identity of the issuer of the voter-approved bonds, and any related underwriting activity.

In January of this year, California Attorney General Kamala Harris issued an opinion that said in part that it is illegal in California for school and community college districts to purposely incentivize municipal finance professionals with the promise of business if they advocate for passage of bond ballot initiatives.

A 2014 study by Todd Ely, a professor in the School of Public Affairs at the University of Colorado Denver, and Thad Calabrese, a professor in New York University's Wagner School of Public Service, found that the underwriters that contributed to campaigns in California received higher fees in their deals and generally saw an average rate of return of $1.70 for every dollar they contributed. The study observed California underwriting activity between 2007 and 2012 and concluded the bump in fees was likely because underwriters were recouping their contributions to bond ballot initiatives.

Another study, by Marc Joffe of Public Sector Credit Solutions, examined more than 800 bond deals since 2012 and found that issuance costs averaged 1.02%, but ranged to about 10% for some California school districts. The 2015 study, published by the Haas Institute for a Fair and Inclusive Society at the University of California-Berkeley, also found that underwriter discounts made up the largest amount of total issuance costs for municipal entities. Additional data Joffe shared with The Bond Buyer showed the underwriter discount as a percentage of the face amount of the issuance exceeded 2% in a number of issuances.

THE BOND BUYER

BY JACK CASEY

FEB 23, 2016 4:26pm ET

MSRB Webinar: Prevailing Market Price.

Join a live webinar March 10 – 3:00 p.m. – 4:00 p.m. EST – on the MSRB's Request for Comment on draft amendments to MSRB Rule G-30.

Register for the webinar.

MSRB Webinar: Click, Call and Comply.

Join a live webinar – March 18 12:00 p.m. – 12:45 p.m. EST – demonstrating resources available to issuers to support fulfilling continuing disclosure obligations.

Register for the webinar.

MSRB Webinar: Limitations on Gifts.

Join a live webinar March 24 – 3:00 p.m. – 4:00 p.m. EST – on MSRB Rule G-20 and its application to municipal advisors.

[Register for the webinar.](#)

TAX - CONNECTICUT

[Wheelabrator Bridgeport, L.P. v. City of Bridgeport](#)

Supreme Court of Connecticut - February 2, 2016 - A.3d - 2016 WL 347925

Taxpayers, which were a waste-to-energy (WTE) facility and its owner trustees, appealed assessor's valuation as to their real and personal property on the Grand Lists. Appeals were consolidated. The Superior Court dismissed in part, and entered judgment. Taxpayers appealed, and city cross-appealed.

The Supreme Court of Connecticut held that:

- Trial court's improper rejection as a matter of law of the cash flow approach required a new trial;
- Trial court was required to determine whether the appraisals by experts included the value of personal property;
  Evidence that the city engaged in wrongdoing was admissible;
- Any failure by taxpayer to provide a copy of an appraisal would not deprive the trial court of jurisdiction;
- An otherwise qualified expert is not disqualified merely because of a lack of a Connecticut real estate appraiser's license; and
- Trial court did not abuse its discretion when it deducted developer's profit of 15% from its reproduction cost approach calculations.

Trial court's improper rejection as a matter of law of the cash flow approach to valuation of property of taxpayers, which were a waste-to-energy (WTE) facility and its owner trustees, required a new trial at which the court could exercise its discretion to determine the credibility of expert testimony regarding the appropriate valuation method and expert's calculations, where court strongly suggested that it believed there were problems with the approach itself, implied that approach was inherently improper for tax assessment of a property that had no rental market, noted with approval another court's disparagement of the approach, and never explained why it found not credible the expert testimony from both sides that the approach was best.

Evidence that the city engaged in wrongdoing was admissible in appeal from valuation as to real and personal property of taxpayers, which were a waste-to-energy (WTE) facility and its owner trustees, for the purpose of determining whether taxpayers were entitled to interest on overpayments to the city.

Any failure by taxpayer, through refusing to provide a copy of an appraisal, would go, at most, to the merits of the trial court's decision sustaining taxpayers's appeal, and would not deprive the trial court of jurisdiction to hear the appeal.

A person who otherwise would be qualified as an expert witness to testify regarding the value of real property is not disqualified merely because the person is not a licensed real estate appraiser in Connecticut. In contrast to the evidentiary and procedural rules governing expert testimony, the purpose of the statutory scheme governing the licensure of real estate appraisers is to protect members of the general public.

Trial court did not abuse its discretion when it deducted developer's profit of 15% from its reproduction cost approach calculations when reviewing city's assessment of property of taxpayers, which were a waste-to-energy (WTE) facility and its owner trustees, where city cited no evidence that would support a finding that the property's historical cost basis did not include developer's profit, and trial court reasonably could have concluded from the record that expert had assumed that it did not.

Michigan Ccould Seek Private Partners to Develop High-Speed Rail Line.

A proposed Detroit-Lansing-Holland passenger rail line could be built through a public-private partnership, according to a feasibility study requested by the Michigan Department of Transportation.

Three potential rail line routes were examined in the study, which was managed by the Michigan Environmental Council. Routes that would run through Ann Arbor and either Jackson or Howell are feasible from a financial standpoint but a third route that calls for bypassing Ann Arbor, is not, the research indicates.

The rail line would cost from $130 million to $540 million to build, depending on the highest speeds the track would accommodate. The fastest — 110 mph — rail line would be more expensive to build because faster trains need more infrastructure and safety upgrades to function at road crossings and to travel around curves, than do slower ones, reported MLive on Feb. 23.

However, the additional cost of accommodating faster trains could be offset over time by the up to $14.4 million per year in increased revenues they could generate, whereas the slower trains would have to be subsidized annually. The more expensive but revenue-generating high-speed rail option also would give planners flexibility in deciding how to finance the project, the study indicates.

If "the system is generating a positive cash flow, a Private-Public Partnership or other innovative financing methods can be used to construct and operate the system. This absolves the local entity of any need for providing an operating subsidy but, more than this, it is not uncommon for the operating cash flow to be sufficient to cover the local match requirement as well," the report's authors wrote.

The rail line is likely to take seven to 10 years to complete, which includes time needed to identify funding sources and conduct potential environmental impact studies, but the rail line is "viable and worth looking into," said Liz Treutel, a transportation expert with the Michigan Environmental Council.

"I think the biggest thing the report revealed is that, yes, the ridership potential is there and the costs are relatively reasonable for a transportation project," she said, according to The Detroit News.

By NCPPP

February 25, 2016

Moody's: Governments Well Positioned to Handle P3 Financial Obligations.

Using public-private partnerships to develop large public projects has had a “limited impact” on governments’ credit profiles, Moody’s Investors Service concluded.

Most governments “have proved resilient” in meeting both negotiated financial obligations — such as making availability payments — and potential contingencies, the credit rating agency said in a press release announcing a new report on its findings (paywall). A Moody’s representative offers several reasons for this finding.

“Funding for PPP projects is often spread over a long period of time. Fiscal commitments are often small in scale relative to the size of a government’s balance sheet and revenue sources,” explained Kathrin Heitmann, an analyst in Moody’s Project Finance and Infrastructure team.

The United Kingdom, Canada and Australia have the most experience conducting P3s and have developed strong secondary and refinancing markets and legal frameworks to support P3s, Moody’s pointed out.

The United States, on the other hand, has been slower to adopt the procurement method, in part because of the ready availability of municipal bond financing for large infrastructure projects. Moody’s estimates, for example, that only 0.5 percent of California’s net tax-supported debt is associated with P3s. In Florida the amount is 11.4 percent and in triple-A rated Indiana, about 24 percent, reported Reuters. As a result, developers view the United States as the world’s largest virtually untapped P3 market, noted the news agency.

Countries whose credit profiles are most likely to be affected by real or potential P3 financial obligations are those that are struggling through economic downturns or “have low creditworthiness,” reported Moody’s.

The ratings agency acknowledged that its findings are not comprehensive because the financial details of P3s that have been negotiated are not always disclosed fully.

“Additional reporting provided by some governments beyond mandatory reporting requirements enhances transparency and facilitates our assessment of both contractual and contingent PPP payment obligations,” said Heitmann.

By NCPPP

February 25, 2016

[S&P’s Public Finance Podcast: (The Not-For-Profit Health Care Outlook And Our Rating Action On North Dakota)]

In this week’s Extra Credit, Senior Director Kevin Holloran discusses the rationale behind our 2016 outlook for the not-for-profit health care sector and Associate Director Carol Spain addresses questions concerning our recent rating action on North Dakota.

Listen to the Podcast.

Feb. 26, 2016

S&P: U.S. Not-For-Profit Health Care Outlook Remains Stable In 2016 On Sector Recovery.

Standard & Poor's Ratings Services' outlook on the U.S. not-for-profit health care sector remains stable despite industry pressures (see "U.S. Not-For-Profit Health Care Sector Outlook Revised To Stable From Negative, Though Uncertainties Persist," Sept. 9, 2015), reflecting operational improvements driven by the Affordable Care Act's (ACA) Medicaid expansion, through a noted boost in volumes, revenues, and improved payor mix; management initiatives that have delivered on their early promise to improve performance; increasing balance sheet flexibility with generally higher levels of unrestricted reserves as compared to a few years ago; and continued operational benefits from recent merger and acquisition (M&A) activity.

Overview

- We've seen a trend of improving provider performance, which has offset various industry pressures to stabilize credit quality.
- The recent uptick in patient volumes stemming from the ACA Medicaid expansion is likely to be just a temporary surge.
- Many issues continue to pressure the sector's overall financial health, and credit quality may be peaking.
- Fundamental change in the health care delivery system is coming at a slower pace than initially thought a few years ago, as fee-for-service is still the dominant reimbursement structure.

Continue reading.

25-Feb-2016

Six Firms To Pay $103.5M in Preliminary Settlements Over Bid-Rigging.

WASHINGTON – Six broker-dealers and investment providers have agreed to pay $103.35 million in preliminary settlements of charges by issuers and state attorneys general that they engaged in bid-rigging and price fixing for municipal investment products and derivatives.

The proposed money to be paid is a result of a coordinated effort by 22 attorneys general along with the city of Baltimore and the Central Bucks School District in Pennsylvania, which are leaders of a class action suit with numerous issuers. The litigation has been ongoing since about 2008.

About $100.5 million of the preliminary settlement amounts come from the issuer class action litigation and includes all six firms. The rest comes from preliminary settlements with the attorneys general and only concerns two firms, New York-based Natixis Funding Corp. and French multinational company Societe Generale.

Of the six proposed settlements, UBS AG agreed to pay the most — $32 million in the class action litigation. Natixis and Societe Generale agreed to pay about $30 million and $26.75 million, respectively, with $28.45 million and $25.41 million of those amounts, resulting from the class action litigation.

The remaining three firms involved in only the class action litigation are Minneapolis-based Piper

Jaffray & Co., which would pay $9.75 million, London-based National Westminster Bank, which would pay $3.5 million, and Kansas City, Mo-based George K. Baum & Co., which would pay $1.4 million.

The proposed class action settlements are subject to preliminary approval by Judge Victor Marrero, who sits on the U. S. District Court for the Southern District of New York in Manhattan. The documents will then be circulated among the issuers in the class action suit to gather their comments. If, after receiving comments from the class participants, Marrero gives final approval to the six settlements, it will bring an end to more than eight years of litigation that began when a large number of issuers filed actions that were then consolidated with several lead plaintiffs in the New York district court.

Lawyers for the issuers either could not be reached for comment or declined to comment.

However, New York Attorney General Eric Schneiderman, who announced the attorneys general portion of the settlement, said the attorneys general “will not tolerate this type of misconduct at any level, especially as [they] work to restore public faith in [their] economic institutions.” He added that he will continue to hold responsible any firms at fault to ensure that the marketplace operates honestly and fairly.

The preliminary settlements follow others in the same class action litigation under which five firms paid a total of $125 million. JPMorgan Chase paid $44.58 million, the most of the firms in these five prior settlements. The other four firms that previously settled include Morgan Stanley, GE Funding Capital Market Services Inc., Bank of America, and Wachovia Bank, which is now Wells Fargo & Co.

The probes of bid rigging and price fixing involving guaranteed investment contracts and other investments of muni bond proceeds began in November 2006 and involved the U.S. Department of Justice’s antitrust division, the Federal Bureau of Investigation, the Internal Revenue Service’s criminal division, and the Securities and Exchange Commission.

In the middle of that month, the U.S. Marshalls, helping with the investigations, raided the offices of at least two GIC brokers, CDR Financial Products, in Beverly Hills, Calif., and Investment Management Advisory Group, Inc., in Pottstown, Pa.

After that several broker-dealers and muni investment providers, as well as their employees, began receiving subpoenas requesting documents and other information.

Eventually, the attorneys general joined the probes and lawyers in private practice filed class action suits on behalf of issuers.

Municipalities, school districts, and nonprofit organizations that issue munis often reinvest their proceeds or work with firms to enter into contracts to hedge interest rate risk. The investigations uncovered anticompetitive and fraudulent conduct involving individuals at a number of large financial institutions with municipal securities business. The federal agencies found that broker-dealers and investment product providers rigged the bidding process for those products so that issuers did not necessarily get the best prices for them.

The investigations led to numerous lawsuits and enforcement actions by the issuers, attorneys general, and federal regulators against the firms and individuals. Bank of America, UBS, JPMorgan, Wachovia, and GE previously agreed to pay a total of more than $740 million as a result of Justice Department investigations, according to documents.

Additionally, at least 17 individuals associated with the broker-dealers and investment providers were either convicted or pleaded guilty as a result of the DOJ investigations, the records show.

THE BOND BUYER

BY JACK CASEY

FEB 24, 2016 4:18pm ET

CDFA Brownfields Financing Webinar: Reaching Your Redevelopment Goals with Brownfields Revolving Loan Funds.

Brownfield Revolving Loan Fund grants enables states, political subdivisions, and Indian tribes to make low interest loans to carryout cleanup activities at brownfield properties. Through best practices and case studies, this free webinar will examine the RLF structure that has been shown to bring brownfield sites back into productive use.

Join CDFA, EPA, and experienced brownfield communities on **Thursday, April 21, 2016 from 2:00 – 3:30pm EST** as we discuss the key features of a successful Brownfield Revolving Loan Fund and the commonalities and challenges associated with implementing this underutilized financing resource. Learn how even the most challenged or understaffed communities can implement Revolving Loan Fund loans and sub-grants.

Register for the complimentary webinar.

Rhode Island's New Route for Funding Bridge Repairs: Truck Tolls.

Rhode Island has the highest percentage of structurally deficient bridges in the country — 23 percent. Now, it's taking a novel approach to paying for their repair: Truck-only tolls on major bridges throughout the state.

Rhode Island lawmakers adopted the plan earlier this month, and Gov. Gina Raimondo promptly signed off on it. The agency estimates that tractor trailers cause 70 percent of the damage to the state's roads every year, but currently account for just 20 percent of the revenue to pay for that infrastructure.

Overcoming opposition from truckers, the new law authorizes tolls of up to $20 on large commercial trucks for a statewide trip on Interstate 95. The Rhode Island Department of Transportation (RIDOT) anticipates that once it starts collecting tolls over the next two years, they'll raise $45 million a year — a 10 percent increase to the agency's budget.

That money, combined with $420 million worth of bonding, would pay for repairs or replacement of 650 bridges in the next decade. That would bring the percentage of structurally deficient bridges to under 10 percent, as required by federal law, according to RIDOT spokesman Charles St. Martin.

"Trucks are the vehicles that impose the greatest amount of damage on the highways," said Patrick Jones, the head of the International Bridge, Tunnel and Turnpike Association, an industry group. "In fact, when you're building the highways, you're building them to handle heavy trucks."

Rhode Island's approach is unique in the United States, Jones said. It is "probably the only state that is imposing tolls only on trucks, not on all vehicles," he said. "However, if you look at the entire world, it's not uncommon." Germany and Switzerland, for example, have nationwide truck tolls.

Raimondo, who originally pushed a plan with even higher tolls on trucks last year, argued that Rhode Island was virtually alone among Northeastern states in not tolling the interstate. Connecticut, which removed its tolls following a deadly 1983 crash at a toll plaza, is the only other state between Maryland and Maine that doesn't use tolls. Although, lawmakers there are reconsidering that stance.

Trucking groups fought the proposal vigorously. "Our strategy has been since day one, no tolls," Rhode Island Trucking Association president Chris Maxwell told Providence's WPRI. "We're not down at the statehouse to cut any deals or make nice with anybody. From day one, [we've been] against tolls."

The state trucking group suggested last year that raising Rhode Island's diesel tax and truck registration fees would be better ways of raising money.

Stephanie Kane, a spokeswoman for the Alliance for Toll-Free Interstates, said the new tolls have already prompted some companies to consider leaving Rhode Island. "While the governor heralds RhodeWorks as a jobs booster, the reality is that it harms Rhode Island businesses and will cost Rhode Island jobs," she said.

The American Trucking Associations also warned Raimondo that her administration's plan to prevent trucks from leaving highways to avoid tolls could run afoul of federal regulations. Those rules require states to let trucks have easy access to food, fuel, repairs and rest, an association lawyer wrote.

Federal law also normally prevents states from tolling existing interstates without adding new capacity. Rhode Island's tolling program takes advantage of one of the exceptions to that law: States can put tolls on a non-tolled bridge if they replace or repair that bridge. Each of Rhode Island's 14 proposed tolling sites is on a bridge or overpass.

The tolls would all be collected electronically using E-ZPass transponders. RIDOT anticipates that it will contract with a company to design, build, operate and maintain the tolling operations. The agency expects the cost of running the program will only take up 5 percent of the revenues. "This application of new technology has made it feasible for the DOT to implement tolls on many bridges that were uneconomical in the past," St. Martin said.

Rhode Island's new tolls are part of a larger effort, called RhodeWorks, to shore up the state's crumbling bridges. It would include massive new projects, like the completion of a $170 million replacement of the viaduct carrying I-95 through Providence, as well as preventive maintenance for hundreds of bridges.

One of the biggest elements of the plan is rebuilding an interchange of two major highways on Providence's west side, which means replacing 11 bridges. The project has been on the books for 30 years and could cost as much as $500 million — more than the whole RhodeWorks program. The state hopes to win federal grants to cover much of the cost.

New federal funding from Fixing America's Surface Transportation (FAST) Act, which Congress passed late last year, will also help Rhode Island's bridge-building effort. Increased federal funding helped the state cut in half the amount of bonding it planned to use for RhodeWorks. That, in turn, reduced the amount of interest the state will pay by 65 percent.

GOVERNING.COM

BY DANIEL C. VOCK | FEBRUARY 23, 2016

Regulators Tone Deaf, Stephens Says.

PHOENIX – Overzealous regulators are a big problem for middle-market broker-dealers, according to Warren Stephens, chief executive officer of Stephens, Inc. and a founding member of the Bond Dealers of America.

Stephens, who since 1986 has headed the Little Rock, Ark.-based firm that his family founded during the Great Depression, described the challenges of the industry in a wide-ranging interview with The Bond Buyer.

Chief among his concerns are the significant new rules and enforcement initiatives from federal regulators in recent years, which Stephens said have demonstrated a lack of understanding of the municipal bond business landscape.

“The challenges are numerous,” Stephens said, honing in on the Municipalities Continuing Disclosure Cooperation initiative, which the Securities and Exchange Commission launched in March 2014. The MCDC program allowed underwriters and issuers to receive lenient settlement terms if they self-reported any instances during the previous five years in which issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

As of Feb. 2, the SEC had completed its underwriter settlements, having ordered a total of 72 firms representing 96% of the market share for muni underwriting to pay a total of $18 million for selling municipal bonds using offering documents that falsely stated issuers had filed timely disclosure in compliance with their continuing disclosure obligations.

A key priority for the Bond Dealers of America, which represents middle-market firms like Stephens, has been to point out what it feels is the disproportionate impact of regulation and enforcement on firms much smaller than the major Wall Street fixtures.

Stephens, who said nobody lost any money as a result of the instances his firm self-reported, strongly agrees.

But Stephens also has a more general sense that regulators’ efforts have been misguided. “The whole MCDC thing is just a perfect example of that,” Stephens said. His firm was fined $400,000, Stephens said, a mere $100,000 less than the maximum $500,000 fine levied against some of the largest investment banks in the world.

The SEC’s municipal advisor rule, for example, imposes a fiduciary duty on anyone who gives bond-related advice to a state or local issuer. It also prevents anyone who has given such advice from underwriting a resulting bond issuance.

Many municipal advisors do not have to worry about this because they are non-dealer advisors who do not have an underwriting business, and some issuers have expressed a preference for non-dealer advisors in the wake of the MA rule's adoption. But Stephens said the presence of such advisors is generally not any help to the deal team.

"I don't think they add any value," he said, because an advisor who doesn't have any experience going out in the market with securities is less likely to understand how best to serve the issuer client.

Stephens further added that he doesn't put much stock in the idea that issuers need a third party muni advisor at all.

"We consider ourselves an advisor to all our clients," he said.

He said much recent regulation of the municipal securities arena is pointless.

"It's hurting the efficiency of the market," he said. "We're complying with rules that don't really matter. It's not useful. We're just pushing paper around."

Stephens said that regulators were generally more receptive to industry input in the past. While the Municipal Securities Rulemaking Board and the SEC have frequently invited market participants to comment or reach out to them as needed, Stephens is not alone in feeling that his concerns have been ignored.

Issuer officials such as Florida's bond finance director, Ben Watkins, have leveled similar charges.

Stephens is less concerned by the market landscape in the wake of the Detroit bankruptcy and the ongoing Puerto Rico crisis.

The treatment of bondholders in Detroit and elsewhere where investors were forced to take steep haircuts on their securities have caused some bond lawyers and analysts to question basic market assumptions about the security of the general obligation pledge and the willingness of municipalities to use bankruptcy to restructure their debts. Stephens said he is concerned that courts would side with other creditors over bondholders, but said he doesn't sense any seismic shift in the landscape.

"From our firm's perspective, nothing has changed in the marketplace," he said. "I think we've always placed a high premium on financially sound issuers. A credit is only as good as the financial's behind it."

THE BOND BUYER

FEB 25, 2016 5:37pm ET

[The Complicated Business of Evaluating Tax Incentives.]

States give out billions to businesses and corporations each year in tax breaks to keep them within their borders. But tracking how these tax incentives are spent — and whether they even work — has been an incredibly tricky business.

Back in 2000, Good Jobs First, which follows corporate tax subsidies, [released a report] that looked at 122 audits of state economic development programs in 44 states. What it found was that auditors were having trouble doing their jobs because "they are hampered by lack of data and objectives."

The climate has improved somewhat since then, says the group's president, Greg LeRoy. But it's been a long, state-by-state slog.

Massachusetts illustrates just how difficult it's been. For a state that is among the more active when it comes to tax incentives, it has been particularly slow at revealing any information about the hundreds of millions of dollars it forgoes each year via giveaways. The state has typically ranked among the bottom of Good Jobs First reports that track tax expenditures and accountability measures. That stands in contrast with the state's strong reputation — and ranking — with other financial accountability groups, such as the nonprofit U.S. Public Interest Research Group, which applaud the state's transparency on how it spends its actual revenues.

For the past half-decade, businesses and legislators in the Bay State have thwarted numerous attempts to track the effectiveness of tax incentives. State Auditor Suzanne Bump has been trying since she took office in 2011 to gain access to business tax returns at the Department of Revenue (DOR) for the purposes of auditing the tax credit programs. Bump is stymied by a state law that bans the auditor from accessing business tax information filed with the department. "Although we are told to audit the tax department, we cannot actually look at tax returns," she says. "If you can't look at the source documents, you can't know how well DOR is executing its functions."

Bump's solution has been to propose legislation granting her access, but the idea has met staunch resistance from the business community during the past two legislative sessions. Businesses cite privacy concerns and worries the auditor is overreaching her authority as the reasons for their opposition. To address those fears, Bump's latest bill includes stipulations regarding the auditor's access and calls for criminal penalties for any business disclosure violations. Still, the bill has sat in committee following a September hearing.

Similarly, state Rep. James Eldridge has sponsored a bill that calls for more stringent reporting requirements on the state's economic development tax credits. He wants to know whether jobs were created and wants clawback provisions should the state need to cancel the incentive if the goals aren't being met. In the past, the bill never made it out of committee and its hearing for the current legislative session was last June. Most bills in Massachusetts have until March to make it out of committee to stay alive in the current legislative session.

Bump says a total of 37 other state auditors have the power she is seeking. But the experience of other states indicates there's no guarantee she'll get to the bottom of whether the state's tax incentives are working.

In Louisiana — where auditors can access tax returns — a 2012 legislative audit concluded it was "impossible" to determine whether $3 billion in business tax credits were actually a good investment for the state. Meanwhile, Illinois doesn't grant auditors access to tax returns, but Good Jobs First rates it among the best at tax credit disclosures because of a law requires companies to report subsidies, where the company located, how much it received, and what the results were in terms of job creation and wages.

Eileen McAnneny, president of the Massachusetts Taxpayers Foundation, says that most of the tax credits the state gives out don't specify expectations for the employer. She argues that giving Bump access to tax returns would yield "very subjective" results. "For example, was the brownfields tax credit enacted to create jobs, clean-up contaminated sites or to facilitate economic development?" she says. "Its effectiveness could vary widely depending on the criteria you are using to evaluate it."

But Bump counters that her bill allows for flexibility in the criteria. Job creation, she says, is only one aspect she would look at to see if tax credits were working. "Other tax expenditures exist, for instance, to reward green technology use or to nurture new industry," she says. "I believe it is critical that an independent entity provide oversight and verification of the impact of all tax expenditures in the commonwealth."

To date, Massachusetts' last movement on disclosures was a relatively minor one. That was in 2010, when lawmakers passed a law requiring agencies to report the amount and recipient of tax credits that are transferable to other companies or where companies can receive cash back from their credits. The new requirement, effective in 2012, came only after controversial stories emerged about companies profiting off these types of state credits.

Still, points out LeRoy, the reported dollar amounts reveal nothing about whether the recipients profited off their award or how it was even spent. "You can't just give a company money," he says, "and hope good things happen."

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 25, 2016

Franklin Making Failed Puerto Rico Fund Disappear Through Merger.

Puerto Rico's debt exchange isn't the only security swap for investors burned by the island's financial collapse.

Franklin Resources Inc. plans to close the $147 million Double Tax-Free Income Fund, whose strategy of plowing more of its assets into Puerto Rico than any other municipal-bond fund turned it into one of the worst performers. After the fund shriveled when investors pulled out money, Franklin is asking those remaining to exchange their shares for a piece of the $8.3 billion High Yield Tax-Free Income Fund, which has far less exposure to the island.

"It parallels the life cycle of Puerto Rico in the debt markets," said Matt Fabian, a partner at Municipal Market Analytics, a research firm based in Concord, Massachusetts. "As the island becomes increasingly insolvent, investing strategies dependent on the island also become insolvent."

U.S. mutual funds for years were eager buyers of the Caribbean territory's debt, which is tax-exempt everywhere in the nation and provided high yields in a municipal market that's known as a haven. With Puerto Rico pushed to the brink, that investment tactic has turned toxic: The five worst-performing open-ended municipal funds in the past year, including Franklin's, all had at least 10 percent of their assets in the island's securities, according to Bloomberg and Morningstar Inc. data.

Puerto Rico, which racked up $70 billion of debt by routinely borrowing to paper over budget shortfalls, has already skipped interest payments on some securities and may default on general-obligation bonds for the first time by July. Governor Alejandro Garcia Padilla is seeking to cut what the commonwealth owes by about 46 percent by asking investors to exchange their bonds for new securities. If they decline, his administration has said it may suspend interest and principal payments altogether.

The anticipated losses from the island's building crisis caused the price of Puerto Rico bonds to tumble over the past two years. Securities due in 2035, the most frequently traded, have dropped to about 71 cents on the dollar, down 24 percent since they were first sold to investors in March 2014.

Franklin, which has about $1.6 billion of commonwealth securities among its municipal funds, is one of Puerto Rico's biggest bondholders. The San Mateo, California-based company, along with BlueMountain Capital Management and OppenheimerFunds, successfully sued to overturn a Puerto Rico law that would allow the government to cut its debts, similar to how U.S. cities can in bankruptcy proceedings. The U.S. Supreme Court will hear arguments on March 22 about whether that law should be reinstated.

The Double Tax-Free fund, which was started in 1985 and focuses on debt issued by U.S. territories, was among the funds hardest hit as the island veered toward default, and it has been closed to investors since August 2012. Its assets have dropped by 83 percent since July 2012, when it had $868.7 million, according to data compiled by Bloomberg. Almost half of its investments were Puerto Rico securities as of Jan. 31, according to the firm's website. With the island locked out of the bond markets, the supply of territory bonds has been curtailed.

Advantages Seen

The proposed merger will offer Double Tax-Free shareholders "the opportunity to reorganize into a fund with a larger asset size, lower annual fund operating expenses, better long-term total return investment performance (although a slightly lower income return performance), and a more stable and diversified investment portfolio," Stacey Johnston Coleman, a spokeswoman for Franklin, said in an e-mail.

The fund lost 1.1 percent in 2015, putting it at the very bottom percentile of performers, according to data compiled by Bloomberg. Its shares traded for $9.38 on Monday, down from as much as $12.27 in 2012.

If Double Tax-Free shareholders approve the merger at a meeting set for April 4, they'll be given shares of the larger fund, which offers a more diverse mix of municipal bonds. If the step is rejected, the fund's assets may be sold off and its money returned.

The average annual total return in the past 10 years for the Double Tax-Free fund was 2.07 percent, compared with 4.79 percent for the High Yield fund, according to Franklin's website.

The merger would increase the High Yield funds' allocation to Puerto Rico. It directed 3.1 percent, or about $258.8 million, to commonwealth securities, as of Jan. 31. Based on those amounts, the fund would have about 3.9 percent of its assets in the island's debt if it absorbed all of the smaller portfolio.

That wouldn't be a large increase to its Puerto Rico exposure, said Beth Foos, a senior analyst in Chicago at Morningstar who focuses on municipal mutual funds.

"You're most likely gaining more stability and absorbing that stress and volatility into a much larger pool of assets," she said. "If it were to go anywhere, this is the fund where it would make the most sense."

Bloomberg Business

by Michelle Kaske

February 23, 2016 — 9:01 PM PST Updated on February 24, 2016 — 5:10 AM PST

George K. Baum Overcharged School District, Regulator Says.

Municipal-bond underwriter George K. Baum & Co. agreed to pay a $100,000 fine over allegations it charged a school district four times the typical fee to sell debt, in part to help cover the cost of bond elections, a regulator of securities dealers said.

The firm in 2011 charged an unnamed district $416,173, or $43 per $1,000 of bonds issued, according to the Financial Industry Regulatory Authority, or Finra. The fee was "was inappropriate given the underwriting work it performed," Finra said. Baum had told the school district a typical fee would be $7 to $9 per $1,000 of bonds.

State and federal officials have raised questions about the high underwriting fees by dealers that provide services to help borrowers get voters to authorize bonds. California Attorney General Kamela Harris said last month that promising underwriters they will be hired to sell debt if the provide election services is illegal.

The Municipal Securities Rulemaking Board, which oversees the $3.7 trillion tax-exempt bond market, bans most contributions from underwriters to elected officials who oversee awarding of bond work. In 2013 it began requiring dealers to disclose contributions or services donated to passing bond issues. At the time Lynnette Kelley, executive director, said the revelations would "shine light on potential connections between dealers' financial contributions and the awarding of bond business."

Underwriters Overcharging

A study by the Haas Institute for a Fair and Inclusive Study last year that U.S. state and local governments found that smaller school districts in California and various kinds of special districts nationwide are sometimes paying $20 per $1,000 or more in underwriting fees. The Haas Institute is a policy center at the University of California at Berkeley.

"We found many cases of overcharging by underwriters and other types of municipal bond service providers," said Marc Joffe, the author of the study.

George K. Baum self-reported the violations under the U.S. Securities and Exchange Commission's continuing disclosure initiative, which involves municipal securities underwriters voluntarily revealing violations of disclosure obligations in bond documents. Baum settled without admitting or denying the findings. Jonathan Baum, the firm's chairman and chief executive, declined to comment.

Higher Fees

According to Finra, Baum, in justifying its fee, told district officials it had originally thought it would be selling a larger bond issue and that it had provided services to help the district pass bond elections. Finra said those factors had "no reasonable relationship to the actual underwriting by the firm."
In addition to the fine, Finra said in its February disciplinary report that the firm would give up $170,000 in fees and interest.

A study released in August by Todd Ely of the University of Colorado in Denver and Thad Calabrese of New York University reported that underwriters that contributed earned fees 12.75 percent higher, on average, than those that didn't, based on 118 contributions and 192 issues between 2007 and 2012. The report also found potentially more expensive debt structures for bonds underwritten by the firms that made contributions.

"It's one thing to worry about the appearance of impropriety," said Ely. "It's another thing when when you have to pay more because there is a higher cost to pay the firm that helped with the election."

Bloomberg Business

by Darrell Preston

February 22, 2016 — 1:11 PM PST Updated on February 23, 2016 — 8:44 AM PST

[Bloomberg Brief: Riggs on Increasing Healthcare Bonds (Audio).]

Bloomberg Brief's Taylor Riggs discusses the rise in health-care bonds from states and municipalities as they try to keep up with rising health costs.

[Listen.]

February 22, 2016 — 5:09 AM PST

[Franklin, Oppenheimer Say Cofina Changes Would Harm Puerto Rico.]

Mutual-fund companies holding about $10 billion of Puerto Rico securities warned that a counter proposal to the island's restructuring offer made by another bondholder group would weaken the commonwealth's ability to resolve its financial crisis.

Puerto Rico must maintain its sales-tax structure as the Caribbean island seeks to improve its finances, OppenheimerFunds Inc., Franklin Advisers Inc. and First Puerto Rico Family of Funds, wrote in a Feb. 24 letter to Representative Rafael "Tatito" Hernandez, who chairs the House Treasury Committee, and commonwealth legislators. The island has $17.3 billion of sales-tax bonds, known as Cofinas because of their Spanish acronym.

The letter follows a debt-restructuring proposal released Feb. 10 by a different investor group that includes Goldentree Asset Management, Whitebox Advisors and Metropolitan Life Insurance, which hold about $1.6 billion of senior sales-tax bonds. In that plan, subordinate Cofinas, which already get repaid every year after the senior bonds, would wait even longer to get paid down. Franklin and Oppenheimer bought various Puerto Rico securities at par, including subordinate sales-tax debt.

"Some speculative purchasers of Puerto Rico's debt, those who have purchased securities in recent months at substantial discounts, will try to offer band-aid solutions to Puerto Rico to help themselves make a quick profit at the expense of other creditors and, ultimately, at the expense of Puerto Rico itself," the fund companies said in the letter.

Restructuring Offer

The correspondence shows the tension between long-time investors of commonwealth debt whose exposure to the island is spread out among its different borrowers and distressed-debt buyers who started purchasing Puerto Rico securities about 2 1/2 years ago when prices on the debt fell to distressed levels.

Puerto Rico and its agencies accumulated $70 billion of debt after borrowing for years to fill budget shortfalls. Governor Alejandro Garcia Padilla is looking to cut the island's tax-supported debt by 46 percent through a voluntary exchange where investors accept losses on their holdings. The senior Cofina proposal was the first counteroffer to the commonwealth's debt-restructuring plan.

Commonwealth officials have warned the island may stop paying principal and interest if it can't reach an agreement with its creditors. The island faces a $2 billion debt-service payment July 1.

Revenue Projection

Puerto Rico expects to collect about $2 billion of sales-tax receipts from its 11 percent rate in the year ending June 30, 2016, including $696.3 million of dedicated revenue that the island's already used to repay this year's principal and interest on senior and subordinate bonds, according to the Government Development Bank. Whether Puerto Rico will keep that structure or change it to help repay other bonds or obligations will be a key issue for the commonwealth and its creditors as they negotiate.

Any attempt by the administration to "weaken" the Cofina structure would impair the commonwealth's ability to obtain investment-grade ratings on future securitized bond deals that would help improve the island's finances, the fund companies wrote. The Puerto Rico Electric Power Authority plans to reduce its $9 billion debt load through a debt swap where investors take a 15 percent loss and in return get new bonds that are repaid with dedicated revenue. Hernandez, the House lawmaker, filed legislation last month that would create a similar debt restructuring for the Puerto Rico Aqueduct and Sewer Authority.

The letter was signed by Daniel Loughran, who leads Oppenheimer Rochester's municipal team, and Sheila Amoroso, co-director of Franklin Templeton's municipal-bond department, and Frank Serra, president of First Puerto Rico Family of Funds, investment firms that offer shares in mutual funds to commonwealth residents and businesses.

Bloomberg Business

by Michelle Kaske

February 25, 2016 — 5:00 AM PST

Police Misconduct Costs Prompt U.S. Cities to Increase Taxes.

The costs of police confrontations with citizens are mounting in U.S. cities, forcing many to spend millions more on training and some to seek tax increases to pay for federally mandated reforms in departments that used excessive force.

New Orleans voters in April will consider raising property taxes to pay the costs of a 2010 consent decree, one of 16 enforced by the Justice Department in the past six years. Cleveland Mayor Frank Jackson on Feb. 1 proposed a half-percentage point increase in the local income tax to improve policing, after a 2015 decree that will cost $10.6 million this year and a projected $7.1 million in each of the next four years, city documents show.

Spending on police training in 23 of the 25 most populous U.S. cities has increased by 17 percent since 2013 to $317.9 million last year, with at least $332.5 million budgeted in 2016, according to data provided in response to public-records requests and compiled by Bloomberg. The numbers don't capture all the training costs because some cities don't track it separately.

"Cities just don't have this kind of money," said Kevin Kelley, president of the Cleveland City Council. "Nobody advocates unconstitutional policing, but the point is this is going to be very expensive."

Budget Whack

In Ferguson, Missouri, where the 2014 shooting of an unarmed black 18-year-old caused civil unrest, the St. Louis suburb says the costs associated with a consent decree could consume more than one-quarter of its $14.5 million annual operating budget.

Ferguson's city council balked at signing a proposed agreement Feb. 9. The city, which projects a $2.8 million deficit and last September had its credit reduced to junk status by Moody's Investors Service, estimates the costs could be as high as $10 million over a three-year period. The day after the council's decision, the federal government sued the suburb of 21,000 people, alleging in a civil-rights lawsuit the city violates residents' rights and misuses law enforcement to generate revenue.

Unlike the 1990s, when the federal government provided large grants to police departments for crime fighting, the costs of misbehavior are now borne by municipalities.

"There's never been a concerted national effort to really spend a lot of money to address police misconduct," said Stephen Rushin, a professor at the University of Alabama School of Law who studies consent decrees. "We're finally coming to the recognition that correcting police misconduct is an expensive proposition."

Video Evidence

Even where the federal government isn't intervening, municipalities are facing higher costs from lawsuit judgments after videotaped incidents in which black victims died at the hands of officers.

In July 2014, a white New York police officer was recorded using an apparent chokehold to subdue Eric Garner, who was selling cigarettes illegally. Garner, who was black, died and his death was ruled a homicide, but the officer was cleared by a grand jury.

Subsequent incidents in Ferguson, Baltimore and Chicago drew attention as well as civil-rights investigations. Videotape evidence gave weight to allegations of excessive force.

The risk of litigation involving police "has become very substantial," said Marshall Davies, executive director of the Public Risk Management Association, which is in the business of evaluating and minimizing financial exposure for governments.

"The risk has been there forever, as long as there have been police forces," Davies said. "Suddenly, the risk has greatly increased in size."

Los Angeles has seen its payouts for cases involving excessive or unlawful use of force and civil-rights violations reach $23.6 million for the fiscal year ended June 30 from $4.6 million in the year ended June 30 2012, according to records provided by the city attorney's office.

City Councilman Mitchell Englander, the chairman of the public safety committee, said the city often settles cases even when they lack merit to eliminate the risk of going to court.

“I haven’t seen a spike in misconduct at the LAPD,” Englander said. “What I have seen is a spike in awareness and concern both nationally and locally. We may get punished for the sins of our siblings, so to speak.”

Chicago paid the family of Laquan McDonald $5 million last year before the release of a video showing a white police officer shooting him 16 times, even as he lay crumpled on the ground. The Justice Department began a civil-rights investigation of the city’s police department in December. The nation’s third-largest city is financially vulnerable, facing a $20 billion unfunded pension liability. Moody’s has also cut Chicago’s credit to junk status.

New York City reached a $5.9 million settlement last year with Garner’s family. Cleveland agreed to pay $3 million to settle a lawsuit brought by the family of Tamir Rice, a 12-year-old black boy fatally shot by police in 2014 while holding a toy gun.

These incidents have forced the bill for police training to jump. At a cost of $35 million, the New York Police Department is teaching all 22,000 patrol officers new techniques for street encounters with civilians, particularly in minority neighborhoods, an initiative that grew out of the Garner incident.

Seattle’s annual budget for police training has increased about $5 million to $13.6 million after a 2012 consent decree forced changes, said Sergeant Sean Whitcomb, a spokesman for the department.

Training is a major component of managing risk, and cities that are able to afford more robust training “are the ones that are less likely to suffer,” said Chuck Thompson, executive director of the International Municipal Lawyers Association in Washington.

In a Feb. 18 report, Moody’s said legal bills related to Ferguson’s fight with the Justice Department “will exacerbate the city’s financial challenge that already include large deficits and rapidly dwindling reserves.”

Federal officials have begun their investigations of the Baltimore and Chicago police departments. Cleveland’s Kelley said both places should be ready to open their wallets.

“Cities need to know that when the Justice Department comes in, there will be a financial burden,” Kelley said.

Bloomberg Business

by Tim Jones, Mark Niquette & James Nash

February 23, 2016 — 2:00 AM PST

Threatening `Farewell' to LSU Football Shows Louisiana's Strains.

Louisiana State University’s football team is a perennial national championship contender. The Tigers finished last season ranked No. 16 and boast the third-best incoming freshman class.

It may not be in the chase next year, though, because of the state's budget crisis.

After one month in office, Democratic Governor John Bel Edwards spelled out Louisiana's financial strain to his 4.65 million constituents in a televised address. The collapse in oil prices has created a $940 million budget gap for the current fiscal year and a $2 billion shortfall for the year that begins July 1. In a worst-case scenario, Edwards said, health programs for the poor and disabled will close and some public universities will have to shutter before the end of the semester.

"If you are a student attending one of these universities, it means that you will receive a grade of incomplete, many students will not be able to graduate and student athletes across the state at those schools will be ineligible to play next semester," Edwards said. "That means you can say farewell to college football next fall."

Invoking a football season without LSU, the state's flagship university that has made it to three National Championship games since 2003, shows how Louisiana is reeling in the aftermath of oil's slide to less than $30 a barrel from over $100 in mid-2014. Edwards, a graduate of the university's law school, is trying to drum up support for a higher sales tax and further cuts to public services by jeopardizing one of the most-profitable and well-known college football programs in the country, a threat seen as more of a stunt than a reality.

ESPN commentator Tony Kornheiser quipped that Louisiana residents would likely toss the governor out of office before he could halt the Tigers' season.

Louisiana's strains, though, are real, and few signs indicate they're easing. On top of the budget hole, it has the seventh-highest unemployment rate among U.S. states and the seventh-lowest median household income. It's on the brink of a downgrade from Moody's Investors Service and Standard & Poor's and investors are demanding higher yields to own its bonds.

"The whole point with LSU football is the governor trying to get people to pay attention and say, 'Wait, what's going on?"' said Roy Eappen, a municipal debt research analyst at Wells Fargo Securities in New York. "The public is somewhat detached from whether a budget gets passed or not. It's really hard to have a public discussion about the impact of these cuts."

Ernie Ballard, a spokesman for LSU, said the Baton Rouge-based school doesn't have a comment on the governor's speech.

Edwards, 49, wants to temporarily increase the state's sales tax to five cents per dollar from four cents and boost levies on alcohol and cigarettes. He'd also freeze government hiring, cut state contracts and slash more than $160 million of spending.

The state senate last week unanimously approved the governor's plan to draw $128 million from its rainy-day fund and take $200 million from a settlement with BP PLC to reduce the current-year shortfall.

Credit Ratings

Edwards's predecessor, one-time Republican presidential candidate Bobby Jindal, mostly curbed spending and tapped one-time sources for revenue during his eight years in office. He rolled back income taxes starting in 2009 and had floated the idea of eliminating the state's personal and corporate income taxes altogether.

During much of Jindal's tenure, Louisiana's credit rating improved, a fact he touted on his presidential campaign website. Moody's and S&P both raised the state three steps from 2008 to

2011, giving it the third-highest investment grade.

In February 2015, the two companies soured on Louisiana, lowering their outlooks to negative, the first step toward a downgrade.

Municipal-bond investors including Eagle Asset Management and Wasmer Schroeder & Co. have been mostly avoiding debt from Louisiana, given the swelling budget gaps and its dependence on oil revenue.

“We have not been a big buyer of Louisiana,” said Reid Tomlin, director of muni research in Naples, Florida, at Wasmer Schroeder, which oversees $5 billion of state and local debt. “It’s a small state, it’s had ongoing budget deficits for the last couple of years, and it has rating volatility.”

The extra yield investors demand on some Louisiana general obligations have climbed since Edwards’s address. Bonds due in August 2024 traded Wednesday at a yield of 1.83 percent, or 0.41 percentage point more than benchmark munis, data compiled by Bloomberg show. That’s the widest spread since June.

Selling Louisiana

Similarly, LSU bonds maturing in July 2028 traded last week at yields about 1 percentage point more than similar-dated AAA rated munis, the widest spread since July, Bloomberg data show.

“If LSU came with a new issue, it would come at a wide spread and there probably wouldn’t be much investor appetite,” said Burt Mulford, a manager of tax-exempt funds in St. Petersburg, Florida, at Eagle, which oversees $2.4 billion in munis. He said he’s been selling securities from Louisiana.

While LSU depends on the state for funding, its athletic department receives no state or school subsidies, making it one of about 20 self-sustaining programs. It still sees a bigger profit than almost all other universities, according to Education Department data from the 2014-2015 academic season.

The football program brought in $57.7 million of profit that year, topped only by the University of Texas and Southeastern Conference rivals Georgia and Tennessee. The athletic department as a whole brought in a net $41 million, also the fourth-most overall.

The football team would be in jeopardy in a case where the school shuts down, preventing attendees from finishing the semester. Among the National Collegiate Athletic Association’s rules: “All Division I student-athletes must earn at least six credit hours each term to be eligible for the following term.”

That wouldn’t happen under a scenario where lawmakers rebuke tax increases and look solely to spending cuts, according to a letter from Joseph Rallo, Louisiana’s higher education commissioner. Only incomplete grades would be issued in the spring, canceling all fall athletic events.

“These aren’t the governor’s recommendations — this is what the universities are saying will happen,” said Richard Carbo, a spokesman for Edwards. “It’s a ripple effect that people don’t think about. Because the problem is so severe, he wanted people to understand what it actually means.”

Bloomberg Business

by Brian Chappatta

February 21, 2016 — 9:00 PM PST Updated on February 22, 2016 — 4:38 AM PST

Illinois Fight With Chicago Schools Escalates Over Bond Sales.

Illinois's quest to take over Chicago's schools intensified as Governor Bruce Rauner said the state can block the district from borrowing in the municipal-bond market, a claim the nation's third-largest school system rejects.

The Illinois State Board of Education is investigating the finances of the district, which is facing projected deficits of $1 billion a year through 2020, and the Republican governor is pushing for legislation to strip the city of its control. The system has routinely relied on bond sales to help cover operating costs and push debt payments further off into the future.

"If it determined that any school district was in financial duress, the state board has the right — the legal authority — to block any debt offerings," Rauner told reporters on Monday. "The state board has not ever chosen to do that for the city of Chicago. I hope that never becomes necessary, but we've got to be ready to take action and step in."

The Chicago Board of Education is struggling to avert insolvency after years of borrowing, drawing on its reserves and shortchanging the workers' pension fund, which is causing its annual retirement payment to soar. With a junk credit rating, the board sold $725 million of bonds this month for yields as high as 8.5 percent, more than twice that demanded from most credit-worthy state and local governments.

The district said the state doesn't have the power to keep it from borrowing, as Rauner claimed.

"The governor has come up with a number of novel legal theories," Forrest Claypool, chief executive officer of the district, said in comments aired Monday on Chicago Tonight, a public-television show. "The statute is very clear that the authority he seeks to exercise does not apply to the Chicago public schools."

In the days leading up to this month's bond sale, Rauner called for changes to Illinois law to put the state in charge of the district and authorize bankruptcy. That plan has been rejected by Democrats who control the legislature.

Provisions in the state's school code make it clear that the Illinois education board's authority to block debt sales doesn't apply to Chicago's schools, the district said. Rauner's administration said the statute that the district cited, which established a school finance authority that was dissolved in 2010, no longer applies.

"That applied only when the reform board existed, which it no longer does," said Catherine Kelly, a spokeswoman for Rauner. "CPS can be required to develop a financial plan and would be prohibited from issuing bonds during that period."

Bloomberg Business

by Elizabeth Campbell

February 23, 2016 — 10:46 AM PST

New York Leads Refinancing Wave as Muni Yields Touch Decades Low.

The era of rock-bottom interest rates is sticking around for American states and cities, prompting a fresh wave of municipal-bond sales.

New York City Tuesday sold general-obligation debt for the first time since July to pay off higher-cost securities. The $800 million offering is the biggest tax-exempt sale this week and is set to be followed by refinancing deals from Los Angeles's schools, the Kentucky building commission and North Carolina, according to data compiled by Bloomberg.

Just two months after the Federal Reserve took its first step back from the near-zero interest rates in place since the credit crisis, borrowing costs in the $3.7 trillion municipal market have slipped back near five-decade lows. With investors seeking havens from equity-market turmoil, 20-year muni yields are holding at 3.27 percent, matching the level reached in December 2012 for the lowest since 1965, according to the Bond Buyer's index.

"If rates stay here we'll get a lot of new issuance and a lot of refundings," said Phil Fischer, Bank of America Merrill Lynch's head of municipal research in New York. "Money is very cheap."

New York's bonds priced at a top yield of 3.09 percent for those maturing in 19 years, according to data compiled by Bloomberg. Ten-year bonds were issued for yields of 2.09 percent, 0.43 percentage point more than AAA-rated municipal bonds of the same maturity.

State and local governments have long taken advantage of low borrowing costs to refinance, with many rushing to do so last year as the Fed moved toward its first rate increase since 2006. Municipalities issued about $420 billion of long- and short-term debt in 2015, the most since 2012.

The pace in 2016 has lagged the same period a year earlier: About $45.4 billion of municipal bonds have been issued this year, down from $50.2 billion in 2015, Bloomberg data show. In both years, about half of the proceeds were used exclusively for refinancing. Before Tuesday, the slide for New York governments had been more pronounced, slipping to $3.5 billion from $4.2 billion.

The continuation of low rates could foster an increase in securities offerings. Yields on top-rated tax-exempt bonds maturing in 10 years reached as little as 1.57 percent on Feb. 11, the lowest since late 2012.

The city's sale comes after it refinanced $750 million of general-obligation bonds in July, which officials estimate will save about $109 million. The Los Angeles Unified School District is set to sell $575 million of refinancing debt next week, with another $551 million planned by the Kentucky's building agency and $330 million by North Carolina.

For New York, the interest savings have added to its financial gains, with growing sales and income-tax collections helping the city build $5 billion in reserves. The New York City economy, larger than all but four U.S. states, added 213,000 jobs in 2014 and 2015, pushing the unemployment rate to 4.9 percent.

While the financial sector accounts for 10.9 percent of New York City's employment and 20 percent of its wages, the economy continues to diversify, thanks to the higher education, health-care and technology industries.

New York's fiscal strength has led investors to accept lower yields to hold its bonds. The spread, or extra interest they demand relative to AAA rated bonds, dropped to 0.29 percentage point in trading

Tuesday, near the 26-month low hit last month, according to Bloomberg indexes.

Moody's Investors Service rates New York's general obligation bonds Aa2, its third-highest investment grade. Standard & Poor's gives the bonds a comparable AA rating.

The latest sale should do well, said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which oversees about $4 billion of municipal bonds, including New York's general-obligation debt. New York received $151 million of orders from individual investors on Monday, according Eric Sumberg, a spokesman for Comptroller Scott Stringer.

Municipal bond mutual funds have had 19 straight weeks of in-flows, including about $1.4 billion two weeks ago, according to Investment Company Institute data.

"Retail investors want to balk because they don't like the interest rate environment, but they have so much cash they don't have much choice," Dalton said. "Munis still make sense on an after-tax basis."

Bloomberg Business

by Martin Z Braun

February 22, 2016 — 9:01 PM PST Updated on February 23, 2016 — 12:57 PM PST

Bond Dealers Would Have to Report Retail Markups in Finra Plan.

Brokers would have to reveal how much they earn on bond transactions that involve retail clients under a U.S. regulator's plan for cracking down on inflated commissions.

The Financial Industry Regulatory Authority proposal, if approved by the Securities and Exchange Commission, would force brokers to report markups on bonds they hold for no more than one day, according to a statement released Friday. The requirement would close a loophole that allows brokers avoid disclosing commissions on bond sales, while markups on stock trades have to be reported.

"Finra has found that some individual investors pay considerably more than others for similar trades," Chief Executive Officer Richard Ketchum said in the regulator's statement. "Providing meaningful and useful pricing information will assist customers in monitoring costs, promote transparency into firms' pricing practices, and help enhance investor confidence."

Securities regulators have struggled for decades to improve transparency in the bond market, where the majority of trades are still completed by telephone and most price quotes are never made public. Some retail investors pay markups that are more than 2 percent of the value of their investment-grade bond trade, while institutional investors on average pay much less, according to Finra data.

If the rule had been in effect early last year, its disclosure requirement would have covered 98 percent of all retail bond trades, Finra said in September. It won't apply to trades between dealers and institutional investors.

The SEC and Finra began a campaign for the disclosure almost two years ago, after SEC Chair Mary Jo White told Finra and the Municipal Securities Rulemaking Board to draft a rule to protect retail investors. Wall Street firms and trade groups such as the Securities Industry and Financial Markets

Association opposed the requirement, arguing that most commissions are fair and that retail investors can research prices using public databases maintained on Finra's and MSRB's websites.

"Markups have been greatly reduced and while outliers exist, trading data demonstrates that markups have narrowed and that the market is not as uncompetitive as some critics have noted," Craig Noble, managing director and head of capital markets trading at Wells Fargo Advisors LLC, told an SEC advisory panel last month.

Bloomberg Business

by Dave Michaels

February 26, 2016 — 12:23 PM PST

Puerto Rico Risks Dangerous Precedent by Protecting Pensions.

A suggestion from a U.S. Treasury official to protect Puerto Rico's pension payments while also seeking cuts from all bondholders may be viewed as the latest sign that politicians favor retirees over investors in cases of municipal distress.

Treasury Counselor Antonio Weiss said in prepared testimony Thursday that a failure to ensure payments from Puerto Rico's pension system, which has more than 330,000 beneficiaries and is underfunded by $44 billion, would harm the commonwealth's residents and damage its economy. Meanwhile, "all creditors must be at the table" to restructure the island's liabilities to an affordable level, he said.

It could "set a dangerous precedent," said Peter Hayes, head of munis at BlackRock Inc., which oversees $110 billion of the debt. "Pensions are clearly down the capital structure in terms of hierarchy and repayment. So the political side of it is boosting them higher than bondholders."

Weiss said in Washington that there was a difference between protecting pensions and saying that they "should be prioritized above everything else." He said all stakeholders should receive fair and equitable treatment.

Political Priorities

The suggestion to shield Puerto Rico's pensions, combined with bankruptcies in Detroit and Stockton, California, show that the politics around retiree benefits can often muddy the outlook for repayment assumed by bond investors. Constitutionally protected general obligations would recover about 72 percent under a plan from the commonwealth released earlier this month. Other securities would get less.

In Stockton, the California Public Employees' Retirement System was protected from cuts while some bondholders received cents on the dollar. In Detroit, the city's pensions got more than twice what creditors who loaned the city money for those funds received. General obligation bondholders settled for less than full value, even though the $3.7 trillion municipal market has long believed that such debt is sacrosanct.

Moody's Investors Service said Thursday in a report that recovery rates for bondholders have generally been lower than for retirees in municipal bankruptcies. Of the six large bankruptcies cited in the report, four of them paid pensioners 100 percent of what they were owed.

Generally, to fund a pension plan, “you raise taxes and you pay for it, or you have to make cuts if you don’t want to raise taxes,” Hayes said in an interview at BlackRock’s New York headquarters. “We’re seeing this political will to make pensioners whole and ignore the other two options.”

Ryan Deadline

Puerto Rico’s benchmark general obligations with an 8 percent coupon and maturing in 2035 traded at an average 71 cents on the dollar, the highest price since Feb. 5, data compiled by Bloomberg show. They’ve been little changed in 2016 as many investors are entrenched in their positions ahead of a restructuring.

Republican Representative Mick Mulvaney from South Carolina also brought up the risk of a “dangerous precedent” in potentially favoring pensioners at the expense of bondholders during a Thursday hearing of the House Financial Services Committee’s oversight and investigations group.

“That doesn’t strike me as fair,” he said.

Congress is considering whether to inject the federal government into a more central role in a crisis that’s escalated since Governor Alejandro Garcia Padilla in June said the government can’t afford to pay its debt.

Puerto Rico has already defaulted on some securities and has warned that it may halt payments as soon as May without a solution. House Speaker Paul Ryan directed Republican committee chiefs to come up with a plan by the end of March.

Bloomberg Business

by Brian Chappatta

February 25, 2016 — 10:42 AM PST Updated on February 25, 2016 — 1:52 PM PST

Bloomberg Brief Weekly Video - 02/25

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

Watch the video.

February 25, 2016

California Going to First From Worst When It Comes to Bond Sales.

California municipal-bond investors who have been praying for an end to the debt-sales drought don’t have to wait any longer.

Issuance from the most-populous U.S. state is set to lead the nation over the next 30 days, a reversal from as recently as last week, when California had the least upcoming deals, according to data compiled by Bloomberg. Spurring the shift is California's plan to sell $2.3 billion of general-obligation bonds on March 8, the state's biggest offering since September 2014.

With a wave of supply on the way, investors are demanding higher compensation to own California debt. The extra interest they require to hold 10-year California bonds instead of benchmark munis rose to as much as 0.31 percentage point this week, the most since November, Bloomberg data show. That's still low compared to other states: Illinois is paying a 1.65 percentage-point penalty on its 10-year securities, the most among the 20 states tracked by Bloomberg, because of a political stalemate that's left it without a budget since July. That impasse has also slowed Illinois's borrowing. It has the least projected issuance over the next 30 days.

Only 12 states, led by California, have positive net supply in the next month, even though yields are holding near half-century lows.

Overall, municipal supply isn't as robust as it should be, said Dan Heckman, a senior fixed-income strategist in Kansas City at U.S. Bank Wealth Management, which oversees $125 billion. While the finances of state and local governments revived along with the economy, many have been hesitant to run up new debts after being forced to cut their budgets in the wake of the recession. That led the state and local bond market to shrink from 2011 through 2014, according to Federal Reserve Board figures.

"We're concerned that these lower interest rates aren't generating a little bit more supply," Heckman said. "There's still some tight purse strings."

Bloomberg Business

by Elizabeth Campbell

February 25, 2016 — 9:01 PM PST Updated on February 26, 2016 — 5:42 AM PST

Moody's: Global Changes in Economy, Technology, and Finance Transforming Environment for Higher Education.

New York, February 23, 2016 — The global higher education sector is undergoing significant transition, with growing demand, increasing competition, and evolving funding models, Moody's Investors Service says in a new report. The strength of enterprise risk management and strategic positioning will drive the financial health of individual universities as they adapt to this changing environment.

"Demand will continue to grow based on the benefits of advanced education. Increasing desire for lifelong learning expands the pool of students. At the same time, globalization and new delivery models drive increased competition for students, faculty, research funding and philanthropy," Moody's Associate Managing Director Susan Fitzgerald says in "Global Higher Education Faces Period of Significant Transition." She adds, "While risk increases during transition periods, the sector overall is expected to be resilient."

Due to the significant growth in demand for education, government funding will be unable to keep pace, particularly amid competing governmental budgetary priorities. This will shape how higher education is funded globally, with students bearing a greater burden of costs. There will also be continued expansion and change in the types of student loans offered.

Amid the global evolution of higher education, changes to regulatory frameworks and oversight mechanisms will intensify and accelerate. Public university funding will become increasingly tied to public policy priorities.

Over time, there will be an increase in mergers and restructurings, with more universities pursuing these arrangements to achieve economies of scale and contain expenses.

Moody's says most mergers of public universities will be driven at the governmental level, rather than by individual universities. Merged entities can benefit from increased enrollment, size and programmatic diversity, but simultaneously face risks as they address the structural challenges that contributed to the merger. Some private colleges lacking brand recognition and scale will close in an increasingly competitive environment.

Beyond seeking to enroll more international students, universities are expanding their brand footprint, either by directly establishing branch campuses outside their home state or country, or partnering with universities in other countries. This can aid revenue diversification and result in a growing pipeline of students at the home campus, Moody's says.

Additionally, students will seek out not only an affordable university, but one with flexible alternatives, including online learning. Online education will become a more accepted and mainstream strategy for universities across regions and programs, and will provide universities with alternative revenue streams and new branding opportunities.

Rising fixed costs are a credit challenge for many universities, particularly against a constrained revenue environment. These costs include new infrastructure costs as universities absorb debt service and facilities operating costs previously covered by their associated governments, as well as rising regulatory and compliance costs. With an aging university workforce in many countries, pension and other post-employment benefit costs will be an increasing burden for universities globally.

The report is available to Moody's subscribers here.

Smaller Brokerages Band Together to Challenge Regulatory Costs.

Fifteen brokerages have banded together to protest regulations imposed since the 2008 financial crisis that they say unreasonably treat them the same as giants like Morgan Stanley and Bank of America Corp.'s Merrill Lynch.

"You can't just say we have to regulate trading and markets and have all of us comply with a rule written for the largest firms," said Curt Bradbury, chief operating officer of Stephens Inc. and chair of the newly formed American Securities Association.

For instance, he pointed to a Securities and Exchange Commission crackdown on municipal-bond disclosures. In June, the SEC charged and fined 36 municipal underwriting firms for giving inaccurate information to investors, including levying the maximum fine allowed of $500,000 on Goldman Sachs Group Inc., Raymond James Financial Inc.'s brokerage unit and Robert W. Baird & Co. Stephens was fined $400,000. "We tried to make the point that if you make the fines proportionate, it would make Goldman's fine a hundred times larger than $500,000," Mr. Bradbury said.

Mr. Bradbury said the fact that some giant firms, including Goldman, are deemed systemically important financial institutions, or SIFIs, sets a precedent for treating firms of varying sizes differently. “Yes, we’re grousing about the burden of regulation and its extent but also pointing out that a SIFI is different from a non-SIFI and regulations should be different for both,” he said. “Rules imposed on the entire industry are simply inappropriate for our firms.”

The added costs of complying with added regulation fall more heavily on smaller firms, Mr. Bradbury and others say.

Indeed, Goldman Sachs Chief Executive Lloyd Blankfein said at a conference last year that expensive regulations have “raised the barrier of entry higher than at any other time in modern history,” so that “only a handful of players” would be able to compete with one another globally.

The new group wants regulators such as the SEC and the Financial Industry Regulatory Authority to fine-tune how new rules impact different companies based on their size and scope.

The founding members of the new brokerage group are mostly midsize and regional firms. The ASA will oversee the Bond Dealers of America, an existing organization that comprises 57 firms, and the newly created Equity Dealers of America, a group with 11 members so far.

Executives at publicly traded securities firms and banks describe how each quarter they are paying higher sums to comply with rules and requirements introduced by the 2010 Dodd-Frank regulatory overhaul.

Among the ASA’s focuses is the Labor Department’s proposal to protect retirement savers. The rule, which could be ready as early as March, would require financial advisers to put their clients’ financial interests above their own. It is expected to speed up a transition from commission-based accounts to fee-based accounts, which many firms say may not be workable for the smaller accounts held by many smaller securities firms.

A report by researcher Morningstar Inc. late last year said regional and independent wealth-management firms will likely face bigger revenue declines tied to the Labor Department’s rule, since many may be forced to let go of commission-based individual retirement accounts with $100,000 in assets or less. Bigger firms are expected to fare better since they generally work with investors who have more assets.

The Labor Department rule is “something we have opposed vigorously through all the industry organizations and have not been able to make our point,” Mr. Bradbury said. “It may be too late to work on it, but we’ll try.”

THE WALL STREET JOURNAL

By MICHAEL WURSTHORN

Updated Feb. 24, 2016 10:07 a.m. ET

Write to Michael Wursthorn at Michael.Wursthorn@wsj.com

Natixis, Société Générale Settle Municipal Bond Fraud Charges.

Firms to pay more than $56 million as part of 22-state and private class settlement

Natixis Funding Corp. and Société Générale SA agreed to pay more than $56 million to settle charges of defrauding state and local governments and nonprofits across the U.S. in municipal bond derivative transactions.

New York Attorney General Eric Schneiderman said Wednesday that Natixis will pay about $30 million and Société Générale will pay about $26.8 million in a 22-state and private class settlement. About $53.9 million will go into a settlement fund to pay restitution to municipalities, counties, government agencies, school districts and nonprofits that the states say were harmed in contracts with the banks.

"SG is pleased to have reached agreement to resolve these matters," Societe Generale spokesman said in an email statement.

Natixis couldn't be reached for comment.

The attorneys general of New York and Connecticut, plus other 20 states, in 2008 began investigating the municipal bond derivatives market, where tax-exempt entities including municipalities, school districts and nonprofit organizations issue municipal bonds and reinvest the proceeds until the funds are needed or enter into contracts to hedge interest rate risk.

The attorneys general said they found "anticompetitive and fraudulent conduct" at several large financial institutions, including Natixis and Société Générale. They claim employees at the banks rigged bids and submitted noncompetitive courtesy bids and fraudulent certificates of arm's-length bidding to government agencies.

Other settlements totaling about $350 million were reached between December 2010 and December 2011 with Bank of America, J.P. Morgan Chase & Co., UBS Group AG, GE Funding Capital Market Services and Wells Fargo & Co.'s Wachovia.

THE WALL STREET JOURNAL

By ANNE STEELE

Feb. 24, 2016 1:39 p.m. ET

Write to Anne Steele at Anne.Steele@wsj.com

Senators Reach Deal to Help State Water Programs After Flint.

WASHINGTON — U.S. Senators unveiled legislation on Wednesday providing federal aid to help states fix water infrastructure in the wake of Flint, Michigan's crisis over lead-tainted drinking water.

Senators James Inhofe, an Oklahoma Republican, and Debbie Stabenow, a Michigan Democrat, and others introduced the measure providing $100 million to a revolving fund states can tap if they have drinking water problems.

The funding in the agreement is paid for by cuts from the Advanced Technology Vehicles Manufacturing loans for auto companies, aimed to speed development of electric cars and other technologies. Inhofe called it a “failed program” that hasn’t been used in more than a year and has only issued five loans since 2008.

It was unclear whether the measure would be attached to a wide-ranging energy bill that failed to advance early this month or whether the senators would try to pass it as a separate bill.

Under the plan, states must first explain how the money would be spent, according to details of the agreement. If they do not use the aid in 18 months, it would return to the federal government.

“This is not a blank check,” according to a document explaining the deal.

Thousands of children in Flint, a predominantly African-American city of 100,000, are believed to have consumed dangerous amounts of lead in drinking water after a state-appointed emergency manager directed the city to switch from Detroit’s drinking water supply to the Flint River. Lead is a neurotoxin that can harm brain development in children.

Under the deal, Flint and the states would also have access to $70 million in a credit subsidy under a federal program called the Water Infrastructure Finance and Innovation Authority, or WIFIA.

Congress conceived the WIFIA to help lower borrowing costs for municipal water projects. The federal program acts as a loan guarantee, rather than a grant, and is aimed at bringing borrowing costs in line with U.S. government bond rates.

Some critics say local governments need direct federal aid, not borrowing support, to improve infrastructure.

There would also be $50 million in aid available for national use for a childhood lead poisoning prevention program, a health registry and other items. Earlier this month, Michigan lawmakers had at first opposed getting funding from the advanced vehicles program, saying it would hurt auto workers.

By REUTERS

FEB. 24, 2016, 3:33 P.M. E.S.T.

(Reporting by Timothy Gardner; Additional reporting by Patrick Rucker; Editing by Jonathan Oatis and Alan Crosby)

Detroit Mayor Eyes Legal Action Over Pension Shortfall.

DETROIT — Detroit may sue some of the consultants who worked on its historic municipal bankruptcy over a $490 million pension funding shortfall that will result in bigger-than-expected city payments starting in 2024, according to Mayor Mike Duggan.

In his state of the city address on Tuesday night, Duggan said he is seeking advice from the city’s legal department to review any possible claims against consultants.

The mayor blamed the projected deficit on outdated mortality tables used by the consultants that assume retirees will not live as long. The consultants were hired under the city’s former emergency manager, Kevyn Orr.

Orr, an attorney at law firm Jones Day, who was tapped by Michigan Governor Rick Snyder in 2013 to run Detroit, declined to comment. A representative of Milliman, the city's actuarial consultant, could not be reached for comment.

Detroit exited the biggest-ever U.S. municipal bankruptcy in December 2014, shedding about $7 billion of its $18 billion of debt and obligations. The city paid $177 million in legal and consultant fees to dozens of firms.

The city's court-approved debt adjustment plan contained money to pay for pensions over the first 10 post-bankruptcy years, according to John Naglick, Detroit finance director. The plan also projected contributions by the city starting in 2024 needed to amortize the unfunded pension liability which was understated by $490 million, he added.

Detroit's contribution to its two retirement systems is expected to total $194.4 million in 2024, which is $84.4 million more than anticipated in the debt adjustment plan, according to a Nov. 24 report by Detroit's financial review commission.

To start addressing the shortfall, Duggan said $10 million in surplus money will be tapped for pensions for this year and next.

By REUTERS

FEB. 24, 2016, 5:06 P.M. E.S.T.

(Reporting by Serena Maria Daniels in Detroit; Additional reporting by Karen Pierog in Chicago; Editing by Matthew Lewis)

Treasury Plan for Puerto Rico Favors Pensions Over Bondholders.

WASHINGTON — If it's up to the Treasury Department, public employees in Puerto Rico who were promised pensions could be better off than investors who bought the island's bonds.

A broad plan being put forward by the Treasury Department to ease Puerto Rico's financial crisis would put pension payments to retirees ahead of payments to bondholders — a move that some experts fear could rattle the larger municipal bond market.

The proposal was being driven by evidence that Puerto Rico's pension system is nearly out of money, leaving retirees who are dependent on it financially vulnerable.

"The major problem is, the entire pension system is close to being depleted," said Antonio Weiss, counselor to Jacob J. Lew, the Treasury secretary. "But 330,000 people depend on it. It's unfunded, and they have to be protected."

Shielding retirees from pension cuts, the thinking goes, would not only protect thousands of older residents on the island, but it might also encourage younger retirees to stay there, rather than move to the United States mainland in search of new jobs and incomes.

Out-migration is considered a prime cause of Puerto Rico's financial tailspin, because it shrinks the island's economy, leaving fewer people and fewer dollars to support the crushing debt.

Puerto Rico is said to have about $72 billion of financial debt outstanding, most of it in the form of municipal bonds. By some estimates, it has incurred an additional $43 billion in unfunded pension obligations.

But deciding that pensioners' interests should be put above those of bondholders — if a choice must be made — is not without certain risks.

Some public-finance experts say they fear that if Puerto Rico can renege on promises to pay debts to investors, while sparing retirees, other municipalities might try to do the same, casting a pall over the larger market in municipal bonds, where American towns and cities have gone for decades to get the money they need to build roads, schools and other public works.

If Puerto Rico gets special treatment, "you have huge contagion risk to the entire municipal market," Andrew N. Rosenberg, a partner at the law firm Paul, Weiss, Rifkind, Wharton & Garrison, said at a recent gathering of creditor representatives.

Treasury officials said such concerns were unfounded. The framework they are proposing would be designed only for distressed United States territories, like Puerto Rico, and could not be used by states or municipalities on the mainland.

Officials pointed to a report by an investment firm, Nuveen Asset Management, which said, "We believe most institutional investors understand Puerto Rico's unique situation and the coming debt restructuring will not create widespread credit implications."

Still, moving public pensions to the top of the stack would infuriate at least some bondholders — especially those who paid close to face value for their bonds years ago, when they were still rated investment grade, and who had expected to hold them to maturity and get all their principal back.

Although the bondholders have often been portrayed as deep-pocketed vultures since Puerto Rico's debt crisis began, many of them are small investors, themselves trying to save for a comfortable retirement.

"Most Puerto Rican debt is held by individuals," said Thomas Moers Mayer, a lawyer representing two large mutual fund companies, Franklin Advisers and OppenheimerFunds, which together own about $10 billion in Puerto Rican debt securities. "They are mostly over 65, and they mostly have incomes of less than $100,000 a year. They are not vulture funds. They are your friends and neighbors."

Some Republican senators — notably Charles E. Grassley of Iowa and Orrin G. Hatch of Utah — whose constituents are among the bondholders, have expressed similar views. Puerto Rico's debt is unusually widely held because it offered above average yields and interest that was exempt from federal, state and local taxes, no matter where the buyer lived.

Treasury officials have said they are willing to work with Congress to find a suitable way of handling the different categories of creditors.

Financial help for Puerto Rico will be the subject of a hearing on Thursday by the House Committee on Natural Resources. Mr. Weiss is scheduled to be the sole witness.

Any rescue plan would need congressional approval and various committees in the House and Senate are weighing ways to help the island reduce its debt and better manage its economy.

Paul D. Ryan, the Republican speaker of the House, has set a deadline of March 30 for a House version of a bill. A version of Treasury's plan was outlined in a draft bill presented to a Senate committee; it has not been voted on.

The draft, obtained by The New York Times, also calls for a five-member "fiscal reform assistance council" appointed by the president to hold the island to meaningful budgeting, disclosure and fiscal reform practices. The board would have the power to make across-the-board budget cuts if necessary.

Members of Congress, especially Republicans, have expressed concern about whether Puerto Rico has the wherewithal to manage its future finances, even if it gets help in the short term. Credit markets have also been reluctant to invest further in Puerto Rico's bonds without some assurances that the island's finances will be better managed in the years to come.

The idea of an oversight board has rankled residents, however, who say it has overtones of colonialism.

The part of the proposal that gives priority to pensioners has received little attention. Currently, Puerto Rico's laws and Constitution give top priority to general-obligation bonds — the type backed by the government's "good faith, credit and taxing power."

Puerto Rico is not unique in this respect; for decades, the general-obligation bonds of all the states have been marketed as virtually default-proof, safe enough for widows and orphans. The concept was developed after the Civil War, as a way to rebuild investor trust after a number of notorious bond defaults.

Other bonds carry with them varying degrees of legal repayment security. Puerto Rico's debt is extraordinarily complex, but in general, its bonds can be ranked in a hierarchy of eight levels, with general-obligation bonds at the top. The ranking is described in an analysis of the debt by the Center for a New Economy, a nonpartisan research group in San Juan.

Public workers' pensions, the center found, fall on a second hierarchy altogether, which sets priorities for the government's operational disbursements. Here again, however, payments due on general-obligation bonds come first, followed by payments due on legally binding contracts. Outlays for pensions come third.

That means that under existing law in Puerto Rico, if there is not enough money to pay both general-obligation bonds and public retirees' pensions, the money would go to bondholders.

But the Treasury's proposed restructuring framework would change that. It would require that the restructuring plan "not unduly impair the claims of any class of pensioners."

General-obligation bondholders, on the other hand, would get such protection only "if feasible," according to the draft that outlined the plan.

This new legal framework is being created because Puerto Rico, as a United States territory, has no access to bankruptcy laws, where complicated claims by creditors can be worked out in a court under the supervision of a bankruptcy judge.

Puerto Rico has already defaulted on some of its bonds. More payments are due in May and June. Bonds are now nearly impossible to sell, and members of Congress, especially Democrats, as well as financial experts say the island's troubles will become increasingly enormous if some kind of restructuring framework is not approved soon.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

FEB. 24, 2016

Puerto Rico Needs Restructuring to Avoid Cascading Defaults: Treasury.

NEW YORK/SAN JUAN — U.S. Treasury counselor Antonio Weiss said on Thursday that without a proper restructuring regime, Puerto Rico will default and litigation will intensify, as he pushed Congress to act with legislation to help the island fix its crisis.

Weiss, speaking to the House Natural Resources Committee in a hearing about the island's fiscal crisis, outlined the scale of the problems the U.S. territory faces.

“As the cascading defaults and litigation unfold, there is real risk of another lost decade, this one more damaging than the last,” Weiss said.

A legislative solution for Puerto Rico, battling with $70 billion debt, may be edging closer. Legislation to find a fix for the island is expected to be drawn up following two Congressional hearings on Thursday – one in front of the House Natural Resources Committee at which Weiss was the sole witness.

House Speaker Paul Ryan has said he wants the Republican-led House to develop a response to Puerto Rico's fiscal crisis during the first quarter of 2016, and Republicans plan to bring a bill addressing the crisis to the House floor by the end of March.

Puerto Rico wants access to a bankruptcy-like mechanism to reduce debt – a view backed by President Barack Obama's administration and some Congressional Democrats. But majority Republicans have not supported efforts to extend bankruptcy protection to the island, a strategy which could be detrimental to some creditors, and are keen to put Puerto Rico under strict fiscal oversight.

Weiss, in questioning, said that Treasury's restructuring proposal was not envisioning the Chapter 9 bankruptcy law U.S. states can access for their public agencies, but legislation “customized to the unique conditions that face Puerto Rico.”

Weiss said his team will have to work to convince island leaders of the need for an oversight board for the island. “I think the legislature doesn't fully understand what this oversight authority would consist of,” he said.

Puerto Rico, with a 45 percent poverty rate, has been in recession for nearly a decade and is losing population to the mainland. It is suffering from a huge debt buildup and has already defaulted on some borrowings.

“There is fear of the future,” said Weiss. “Puerto Ricans are leaving and are joining us on the mainland where they find access to jobs, a future for their children, better healthcare.”

Weiss said that a failure to protect pension payments would “irreparably harm retirees” and add greater stress to Puerto Rico's economy.

“We are deeply concerned about the pensions in Puerto Rico,” he said.

The Treasury late last year envisioned giving Puerto Rico’s pensioners stronger legal protection than holders of its constitutionally backed bonds if it went bankrupt, according to a draft of a proposed plan seen by Reuters.

A separate hearing before a subcommittee of the House Committee on Financial Services focused on the impact to investors in the $3.7 trillion municipal bond market.

Mark Zandi, chief economist at Moody’s Analytics, said without a broad restructuring framework to include more of the debt than a Chapter 9 framework would envision, the issue would not be solved and “we will be back here again.”

Legislation for Puerto Rico could potentially be written as a stand-alone law, which carries the risk of having little momentum to approve it, or attached to a bill related to the Federal Aviation Administration (FAA), a congressional source previously said.

An FAA authorization bill which authorizes funding for the agency could come up for a vote in the House of Representatives as early as next month.

However, a legislative solution may be hard to achieve given the differing views and acrimonious relationship between Republicans, which control Congress, and Democrats.

Tom McClintock, a Republican of California, said instead of increasing regulation, Puerto Rico needs less red tape, less tax burden and could be turned into a “Hong Kong of the Caribbean.”

However, Representative Raul Labrador of Idaho said he appreciated that Weiss was “trying to find a solution.”

“We don’t agree on every one of your solutions but I can tell that the administration is acting in good faith in finding a solution to the problem,” Labrador said.

By REUTERS

FEB. 25, 2016, 11:54 A.M. E.S.T.

(Additional reporting by Daniel Bases in New York and David Morgan in Washington)

Detroit Mayor Unveils Budget With Eye on Shedding State Oversight.

(Reuters) – Detroit Mayor Mike Duggan proposed a $2.6 billion fiscal 2017 budget on Thursday that he said could be the city’s ticket to removing state oversight of its finances.

He said the all-funds budget, which includes $1.077 billion of general fund spending, would mark the third-straight balanced budget for the city, which exited the biggest-ever municipal bankruptcy in December 2014. A financial review commission was created under Michigan law to oversee a post-bankruptcy Detroit until it reaches certain benchmarks.

“If we can finish the 2017 fiscal year with a balanced budget and we’re paying our bills and meeting some other conditions that I believe we’ll meet, we will be able to get out of the financial review commission control period,” Duggan told the city council.

He added the goal is to shed state oversight by January 2018. If the city ends fiscal 2017 with a deficit, the mayor said Detroit would have to start a new three-year balanced budget cycle.

Detroit Chief Financial Officer John Hill said the budget for the fiscal year that begins July 1 is based on conservative revenue estimates that could be hurt if the state cuts revenue sharing to local governments to deal with costs for the ongoing lead-tainted water crisis in Flint.

The mayor said he plans to tap $50 million in unused, voter-approved bond proceeds dating as far back as 1987 for various projects.

Duggan also addressed a $490 million increase in the unfunded liability for Detroit's two pension funds caused by the use of outdated mortality tables by the city's bankruptcy consultants.

The situation has become "pretty adversarial" with the consultants, who have been told by the city not to destroy any of the documents they took with them, according to the mayor. He cautioned the council that a malpractice lawsuit against the consultants would be difficult to win.

By REUTERS

FEB. 25, 2016, 2:42 P.M. E.S.T.

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

Los Angeles School District to Sell $1.3 Billion in Muni Bonds.

(Reuters) – The largest U.S. municipal market deal next week is expected to total $1.3 billion from Los Angeles Unified Schools, a district that faces declining student enrollments and competition from charter schools.

The deal, along with $1.1 billion of general obligation bonds from the state of Massachusetts, helped push scheduled new sales of municipal bonds to $10.09 billion next week, according to preliminary figures from Thomson Reuters Municipal Market Data (MMD).

Fitch Ratings rated the Los Angeles bonds triple-A, better than the agency's A-plus for the school district, because bondholders would be insulated from the district's operating risk. The new bond money will be used to fund facility renovations.

The debt will repaid with property taxes, which are considered "pledged special revenues," in the event of a municipal bankruptcy. The district benefits from positive tax base growth because of its huge, diverse and growing economy, Fitch noted.

While state funding for Los Angeles' school district has grown, revenues have declined from lower student enrollment. At the same time, fixed costs are rising, in part from retiree benefits.

Fitch warned that enrollment continues to decline at Los Angeles public schools. The district has lost almost 210,000 students from since 2003, or more than a quarter of its student body.

Los Angeles Unified School District is the second largest U.S. public school district, with more than 1,000 schools and educational centers, plus 53 affiliated charter schools.

Within the region, another 211 independent charter schools compete for students. The Los Angeles district has lost about 100,000 students to independent charter schools, Fitch estimated.

By REUTERS

FEB. 26, 2016, 2:09 P.M. E.S.T.

(Reporting by Robin Respaut; Editing by Richard Chang)

GASB Outlook E-Newsletter Q1, 2016.

Read the Newsletter.

NFMA February 2016 Municipal Analysts Bulletin.

Download the Bulletin.

FINRA Approves Enhanced Price Disclosure to Retail Investors in Fixed-Income Securities.

WASHINGTON, D.C. — The Financial Industry Regulatory Authority's Board of Governors today approved a proposal designed to help retail customers understand and compare transaction costs in fixed-income securities. The proposal, subject to the approval of the Securities and Exchange Commission, would require member firms to disclose on retail customer confirmations the "mark-up" or "mark-down" for most transactions in corporate and agency debt securities.

"FINRA has found that some individual investors pay considerably more than others for similar trades. Providing meaningful and useful pricing information will assist customers in monitoring costs, promote transparency into firms' pricing practices, and help enhance investor confidence in the market," said Richard Ketchum, FINRA Chairman and CEO.

The proposal would require that if a firm sells or buys a corporate or agency fixed-income security from a retail customer and on the same day buys or sells the same security as principal from another party, the firm would have to disclose on the customer confirmation the firm's mark-up or mark-down from the prevailing market price for the security. The confirmation would also have to include a reference (and hyperlink if the confirmation is electronic) to trade-price data in the same security from TRACE, FINRA's Trade Reporting and Compliance Engine.

The disclosure requirement will not apply to transactions in fixed-price new issues, or in situations where the bonds sold to the retail customer (or bought from the customer) were held by the firm longer than one day.

FINRA, the Financial Industry Regulatory Authority, is the largest independent regulator for all securities firms doing business in the United States. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services. FINRA touches virtually every aspect of the securities business – from registering and educating all industry participants to examining securities firms, writing rules, enforcing those rules and the federal securities laws, and informing and educating the investing public. In addition, FINRA provides surveillance and other regulatory services for equities and options markets, as well as trade reporting and other industry utilities. FINRA also administers the largest dispute resolution forum for investors and firms. For more information, please visit www.finra.org.

Friday, February 26, 2016

Contact(s):
Ray Pellecchia (212) 858-4387

MSRB 2016 Compliance Advisory.

The Municipal Securities Rulemaking Board (MSRB) is publishing the 2016 Compliance Advisory (Advisory) to highlight some of the key compliance risks for brokers, dealers and municipal securities dealers (collectively, dealers) that, if not properly addressed, could adversely affect municipal entities, obligated persons, investors and public confidence in the municipal securities market.

This Advisory also provides dealers with certain factors to consider when evaluating compliance controls and implementing measures to mitigate exposure to these compliance risks (identified below as Considerations). The MSRB intends for dealers to use this Advisory as a tool that can be used to supplement the assessment of the adequacy of their compliance programs.

Download the Advisory.

MSRB Launches Outreach Effort for Issuers on the Municipal Securities Market.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today it is launching an outreach effort to remind state and local governments about the free education resources and tools available to support their issuance of municipal bonds. The MSRB operates an online Education Center about the municipal securities market and the Electronic Municipal Market Access (EMMA®) website to support market transparency and awareness.

“Part of the mission of the MSRB is to educate state and local governments on how to use the MSRB’s free tools to help them navigate the municipal bond market,” said MSRB Executive Director Lynnette Kelly. “The MSRB wants to be the 3-1-1 for municipal bond issuers—we’re here to assist when they have questions about how to use EMMA and what to expect from their financial professionals.”

The MSRB’s new campaign will highlight resources issuers can use to help them fulfill their continuing disclosure obligations to investors and understand what they need to know about new regulations for municipal advisors who advise state and local governments on municipal securities transactions. The outreach effort will also help issuers learn how they can take full advantage of the EMMA website to communicate with investors.

A series of webinars, emails and related communications aimed and state and local governments will be offered over the next six months. The first webinar, called "Click, Call, Comply: Understanding Continuing Disclosure," will be offered on March 18, 2016 at 12:00 p.m. Register for the webinar. CPE credit is available.

State and local governments and related organizations that wish to learn more about the MSRB's outreach effort or request the MSRB's appearance at an upcoming event should contact Ritta McLaughlin, MSRB Chief Education Officer, at 202-838-1306 or rmclaughlin@msrb.org. Sign up to receive emails about state and local government education from the MSRB.

State and local governments and other municipal entities issue approximately $400 billion in municipal bonds each year. The issuance of these bonds involves, among other things, the hiring of financial professionals, such as underwriters and municipal advisors, and communicating to investors on a regular basis.

"When state and local governments decide to issue bonds to finance public infrastructure projects, they can benefit from access to objective information about the market," Kelly said. "The MSRB is a neutral resource available to support issuers' information needs and their disclosure obligations."

Date: February 23, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

- Municipal Advisors to be Subject to New Pay-to-Play Regulations.
- MSRB Amends its Rule Regarding Calculations for Bonds that Do Not Pay Interest Semi-Annually.
- MSRB Publishes Draft Guidance to Support Fair Pricing of Municipal Securities and Dealer Compensation Calculations.
- NABL Submits Additional Issue Price Comments.
- New Bond Rules Target Large Broker Fees.
- Initial Support for MSRB Pricing Guidance Proposal.
- IRS Proposed Political Subdivision Rules Would Be Big Change for Munis.
- NABL: IRS Issues Proposed Political Subdivision Regulations.
- MSRB Launches Outreach Effort for Issuers on the Municipal Securities Market.
- And finally, we are reminded this week by *Miller v. Thibeaux* that something has indeed gone terribly awry with one's approach to parenthood when the court feels it necessary to refer to you as the "putative father." (We would also have accepted "alleged father.") The putative father in question would have undoubtedly been wounded to the core by this construction had he: a) had a core; and b) had the first clue as to the meaning of "putative."

SCHOOL FUNDING - ALASKA

State v. Ketchikan Gateway Borough

Supreme Court of Alaska - January 8, 2016 - P.3d - 2016 WL 106156

After making its contribution to fund local school district, borough brought suit against state asking the superior court to declare the required local contribution unconstitutional, to enjoin the state from requiring the borough to comply with the statute, and, to direct the state to refund its protested $4.2 million payment. Both parties moved for summary judgment. The Superior Court partially granted borough's motion. State appealed and borough cross-appealed.

The Supreme Court of Alaska held that:

- As a matter of first impression, local school funding formula was not a state tax or license within meaning of state constitutional prohibition against dedicated taxes, and
- Required local contribution did not violate the appropriations clause or the governor's veto clause of the Alaska Constitution.

SCHOOL FUNDING - KANSAS

Gannon v. State

Supreme Court of Kansas - February 11, 2016 - P.3d - 2016 WL 540725

School districts that lost funding due to reductions in base state aid per pupil (BSAPP) filed suit against state, challenging constitutionality of school funding under state constitution's education article on both adequacy and equity grounds.

Following trial, the District Court ruled that state violated education article by failing to provide suitable funding for education and that state created unconstitutional, wealth-based disparities among districts. State appealed. The Supreme Court affirmed in part, reversed in part, and remanded. On remand, a three-judge panel of the District Court determined THAT state failed to meet equity and adequacy requirements of education article, issued remedial orders to enforce holdings, and directed districts to join state officials. State appealed as a matter of right and equity and adequacy portions of appeal were bifurcated.

The Supreme Court of Kansas held that:

- Panel unnecessarily joined state officials in their official and personal capacities;
- Panel did not exceed scope of Court's mandate by reviewing Classroom Learning Assuring Student Success Act's (CLASS) capital outlay and supplemental general state aid provisions;
- Panel applied proper equity test;
- State failed to carry its burden to show that it had cured capital outlay's unconstitutional inequities; and
- State failed to carry its burden to show that it had cured supplemental general state aid's unconstitutional inequities.

District court panel unnecessarily joined certain state officials in their official and personal capacities under compulsory joinder statute to provide for enforcement of any order that might ensue on remand from Supreme Court's determination that state failed to meet adequacy and equity requirements of state constitution's education article in school district's action against state challenging constitutionality of school funding. It was possible for complete relief to be accorded among existing parties in officials' absence.

On remand from Supreme Court's decision that state failed to meet its duty to provide equity in public education under state constitution's education article, district court panel did not exceed scope of Supreme Court's mandate by reviewing capital outlay and supplemental general state aid provisions under Classroom Learning Assuring Student Success Act (CLASS), which was new funding system enacted in response to Court's decision, for compliance with education article's equity requirement. Supreme Court specifically instructed panel to review any legislative action taken in response to Court's decision for constitutional compliance, and panel needed to review CLASS to comply with Court's directive that panel ensure school funding inequities were cured.

On remand from Supreme Court's decision that state failed to meet its duty to provide equity in public education under state constitution's education article, district court panel applied proper equity test adopted by Court on prior appeal, instructing panel to evaluate any legislative response to Court's decision by considering whether response sufficiently reduced unreasonable wealth-based disparity among districts so disparity then became constitutionally acceptable, not whether cure necessarily restored funding to prior levels. Panel determined that legislature had not fully funded capital outlay and the supplemental general state aid provisions, but had otherwise attempted to cure inequities, and panel quoted language of equity test several times in determining that state failed to meet equity requirements.

State failed to carry its burden to show that it had cured unconstitutional capital outlay inequities for fiscal year 2015 on remand from Supreme Court's determination that state created unconstitutional, wealth-based disparities among school districts under state constitution's education article in districts' action against state, challenging constitutionality of school funding. Although state demonstrated that more money was provided than before, state failed to show that increase provided students in districts entitled to capital outlay state aid with reasonably equal access to substantially similar educational opportunity through similar tax effort.

State failed to carry its burden to show that it had cured unconstitutional supplemental general state aid inequities for fiscal year 2015 on remand from Supreme Court's determination that state created unconstitutional, wealth-based disparities among school districts under state constitution's education article in districts' action against state, challenging constitutionality of school funding. Although state showed that amount of supplemental general state aid was greater than previous years' funding, state still made it more difficult for aid-receiving districts to provide substantially similar educational opportunities through tax efforts similar to their wealthier counterparts.

State failed to carry its burden to show that it had cured unconstitutional capital outlay inequities through Classroom Learning Assuring Student Success Act (CLASS) on remand from Supreme Court's determination that state created unconstitutional, wealth-based disparities among school districts under state constitution's education article in districts' action against state, challenging constitutionality of school funding. Despite contention that any reduction in aid was relatively minimal and did not impact educational opportunity, losses only affected districts with lower property wealth entitled to aid, and aid-qualifying districts would have not received any additional aid even if districts increased their tax burden or if districts' property values increased, since CLASS froze funds at prior year's amount, which did not comply with Court's equity order.

State failed to carry its burden to show that it had cured unconstitutional supplemental general state aid inequities through Classroom Learning Assuring Student Success Act (CLASS) on remand from Supreme Court's determination that state created unconstitutional, wealth-based disparities among school districts in districts' action against state, challenging constitutionality of school funding under state constitution's education article. Despite contention that any change in supplemental general state aid was relatively minimal and that there was no evidence showing any aid reductions would have impacted districts' access to substantially similar educational opportunities, CLASS's failure to provide additional supplemental general state aid even to those districts that chose to obtain more funds through their own efforts exacerbated wealth-based disparities between districts and did not comply with Court's equity order.

School districts were not entitled to attorney fees during remedial phase of districts' action against state, challenging constitutionality of school funding, following remand from Supreme Court's decision that state failed to meet its duty to provide equity in public education under state constitution's education article. Districts failed to raise claim in district court on remand, districts' request for fees was not so narrowly drawn as to warrant interpretation as a request for only appellate attorney fees, and even if request could be interpreted in such a light, districts failed to file motion for attorney fees and supporting affidavit required under rule authorizing appellate attorney fees.

LIABILITY - LOUISIANA

Miller v. Thibeaux

Court of Appeal of Louisiana, Third Circuit - January 27, 2016 - So.3d - 2016 WL 385304 - 2013-541 (La.App. 3 Cir. 1/27/16)

Putative father brought wrongful death and survival action against parish school board, its insurer, bus driver, and his insurer, after driver closed bus doors on child's arm and drove away, dragging child. The District Court denied defendants' exception of no right of action, granted putative father's motion for judgment of paternity, awarded damages to putative father. Defendants appealed. The Court of Appeal reversed and rendered. Father sought review. The Supreme Court reversed and remanded.

On remand, the Court of Appeal held that:

- Putative father adequately established paternity;
- Bus driver was not covered under school board's automobile insurance policy for damages in excess of cap set forth in Louisiana Governmental Claims Act (LGCA), and thus statute allowing direct claim to be brought against school employee when there was insurance coverage for such negligence did not apply;
- Evidence supported trial court's finding that child had been conscious for only up to four seconds between time he became trapped in school bus door and when he was run over by bus; and
- Damages award of $250,000 on wrongful-death claim was not abusively low.

PUBLIC UTILITIES - MARYLAND

Maryland Office of People's Counsel v. Maryland Public Service Com'n

Court of Special Appeals of Maryland - January 28, 2016 - A.3d - 2016 WL 360891

Office of People's Counsel (OPC) petitioned for judicial review of Public Service Commission's approval of gas company's imposition of customer surcharge during implementation of plan to replace outdated gas distribution infrastructure.

The Court of Special Appeals held that:

- Deference was warranted to Commission's interpretation of law to allow imposition of surcharges before completion of each project;
- Strategic Infrastructure Development and Enhancement (STRIDE) law allowed implementation of such surcharges; and
- Commission acted within its discretion by approving broader program conditioned on subsequent annual review of specific projects.

Deference was warranted to Public Service Commission's interpretation of Strategic Infrastructure Development and Enhancement (STRIDE) law to allow Commission to authorize gas company to recover estimated project costs from customers for infrastructure improvements after initial implementation of projects and before completion of each project. Commission focused its attention on statutory provision in question, thoroughly addressed relevant issues, and reached its interpretation through a sound reasoning process.

The Strategic Infrastructure Development and Enhancement (STRIDE) law allows the Public Service Commission to authorize a gas company to recover estimated project costs from customers for infrastructure improvements after initial implementation of projects and before the completion of each project.

Public Service Commission acted within its discretion under Strategic Infrastructure Development and Enhancement (STRIDE) law by approving broader program authorizing gas company to recover estimated project costs from customers for infrastructure improvements conditioned on subsequent annual reviews of the specific projects within the broader program, rather than reviewing each project prior to approving a new plan.

PUBLIC UTILITIES - MISSISSIPPI

City of Tchula v. Mississippi Public Service Com'n

Supreme Court of Mississippi - February 4, 2016 - So.3d - 2016 WL 453451

Private gas company, that operated gas-distribution systems for two cities as a public utility, sought rate increase for customers beyond one mile of city limits in each gas system it operated. The Public Service Commission granted the rate increase request, and the two cities appealed.

The Supreme Court of Mississippi held that the Commission lacked statutory rate-setting jurisdiction over municipally owned, but not operated, public utility gas distribution systems.

State Public Service Commission lacked statutory rate-setting jurisdiction over municipally owned, but not operated, public utility gas distribution systems; even though cities continued to supply gas outside one mile of their city limits after passage of the Public Utilities Act, they did not add to or enlarge their distribution or transmission systems beyond those that were in service prior to that date, and thus, remained exempt from Commission regulation.

EMINENT DOMAIN - MISSISSIPPI

Mississippi Transp. Com'n v. United Assets, LLC

Supreme Court of Mississippi - February 11, 2016 - So.3d - 2016 WL 541067

Mississippi Transportation Commission (MTC) filed complaint to condemn property. After a jury trial, the Special Court of Eminent Domain awarded more than $1.6 million as just compensation for the taking. MTC appealed.

The Supreme Court of Mississippi held that:

- MTC waived argument that appraiser's testimony was improper, and
- Jury's award was supported by substantial evidence.

Mississippi Transportation Commission (MTC) did not object to appraiser's testimony regarding after-taking value of remaining land in eminent domain case as soon as it reasonably appeared evidence was objectionable, and therefore MTC waived error for appeal, despite contention that MTC failed to object when appraiser opined that land had no commercial value and properly objected when appraiser later testified land had no value for any purpose. Appraiser's initial testimony about remainder was not limited to highest and best use, appraiser discussed both commercial and residential use, appraiser stated during voir dire that remainder was essentially worthless, and MTC did not object until after appraiser had testified several times that remainder had no value.

Jury's eminent domain award of more than $1.6 million was supported by substantial evidence, and therefore any error in admission of appraiser's testimony regarding after-taking value of remaining land was harmless. Jury viewed property, all witnesses agreed that highest and best use of property before taking was for commercial development, testimony established that remainder would have no access for several years, and award was between values provided by appraisers.

SEWER DISTRICT - MISSOURI

U.S. v. Geranis

United States Court of Appeals, Eighth Circuit - December 15, 2015 - 808 F.3d 723

United States filed lawsuit on behalf of United States Department of Agriculture (USDA), seeking to enjoin dissolution of county sewer district. Group of voters, customers, ratepayers, and property owners moved to intervene. The District Court denied motion, and group appealed. While appeal was pending, parties sought court approval for asset purchase agreement to sell district's assets to private entity and finally dissolve district, and group renewed its motion to intervene. The District Court denied motion, and group appealed.

The Court of Appeals held that alleged violation of group's interest in upholding vote to dissolve county sewer district did not establish standing to intervene.

Alleged violation of interest of group of voters, customers, ratepayers, and property owners in upholding vote to dissolve county sewer district and immediately dissolving district did not state specific individualized injury necessary to establish standing in federal court to intervene in United States government's action seeking to enjoin dissolution of county sewer district, since interests were shared by all voters who voted to dissolve district, and existing parties had not ignored or attempted to undermine vote in support of dissolution, and sought to effectuate district's dissolution in accordance with Missouri law, which required "no district shall be dissolved until all of its outstanding indebtedness has been paid."

Group of voters, customers, ratepayers, and property owners failed to show that any injury to interest in opposing repayment of revenue bond county sewer district issued to United States Department of Agriculture (USDA) was actual or imminent, and thus group did not state specific individualized injury necessary to establish standing in federal court to intervene in United States government's action seeking to enjoin dissolution of county sewer district. Through lawsuit, parties arranged a solution for repaying USDA that would lower rates, and group's alleged injury would arise only if sale of district's sewer system failed to close, USDA continued to demand payment on revenue bond, and district raised rates to pay the bond obligation.

Group of voters, customers, ratepayers, and property owners failed to establish that enforcement of

Missouri environmental and administrative regulations amounted to a “personal and individual” injury necessary to establish standing in federal court to intervene in United States government’s action seeking to enjoin dissolution of county sewer district, where group asserted only a generalized grievance, which was available to all members of sewer district.

Alleged violation of interest of group of voters, customers, ratepayers, and property owners in proposing on-site sewage treatment alternatives did not state specific individualized injury necessary to establish standing in federal court to intervene in United States government’s action seeking to enjoin dissolution of county sewer district, since any injury group could suffer with regard to ability to construct on-site systems was not “personal and individual” to group, and it was not caused by dissolution of district.

PENSIONS - NEW YORK

Regan v. Dinapoli

Supreme Court, Appellate Division, Third Department, New York - January 21, 2016 - 135 A.D.3d 1225 - 23 N.Y.S.3d 688 - 2016 N.Y. Slip Op. 00415

Petitioner, a teacher who later served as elected town supervisor, brought Article 78 proceeding seeking to review determination of State Comptroller denying petitioner retirement benefits credit for certain years of service. The Supreme Court, Albany County, dismissed petition. Petitioner appealed.

The Supreme Court, Appellate Division, held that:

- Petitioner was not permitted to receive teacher pension benefits and salary as elected official while also accruing service credits towards local retirement system (LRS) pension, and
- Comptroller was not equitably estopped from denying petitioner benefits.

Civil Service Law provision, which prohibited receipt of both a public pension and salary as public official or employee, except for public pensioners who became elected officials, did not permit petitioner to receive both his state teachers’ retirement system (TRS) pension benefits and his salary as elected official while simultaneously accruing service credit toward a state and local retirement system (LRS) pension. While provision made no express mention of service credit and instead referred only to benefits already awarded or allotted, it made no reference to accrual of any additional credit for new or greater benefits, and Retirement and Social Security Law provision, which considered petitioner an active member of TRS only if he suspended benefits during his time as elected village justice, meant that, as he did not suspend his TRS benefits while a justice, he was not an active member of LRS and, accordingly, did not accrue additional LRS service credit.

State Comptroller was not equitably estopped from denying petitioner, a teacher who later served as elected town supervisor and village justice, retirement benefits credit for certain years of service. No mistakes made regarding information provided to petitioner rose above level of erroneous advice given by government employee.

DEVELOPMENT - PENNSYLVANIA

Honey Brook Estates, LLC v. Board of Sup'rs of Honey Brook Tp.

Commonwealth Court of Pennsylvania - January 13, 2016 - A.3d - 2016 WL 147150

Developer sought review of decision of township board of supervisors, which disapproved developer's preliminary plan for a townhouse development. The Court of Common Pleas affirmed. Developer appealed.

The Commonwealth Court held that:

- Township acted in bad faith in its processing of developer's preliminary plan, and
- Fact that developer's property was not entirely within township's sewer district and thus could not be served by public sewer did not render developer's preliminary plan incapable of correction, and thus remand to township board of supervisors for review of plan was not futile.

EMINENT DOMAIN - TEXAS

City of Friendswood v. Horn

Court of Appeals of Texas, Houston (1st Dist.) - February 11, 2016 - S.W.3d - 2016 WL 638471

Owners of four lots within subdivision that had suffered severe damage in tropical storm filed suit against city and mayor, asserting claims for declaratory relief, breach of contract, inverse condemnation, and nuisance, arising out of city's purchase, with federal assistance, of 38 of 42 lots, for purposes of development of property for public park and amendments to subdivision's original deed restrictions on use of property for residential purposes only to conform to federal laws governing use of such property. The District Court denied city's and mayor's plea to jurisdiction on grounds of immunity, and they appealed.

The Court of Appeals held that:

- City was engaged in governmental function, to which governmental immunity applied, when it purchased lots that had been severely damaged in tropical storm and amended subdivision's deed restrictions in order to comport with its plan to develop property as municipal park;
- Owners did not state claim against city for inverse condemnation;
- City was immune from suit on claim for breach of contract;
- Statute waiving governmental immunity from suit for written contracts "stating the essential terms of the agreement for providing goods or services to the local government entity" did not apply;
- City was immune from suit for declaratory relief challenging legality of city's actions in amending subdivision's original deed restrictions; and
- City was immune from suit on claim for misrepresentation.

TAX - SOUTH CAROLINA

Duke Energy Corp. v. South Carolina Dept. of Revenue

Supreme Court of South Carolina - February 17, 2016 - S.E.2d - 2016 WL 626180

Taxpayer sought review of South Carolina Department of Revenue's denial of corporate income tax refund. The Administrative Law Court granted Department summary judgment. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer appealed.

The Supreme Court of South Carolina held that as a matter of first impression, taxpayer could not include principal recovered from sale of short-term investments in denominator of formula used to apportion income between states in calculating income tax obligation.

The return of investment principal to taxpayer from short-term investments was not a “sale” as that term was defined by statute, and was therefore not includable in denominator of formula used to apportion its income between states in calculating its South Carolina corporate income tax obligation. Inclusion of principal recovered from sale of short-term securities would produce absurd results, which could not have been intended by the General Assembly.

TAX - TEXAS

[HDSA Westfield Lake, LLC v. Harris County Appraisal District]

Court of Appeals of Texas, Houston (14th Dist.) - February 11, 2016 - S.W.3d - 2016 WL 552156

Community housing development organizations (CHDOs) appealed county appraisal review board’s decision upholding appraisal district’s denials of ad valorem tax exemptions for apartments owned by CHDOs. The District Court granted summary judgment to appraisal district. CHDOs appealed.

The Court of Appeals held that CHDOs were “owners” of apartments and were thus entitled to continuation of exemptions.

Community housing development organizations (CHDOs) were “owners” of apartments that had previously received tax-exempt status and were thus entitled to a continuation of ad valorem tax exemptions, even though entity that acquired apartments and then transferred legal title to the CHDOs was not itself a qualifying CHDO, where CHDOs undisputedly held legal title at time they filed timely applications for continuation of exemptions establishing that they were qualifying CHDOs.

TAX - OHIO

[State ex rel. Cornerstone Developers, Ltd. v. Greene Cty. Bd. of Elections]

Supreme Court of Ohio - January 29, 2016 - N.E.3d - 2016 WL 427839 - 2016 -Ohio- 313

Business sought writs of mandamus and prohibition against county board of elections, township, Secretary of State, and city, to prevent a tax levy from appearing on the township ballot.

The Supreme Court held that:

- Two-resolution process is required to place tax levy on ballot;
- The Supreme Court would not issue writ of prohibition to board of elections;
- Laches did not bar business’s action; and
- Business was not entitled to writ of mandamus against Secretary of State.

To levy taxes, a taxing authority is required to first adopt a resolution of necessity and, once the auditor responds, the taxing authority must then adopt a resolution to proceed.

Supreme Court would not issue writ of prohibition to board of elections in business’s dispute over township’s placement of tax levy on ballot, where there was no statutory obligation upon board to conduct hearing.

Laches did not bar business's action for writs of mandamus and prohibition in dispute over township's placement of tax levy on ballot without passing required two resolutions, despite contentions that business should have brought action when township approved first resolution, when township certified levy to board of elections, or when board approved matter for ballot. Action brought after approval of first resolution would have been premature, as ballot measure was not pending before board, business was not on notice of when township certified levy to board, and business brought action four business days after board approved levy for ballot.

Business was not entitled to writ of mandamus against Secretary of State in dispute over township's placement of tax levy on ballot, where Secretary had not acted at all.

Public-Private Partnerships Have Limited Impact on Government Debt - Moody's.

Public-private partnerships have had a limited impact on government debt profiles around the globe, including in the U.S. states of California, Florida and Indiana, Moody's Investors Service said in a report published on Monday.

The market for leveraging private dollars to build public projects is far more mature in the U.K., Canada and Australia than it is in the United States. Construction firms have been eyeing the United States as the largest untapped market for such projects globally.

Obligations from such so-called PPP, or P3, projects make up only about 0.5 percent of the total net tax-supported debt in California, for example.

In Florida, that number is 11.4 percent, and for triple-A rated Indiana, it is 24.2 percent, Moody's said.

"Funding for PPP projects is often spread over a long period of time," Moody's analyst Kathrin Heitmann said in a statement. "Fiscal commitments are often small in scale relative to the size of a government's balance sheet and revenue sources."

The U.S. market has been slow to develop, largely because state and local governments can use low-interest municipal bonds to build bridges, schools, water treatment facilities and other infrastructure.

Even so, several massive U.S. transportation projects underway have P3 components, including California's $68 billion high-speed rail and Illinois' $14 billion South Suburban Airport near Chicago. P3s are also being used and considered more often for universities and public buildings like courthouses.

The contracts can also be long, complicated and sometimes risky. Kentucky's $324 million P3 for statewide high-speed internet access faces a 39 percent shortfall in the annual revenue it needs to make bond payments, state officials said in January, according to WDRB News in Louisville.

P3 payment obligation risks can also stress the credit profile of procuring governments, especially in economic downturns or for governments with poor creditworthiness, Moody's said.

So far around the world, however, "the credit strength of most public sector entities has proved resilient to contractual and contingent PPP risks," it said.

Moody's report was constrained by its ability to capture some P3 obligations in its review of debt because not all contractual payment obligations are disclosed, it said.

The report was released in conjunction with the 2016 Institute of International Finance's G20 summit in Shanghai.

Reuters

(Reporting by Hilary Russ; Editing by Dan Grebler)

Mon Feb 22, 2016

[MSRB Launches Outreach Effort for Issuers on the Municipal Securities Market.]

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today it is launching an outreach effort to remind state and local governments about the free education resources and tools available to support their issuance of municipal bonds. The MSRB operates an online Education Center about the municipal securities market and the Electronic Municipal Market Access (EMMA®) website to support market transparency and awareness.

"Part of the mission of the MSRB is to educate state and local governments on how to use the MSRB's free tools to help them navigate the municipal bond market," said MSRB Executive Director Lynnette Kelly. "The MSRB wants to be the 3-1-1 for municipal bond issuers—we're here to assist when they have questions about how to use EMMA and what to expect from their financial professionals."

The MSRB's new campaign will highlight resources issuers can use to help them fulfill their continuing disclosure obligations to investors and understand what they need to know about new regulations for municipal advisors who advise state and local governments on municipal securities transactions. The outreach effort will also help issuers learn how they can take full advantage of the EMMA website to communicate with investors.

A series of webinars, emails and related communications aimed and state and local governments will be offered over the next six months. The first webinar, called "Click, Call, Comply: Understanding Continuing Disclosure," will be offered on March 18, 2016 at 12:00 p.m. Register for the webinar. CPE credit is available.

State and local governments and related organizations that wish to learn more about the MSRB's outreach effort or request the MSRB's appearance at an upcoming event should contact Ritta McLaughlin, MSRB Chief Education Officer, at 202-838-1306 or rmclaughlin@msrb.org. Sign up to receive emails about state and local government education from the MSRB.

State and local governments and other municipal entities issue approximately $400 billion in municipal bonds each year. The issuance of these bonds involves, among other things, the hiring of financial professionals, such as underwriters and municipal advisors, and communicating to investors on a regular basis.

"When state and local governments decide to issue bonds to finance public infrastructure projects, they can benefit from access to objective information about the market," Kelly said. "The MSRB is a neutral resource available to support issuers' information needs and their disclosure obligations."

Date: February 23, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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IRS Proposed Political Subdivision Rules Would Be Big Change for Munis.

WASHINGTON – The Internal Revenue Service is proposing new rules for political subdivisions issuing tax-exempt bonds that lawyers say will completely change the regulatory landscape and the way infrastructure has been financed in a number of states.

Under the proposed rules, which are slated to be published in the Federal Register on Tuesday, an entity is a political subdivision that can issue tax-exempt bonds if it meets a three-prong test. It must exercise sovereign powers, serve a governmental purpose, and be governmentally controlled. The requirement to be governmentally-controlled is new.

Historically, community development districts in Florida, metropolitan districts in Colorado, and rural utility districts in California and other states have been set up to issue tax-exempt bonds to finance public infrastructure such as roads, sewer and water systems for a variety of development projects. Initially the districts are controlled by developers, but as homes, business parks or shopping areas are built and irrigation systems are set up, that control is passed onto to users such as homeowners, businesses or farmers.

Now the IRS wants political subdivisions to be controlled by state or local governments or a group of elected officials that do not constitute a "private faction."

"This changing the landscape, it's such a change from how the rules were done before," said Vicky Tsilas, a partner at Ballard Spahr here and former associate tax legislative counsel at the Treasury Department. "But the good news is that they are only proposed and there's the ability to comment on them."

Tsilas noted that the proposed rules would restrict the financing of infrastructure at a time with the federal government is trying to promote it.

"This is a big shift in the law in many people's views," said Carol Lew a shareholder at Stradling Yocca Carlson & Rauth in Newport Beach, Calif. "Some of the tests – the three-prong test – are going to be difficult to apply, particularly for small districts such as small irrigation districts" where there may only be three famers that own the land.

"I think it will surprise the IRS as to how many districts are potentially affected by these," said Perry Israel, a lawyer with his own practice in Sacramento, Calif. who represents the Village Center Community Development District in Florida in a current dispute with the IRS that served as the impetus for these proposed rules.

The proposed rules would take effect beginning 90 days after they are finalized. However, they would not apply to existing tax-exempt bonds or to refundings that do not extend the maturities of the underlying bonds. Also, there would be a three-year transition period, under which entities in existence "prior to 30 days after the proposed rules are published" could continue to issue tax-exempt bonds while restructuring to comply with the new rules.

Comments on the new rules and requests to speak at a June 6 public hearing are due by May 23.

Dee Wisor, an attorney at Butler Snow in Denver, said the transition rule might cause a “rush to market” to issue tax-exempt bonds or refunding bonds for existing political subdivisions. He said the infrastructure in these developments has been financed in part with five- to seven-year bank loans with the intent of replacing the short-term loans with longer term tax-exempt bonds. But this wouldn’t comply with the restrictions on refundings.

“If they’re saying a developer can’t form a district and issue tax-exempt bonds, that’s going to be a big deal,” Wisor said.

In a section of the proposed rules called “Possible Relief for Development Districts,” the IRS asked for public comments on whether development districts should be political subdivisions during an initial development period in which one or two private developers could elect the district’s governing body and no other government control exists.

“The Treasury Department and IRS recognize that the governmental control requirement may present challenges for [some] development districts,” the agencies said, adding that they are “concerned about the potential for excessive private control by individual developers, the attendant impact of excessive issuance of tax-exempt bonds, and inappropriate private benefits form this subsidy.”

Lawyers and other market participants have been seeking guidance on the definition of a political subdivision ever since the IRS issued a very controversial technical advice memorandum in 2013. The TAM concluded the Village Center CDD was not a political subdivision, and therefore could not have issued millions of dollars of tax-exempt bonds as it did from 1993 to 2004, because its board was and will always be controlled by the developer rather than publicly elected officials.

Lawyers argued that the notion that control by elected officials is necessary for an entity to be a political subdivision is a new requirement and that such changes should be made through regulatory proposals that can be commented upon rather than through a TAM. Historically, the determination of whether an entity was a political subdivision was based on whether it had the right to exercise substantial sovereign powers, such as the power to tax for services, they said. The IRS has since said the TAM would not be retroactively applied.

In its proposed rules on political subdivisions, the IRS would provide at least three benchmarks of rights or powers that constitute control. These would be the right or power: to both approve and remove a majority of an entity’s governing body; to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; and to approve or direct the significant uses of funds or assets of the entity in advance of those uses.

Aside from these three arrangements, the determination of whether a collection of rights and powers constitutes control would depend on facts and circumstances. Control of an entity by a small faction of private individuals, businesses or corporations, trusts, partnerships or other persons “is fundamentally not governmental control,” the IRS said.

Therefore the proposed rules would generally require that control be vested in either a general purpose state of local governmental unit or in an electorate established under an applicable state or local law of general application.

The IRS provides two facts and circumstances tests that serve as brackets to determine if there is governmental control. On one hand, the number of private persons controlling an electorate "is always unreasonably small" if the combined votes of the three voters with the largest share of votes determine the outcome of an election, regardless of how the other voters vote, the agency said.

On the other hand, the number of private persons controlling an electorate "is never unreasonably small" if determining the outcome of an election requires the combined votes of more voters than the 10 with the largest share of votes. "For example, control can always be vested in any electorate comprised of 20 or more voters that each have the right to cast one vote in an election without giving rise to a "private faction," the IRS said.

The proposed rules would place more emphasis on the fact that an entity must serve a governmental purpose to be a political subdivision. "Arguably, this was there before," Israel said. "This puts more emphasis on it."

Finally, the rules would maintain the existing longstanding requirement that a political subdivision be empowered to exercise a substantial amount of at least one of three generally recognized sovereign powers: eminent domain, or the power to take private property for public use, as well as the powers to police and tax.

THE BOND BUYER

BY LYNN HUME

FEB 22, 2016 12:58pm ET

[NABL: IRS Issues Proposed Political Subdivision Regulations.]

The Internal Revenue Service issued proposed regulations (REG-129067-15) revising the definition of political subdivision for the purpose of tax-exempt bonds. The proposed regulations include transition rules under which the definition of political subdivision will not apply (1) for determining whether outstanding bonds are obligations of a political subdivision, and (2) to existing entities for a transition period.

A public hearing is scheduled for June 6, 2016 at 10:00 AM. Comments and requests to speak must be submitted by May 23, 2016.

[Click here to view the proposed regulations.]

For more information about political subdivision, attend the [Tax Hot Topics panel at NABL's Tax and Securities Law Institute.] The panel will include John J. Cross III, Associate Tax Legislative Counsel at the Department of Treasury, and a discussion on these proposed regulations.

[NABL Submits Additional Issue Price Comments.]

Today, NABL submitted a letter to the Internal Revenue Service and the United States Department of Treasury, supplementing NABL's issue price comments submitted on September 22, 2015. In the letter, NABL requests an exception to the general rule for establishing issue price, separate from the alternative method, based on the unique nature of competitive sales and the burden placed on small issuers.

Click here to view NABL's supplemental letter.

For more information about issue price regulations, attend the Tax Hot Topics panel at NABL's Tax and Securities Law Institute. The panel will include John J. Cross III, Associate Tax Legislative Counsel at the Department of Treasury, and a discussion on the proposed issue price regulations.

Oppenheimer One of 7 Firms FINRA Fines Over Minimum Denominations.

WASHINGTON — Oppenheimer & Co., WFG Investments, and E*TRADE are three of seven firms that the Financial Industry Regulatory Authority fined a total of $412,500 for trading municipal securities below the minimum denomination.

The cases were included in FINRA's monthly disciplinary actions released on Tuesday. FINRA also imposed a total of $90,000 in fines against New York City-based BGC Financial, L.P. and Memphis-based Duncan-Williams, Inc. for failures in reporting muni transactions as well as a $225,000 fine against Oppenheimer in New York City for supervisory failures.

Aside from its $200,000 fine against Oppenheimer, FINRA's other fines tied to trading below the minimum denomination ranged from $25,000 to $42,500 and were lower than fines the Securities and Exchange Commission previously levied for similar misconduct.

The SEC charged 13 firms in 2014 for selling Puerto Rico bonds in denominations below the $100,000 set minimum. Those firms paid fines ranging between $54,000 and $130,000. The SEC also penalized StateTrust Investment, Inc. $90,000 in 2015 for trading below an issuer's specified minimum denomination.

Minimum denominations usually range from $5,000 to $100,000 depending on the issuer's assessment of how suitable the bonds are for retail and institutional investors. The minimums found in the wide array of CUSIPs listed in FINRA's recent citations fell throughout that range but many were set at the $100,000, meaning they were suitable only for institutional investors.

Oppenheimer's $200,000 fine was by far the largest of the seven FINRA charged. The regulator found that between January 1, 2012 and June 24, 2014, Oppenheimer executed 148 transactions in municipal securities in amounts lower than the established minimum denominations. The conduct was found to have violated the Municipal Securities Rulemaking Board's Rule G-15 on confirmation, clearance, settlement, and other uniform requirements with respect to transactions with customers. FINRA also found that Oppenheimer's failure to inform its customers of the trades below the minimum denomination violated MSRB's Rule G-17 on fair dealing.

Dallas-based WFG Investments, New-York based E*TRADE, and Salt Lake City-based Zions Direct, Inc. were each fined $42,500 for their trading below the minimum denomination. Zions executed 12 trades below the established minimums between January 1, 2012 and May 1, 2015, WFG executed19 transactions below the issuers' denominations between January 1, 2014 and April 30, 2015, and E*TRADE's violations involved 14 transactions between January 1, 2012 and May 1, 2015. FINRA found the firms violated MSRB Rules G-15 and G-17, as well as MSRB Rule G-27 on supervision because they did not have appropriate supervisory procedures to catch trades below minimum denominations.

FINRA also fined New York-based Beech Hill Securities and Morristown, N.J. -based Securevest Financial Group $30,000 for trading munis below set minimum denominations. Securevest's violations involved 27 customer transactions between January 1, 2012 and May 1, 2015 and Beech Hill's were in connection with 12 trades January 1, 2012 and March 31, 2015, FINRA found. Both firms were also cited for violating MSRB Rules G-15, G-17, and G-27.

FINRA also levied a $25,000 fine against Seattle-based National Securities Corp., which FINRA found executed 17 customer transactions below established minimums between January 1, 2012 and March 31, 2015 and violated MSRB Rule G-15.

Oppenheimer was also fined $225,000 separately for supervisory failures between January 1, 2009 and September 20, 2014. FINRA found that during that time, Oppenheimer held about 85 short positions in tax-exempt munis that corresponded to long positions in customer accounts. The short positions mainly resulted from trading and operational errors at the firm's retail branch level and trading accounts. In the event of short positions, Oppenheimer would cover the short position and pay taxable interest to the customer. The short position would also move to a branch error account or firm trading account, depending on the part of the firm where the error occurred.

FINRA found that Oppenheimer did not have procedures in place to adequately follow through on the payments to the customers and because of that, many payments were delayed from several months to a year. The procedures the firm had in place also misidentified the interest customers were paid as tax-exempt when it was actually taxable.

Starting in 2013, Oppenheimer recognized the positions were not being covered in a timely way and that the customers were receiving inaccurate information about the tax status of the paid interest. Oppenheimer then started instituting procedures to properly report and cover short positions and has had discussions with the Internal Revenue Service about making payments to protect the affected customers from having to pay additional federal income tax.

FINRA found that Oppenheimer's failures violated MSRB Rules G-27, G-17, and G-8 on books and records.

In the separate citations against the companies with muni transaction reporting failures, FINRA fined Duncan-Williams $50,000 and BGC $40,000.

The self-regulator found that between April 1, 2014 and June 30, 2014, BGC submitted 73 transaction reports to the MSRB's Real-time Transaction Reporting System that contained inaccurate information. FINRA found BGC failed to maintain its records of the analysis done to make sure the securities represented fair market value.

Duncan-Williams was found to have failed to report the correct time of trade to RTRS in 32 muni transaction reports between January 1, 2013 and March 31, 2013. The transactions amounted to 2.03% of the transactions the firm reported during that period.

Both firms were found to have violated MSRB Rules G-8, G-27, and G-14 on reports of sales or purchases.

In addition to citations against firms, FINRA also announced it has barred two individuals, Glenn Nicholas Caruso of East Meadow, N.Y. and Edward Joseph Vierling Sr. of Garden City, N.Y. from having any association with FINRA because of failures to provide testimony regarding relevant municipal bond trading the self-regulators was investigating.

THE BOND BUYER

BY JACK CASEY

FEB 16, 2016 4:04pm ET

MSRB Educates Retail Investors on Ways to Buy Municipal Bonds.

Washington, DC – To help retail investors weigh their options when buying or selling municipal securities, the Municipal Securities Rulemaking Board (MSRB) has published a new educational guide outlining the several alternative *Ways to Buy Municipal Bonds.*

Consistent with a recommendation from the Securities and Exchange Commission's (SEC) Report on the Municipal Securities Market, the MSRB's guide aims to improve investors' understanding of the relative advantages and disadvantages of the different methods of buying municipal securities, from working with a full-service broker to trading independently through a self-managed account.

"This new guide is one of many free, objective educational resources available from the MSRB for investors seeking to be more informed about their decision to buy or sell municipal securities," said MSRB Executive Director Lynnette Kelly.

The MSRB Education Center includes multimedia resources about the risks, opportunities and regulatory protections in place for investors in municipal bonds. Retail investors can also access general information about the municipal bond market, preparing to invest, working with financial professionals and understanding disclosures provided by bond issuers available on the MSRB's Electronic Municipal Market Access (EMMA®) website.

Date: February 19, 2016

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S&P's 2015 Upgrades Nearly Doubled Downgrades.

Standard & Poor's made nearly twice the number of upgrades as downgrades in United States Public Finance in 2015.

It was the fourth consecutive year and the 13th consecutive quarter that S&P's upgrades outnumbered its downgrades in the sector, S&P senior director Lawrence Witte and associate Jason Ontko wrote in their report.

Every subsector except higher education and charter schools saw more upgrades than downgrades. S&P downgraded 69 higher education ratings and upgraded 29 in that group. It downgraded 25 and upgraded nine charter school ratings.

"Puerto Rico and other organizations in the commonwealth accounted for more downgrades – 115, including four defaults – and more multiple notch downgrades than any other entity," Witte and Ontko wrote. The Puerto Rico rating changes were 7% of all of S&P's U.S. public finance rating changes in the year.

S&P's upgrade of California to AA-minus from A-plus in July affected 97 ratings, according to the S&P report, "U.S. Public Finance Records Nearly Twice as Many Upgrades as Downgrades in 2015."

Witte and Ontko cited improved issuer finances as the primary reason for upgrades outnumbering downgrades.

On the other hand, S&P's rated issuers had 12 defaults in 2015, the third highest since 1986.

In a similar year-in-review release Moody's Investors Service last week reported its ratio of upgrades to downgrades in the year was 1.067. This compares to S&P's 1.94 ratio.

The Moody's report indicated that Moody's had downgraded more par value than upgraded it in 2015. S&P's report didn't provide a comparison of upgrades versus downgrades by par value.

THE BOND BUYER

BY ROBERT SLAVIN

FEB 16, 2016 5:18pm ET

MSRB Amends its Rule Regarding Calculations for Bonds that Do Not Pay Interest Semi-Annually.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) an amendment to MSRB Rule G-33, on calculations, to modernize the mathematical formula in Rule G-33(b)(i)(B)(2). The updated formula better reflects the technologies currently available to efficiently conduct this more precise calculation.

The compliance date for the amended pricing formula is July 18, 2016.

Read the regulatory notice.

View the SEC filing.

Initial Support for MSRB Pricing Guidance Proposal.

WASHINGTON – Challenges remain despite initial favorable reaction to a proposal to establish guidance for municipal securities dealers calculating prevailing market price and compensation in principal transactions, say dealers and members of industry groups.

The Municipal Securities Rulemaking Board's guidance, designed to harmonize MSRB standards with those previously established by the Financial Industry Regulatory Authority, was released on Feb. 18 in the form of amendments to MSRB Rule G-30 on prices and commissions. FINRA's guidance took effect in 2007 and currently applies to corporate debt and Treasury securities.

While the board felt FINRA's guidance, which took the Securities and Exchange Commission ten years to approve, was a good starting point, it emphasized that its own guidance would account for the unique aspects of the muni market.

The MSRB's solicitation of comments on establishing the prevailing market price for principal transactions is viewed as a precursor to rule changes that would require dealers acting as principals to disclose to retail customers the markups and markdowns on muni trades.

Leslie Norwood, a Securities Industry and Financial Markets Association managing director and co-head of munis for SIFMA, said the group is pleased the MSRB is recognizing there must be differences in how it applies the guidelines to the municipal market. The markets for many municipal securities "are diverse, fragmented and localized, and determining the market price of securities that trade infrequently can be challenging," she said. SIFMA plans to file more detailed comments on the proposed guidance in the coming weeks because the proposal will "likely have a material effect on the MSRB's pending confirmation disclosure proposal," according to Norwood.

Mike Nicholas, Bond Dealers of America's chief executive officer, said BDA appreciates "this logical next step" from the MSRB and believes that "achieving full harmonization of the FINRA and MSRB proposals is an essential component of any future retail confirmation rule."

Hutchinson, Shockey, Erley & Co. president and chief executive officer Thomas Dannenberg said he plans to think about the proposal further but appreciates the value of consistency and harmonization between regulatory standards. However, while he believes the MSRB is cognizant of the needed differences for the municipal market, he does question "whether an overly forced attempt to harmonize will distort the uniquely distinct characteristics of trading and pricing in the municipal securities market."

The MSRB's guidance follows FINRA's in proposing a "waterfall" or hierarchy of factors that dealers should look at to determine the prevailing market price of a municipal security.

The hierarchy places an emphasis on contemporaneous trades in establishing the value of dealer costs and proceeds, but allows for alternatives if contemporaneous trades are not available.

Micah Hauptman, financial services counsel with the Consumer Federation of America, said that while he is still reviewing the proposal, he has questions about whether dealers will be able to game the calculations "in a way that is more favorable to them and may hide the true transaction costs investors are paying."

The "waterfall" would first have dealers look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of a prevailing market price.

If the dealer does not believe contemporaneous trades are representative of the security, it can rebut the presumption that the trades determine the prevailing market price by showing changes in factors like interest rates, the credit quality of the debt, or news about the security or issuer that has changed the market's perception of the market value of the security.

If the dealer does not have contemporaneous trades of the muni security, it must follow a specific order of steps. The first is to look at contemporaneous trades of the muni security among other dealers. If the dealer cannot find any, it can then look at trades of the security between other dealers and institutional investors with which the dealers regularly trade that same security. If there are no trades that fit that qualification, the dealer can then look at electronic platforms where trades occur at displayed quotations.

If there are no contemporaneous trades in the muni security or quotes, the dealer may look at contemporaneous trades of similar securities, which at a minimum would have a comparable yield. To see if a security is similar, the dealer would look at features, provisions, or technical factors that could affect the yield in the same way, such as credit quality, spreads, maturities, call dates, or tax treatment.

If none of the prescribed methods work, dealers could base their prevailing market price calculations on economic models that apply the “waterfall” concept and take into account such things as credit quality, interest rates, industry sector, maturities, and call provisions.

MSRB Rule G-30, where the “waterfall” provisions would be adopted, generally requires a dealer to buy munis for its own account from customers, or sell munis from its own account to customers, at an aggregate price that is “fair and reasonable.” The transaction price to the customer must bear a reasonable resemblance to the prevailing market price of the security. The dealer’s compensation in principal trades with customers must be computed from the interdealer market price prevailing at the time of the transaction.

THE BOND BUYER

BY JACK CASEY

FEB 19, 2016 4:06pm ET

Pew: More Public Pension Fund Transparency Needed on Fees.

Public retirement systems need to do a better job making their investment costs more transparent, said a report issued Thursday by the Pew Charitable Trusts.

Pew’s public-sector retirement systems project looked at reporting practices of the 73 largest state pension funds, which together have $2.9 trillion in assets, representing more than 95% of all state investment assets, according to the U.S. Census Bureau.

Looking at financial data collected from 2012 to 2014, Pew found a “wide variation” in asset allocation, performance disclosure and reporting of fees. “In many cases, current disclosure policies make it difficult for policymakers, stakeholders and the public to gauge the actual performance of these funds,” the report said.

Pew suggested several steps that public pension funds should take to improve transparency, including:

- Adopt fee-reporting standards, such as ones proposed by the Institutional Limited Partners Association;
- Make investment policy statements transparent and accessible;
- Disclose bottom-line performance, both net and gross of fees;
- Include longer-term performance results; and
- Report results by asset class, before and after fees.

More transparency is important now, Pew said, because alternative investments have more than doubled in recent years, representing 25% of allocations in 2013, up from 11% in 2006. Pew defined alternatives to include private equity, hedge funds, real estate and some commodities. In private equity, the treatment of carried interest is “a significant contributor” to the wide variation in fees reported by the 73 pension funds, Pew said. For all investments, the 73 funds paid more than $10 billion in fees and expenses in 2014, which represents a 30% increase in the past decade, Pew found.

Some public pension funds are better than others in reporting more detailed fees, Pew found, noting that the $28.2 billion South Carolina Retirement Systems, Columbia, and the $9 billion Missouri State Employees' Retirement System, Jefferson City, reported more than just invoiced management fees, and included performance fees.

Among the 73 plans studied, 59 provide online access to investment policies, 27 report 10-year results gross of fees, 13 regularly provide 20-year returns and six provide it by asset class.

With investment returns accounting for an estimated 60% of public pension benefits, "boosting transparency is essential," said the report. "The first steps are to provide bottom line, net-of-fee results because ultimately that's the amount of money that's available for benefits," said Greg Mennis, director of the public sector project, in an interview.

Download the Report.

PENSIONS AND INVESTMENTS

BY HAZEL BRADFORD | FEBRUARY 18, 2016 3:31 PM | UPDATED 3:35 PM

— Contact Hazel Bradford at hbradford@pionline.com | @Bradford_PI

Mintz Levin: Department Of Energy Provides Major Funding Opportunities.

The start of the new year has brought with it numerous opportunities for energy tech funding from the Department of Energy. Hundreds of millions of dollars have been or are being given out to companies and research institutions across the country – opportunities stretch a wide variety of focus areas, from solar energy storage to grid modernization. It's evident that energy and environment is a top priority for the Obama administration in its final year in office, and this is good news for those companies on the cutting edge of energy technology. For details on several of the DOE's funding initiatives and its particularly substantial efforts on grid modernization in particular, read on.

One of the most significant recent DOE funding efforts is its new Grid Modernization Multi-Year Program Plan. Alongside the plan comes an award of up to $220 million over three years to support research and development in advanced storage systems, clean energy integration, standards and test procedures, and a number of other key grid modernization areas. The DOE has already invested more than $4.5 billion through the Recovery Act stimulus funding over the past few years. This most recent round of grid mod funding will support 88 innovative grid technology projects led by 14 of DOE's National Labs, in coordination with public and private-sector partners. These projects will seek to solve challenges posed by the integration of conventional and renewable sources with energy and smart buildings, all while ensuring the grid is secure against threats like cyber-attacks and climate change. For more info on the labs and projects that will be funded by the DOE award, click here.

Other recently announced DOE funding opportunities include the following:

– $58 million to advance fuel-efficient vehicle technologies, with which the DOE will solicit projects across vehicle technologies like energy storage, electric drive systems, and advanced combustion.

– [$21 million] to lower solar energy deployment barriers, money that is intended to help states take advantage of falling solar prices while also supporting research on solar energy innovation and technology adoption patterns.

– [$18 million] to develop solar energy storage solutions, money that will fund six new projects across the US that will enable the development and demonstration of integrated, scalable, and cost-effective solar tech that incorporate energy storage power to American homes after the sun sets or when clouds are overhead.

– [$11.3 million] to develop flexible biomass-to-hydrocarbon biofuels conversion pathways that can be modified to produce advanced fuels and/or products based on other factors like market demand.

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

Article by Thomas R. Burton III

Last Updated: February 12 2016

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Why Do Politicians Care So Much About the Fine Print in Regulators' Liquidity Requirements for Banks?

According to civics textbooks, Congress passes broad laws and leaves it to the regulators to work out the details on how to implement them. But when the regulators craft a rule that could pinch institutions in virtually every congressional district, lawmakers are apt to jump back in.

Hence the unusual bipartisan campaign challenging the Federal Reserve and other bank regulators over the arcane question of just what counts as "level 2A high-quality liquid assets," or HQLAs, on a bank's balance sheet.

Under postcrisis rules designed to limit the need for unpopular bailouts, banks are supposed to hold enough liquid assets to fund operations for as long as 30 days in case a new crisis triggers a sudden need for large amounts of cash. Nobody seems to disagree with that goal.

But controversy arose when the regulators ranked different kinds of assets in terms of their value in providing liquidity. They gave the highest weight to cash, Treasurys, and mortgage-backed securities. They want to give less weight to securities issued by municipal governments. "Municipal securities generally are not very liquid," or easily dumped at a time of stress, Fed Chairwoman Janet Yellen told Congress Feb. 11.

But municipal securities are crucial to funding local governments and infrastructure projects around the country. Issuers worry the regulators' determination will discourage banks from holding munis, forcing them to pay higher interest rates to keep borrowing. On Feb. 1, the House passed by voice vote a bill overriding the rules and allowing banks to count municipal bonds to meet their liquidity requirements.

It's less about the safety and soundness of banks and more about the ability of towns and counties in their districts to raise funds—a completely different, albeit understandable, goal.

"Without this fix, critical local infrastructure and other projects could lack the financing they need to go forward, costing us jobs and hurting local communities," Rep. Carolyn Maloney (D., N.Y.), a leading sponsor of the legislation, said in a statement.

The bill still needs to be considered in the Senate, where the issue came up during Ms. Yellen's most recent testimony. "This bill would interfere with our supervisory judgments about what constitutes adequate liquidity," she told lawmakers. But that has nothing to do with building roads.

THE WALL STREET JOURNAL

By JACOB M. SCHLESINGER

Updated Feb. 22, 2016 11:30 a.m. ET

Write to Jacob M. Schlesinger at jacob.schlesinger@wsj.com

MSRB Publishes Draft Guidance to Support Fair Pricing of Municipal Securities and Dealer Compensation Calculations.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today proposed new regulatory guidance on how municipal securities dealers price bonds and calculate their compensation.

"Today's draft pricing guidance is a major step in the MSRB's effort to ensure investors are getting a fair price when buying and selling municipal bonds, and ultimately, that they better understand the cost of their transactions," said MSRB Executive Director Lynnette Kelly. "We are eager to continue our momentum on advancing these important issues in coordination with other regulators."

The MSRB's draft guidance seeks to promote consistent compliance by municipal securities dealers with existing fair-pricing obligations to investors and better align standards on these subjects with those that apply to other fixed income securities. The MSRB believes the draft guidance also could support development of a possible mark-up disclosure rule for the benefit of retail investors in the municipal securities market.

Public comments are due March 31, 2016. The MSRB will host an educational webinar about the rule on Thursday, March 10, 2016 at 3:00 p.m. Eastern Time. Webinar participants are eligible to receive continuing professional education credit. Register for the webinar.

MSRB rules govern dealer pricing and compensation, and require dealers to engage in municipal securities transactions with customers at an aggregate price that is fair and reasonable. To meet this standard, the aggregate price must bear a reasonable relationship to the "prevailing market price" of the security, and, as part of the aggregate price, the dealer's compensation—in the form of a "mark-up" or "mark-down"—must also be fair and reasonable.

The MSRB's reevaluation of what factors dealers should consider in establishing the prevailing market price of a municipal security seeks to promote consistent compliance with existing fair-pricing obligations. The MSRB also believes that additional guidance on prevailing market price may be necessary for its development of a possible new requirement that municipal securities dealers disclose on customer confirmations the amount of the mark-up or mark-down in certain transactions with retail investors.

Today's draft prevailing market price guidance for municipal securities is designed to harmonize it with the guidance established by FINRA for purposes of other types of fixed income securities, to the extent appropriate in light of the differences between the markets. At the same time, the MSRB recognizes there are important differences between the municipal market and other markets and is specifically inviting comment on the appropriate tailoring of the draft guidance to address these differences.

Date: February 18, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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'Government Only Pays for the Positive Outcomes.' A Strikingly New Approach to Social Problems.

Two states announced Tuesday that they would experiment with an unusual method of financing human service programs that allows governments to pay nothing unless the programs are successful.

The approach recruits private companies and philanthropies to provide millions of dollars up front for efforts aimed at difficult social problems. If they meet a series of measurable goals over a number of years, the states will pay them back — with interest.

"We're basically trying to monetize prevention," said Tracy Palandjian, chief executive officer of the Boston-based nonprofit organization Social Finance, which helped bring the various sides together in contractual arrangements in Connecticut and South Carolina. "We're basically using private dollars to invest early" and avoid the higher cost of dealing with the impact later on.

Dubbed "Pay for Success" by the White House, which is cheerleading the effort, the approach is also known as "social impact bonds." Pioneered in Britain in 2010, it is so new that there appears to be no independent research on its overall effectiveness, though some think tanks have written approvingly of the model.

Connecticut Gov. Dannel Malloy (D) announced Tuesday that his state would begin a $12 million, four-year initiative to help keep the children of 500 families out of foster care. Social workers from the Yale Child Study Center will work intensively to keep the children in their homes, focusing on parents with substance abuse problems.

The state spends about $350 million annually for services to children in foster care and institutions, said Joette Katz, commissioner of the Department of Children and Families. No funder has yet been named for the initiative, but officials said several are interested.

Should the program succeed, the state will return providers their money plus an "interest" bonus of 5 percent to 6 percent — money, Katz noted, that the state will have saved on foster care expenses by that time.

In South Carolina, Gov. Nikki Haley (R) announced a $30 million, four-year program that will send registered nurses who specialize in maternal and child health into the homes of low-income pregnant women. The nurses will help mothers learn parenting skills and how to keep their children healthy. The nurses will follow the families until the children turn 2.

The program, expanding on an existing state effort, will be funded by organizations that include the BlueCross BlueShield of South Carolina Foundation, the Duke Endowment and the Boeing Co. It will be evaluated by a research group at the Massachusetts Institute of Technology, which will determine whether the program meets goals such as fewer pre-term births, fewer hospitalizations and emergency room visits, and longer intervals between births.

A third jurisdiction, the city of Denver, also was scheduled to announce Tuesday that it had found an investor for a previously unveiled initiative to tackle chronic homelessness.

Governments commonly demand proof of performance before paying the full amount of private-sector contracts, but that is unusual in human services, said John Roman, a senior fellow in the policy advisory group at the Urban Institute. The Washington-based think tank has helped organize some of the new programs.

Typically, governments at all levels spend tax dollars indefinitely to aid their most disadvantaged citizens without insisting on progress toward stated goals — think of food stamps or classic welfare programs. Philanthropies and foundations provide time-limited grants with no expectation of being reimbursed.

Under this model, government writes a check only if a program meets agreed-upon measures. This distinction is an incentive for funders, which can get their money back to use again.

“Government only pays for the positive outcomes,” said Dave Wilkinson, director of the White House Office of Social Innovation.

That doesn’t always happen. In the first attempt of this approach in the United States, Goldman Sachs lost $7.2 million when a project it funded in 2012 failed to reduce recidivism by the targeted 10 percent among teenagers released from New York City’s Rikers Island jail. The firm’s financial hit was cushioned by a $6 million guarantee from the Bloomberg Philanthropies.

The Washington Post

By Lenny Bernstein

February 16, 2016

Making Transportation Finance History with a Green Muni Bond.

We’ve made tremendous strides up the high road to a clean energy economy over the past decade, thanks not just to new car performance standards and the Clean Power Plan but also to historic investments made in the much-maligned American Reinvestment and Recovery (Recovery Act). The building momentum is palpable and inspiring.

And much more investment is needed. Credible estimates claim that trillions of dollars will need to drive us forward to this brighter future. And this is where environmental finance can fill the gap. What is environmental finance? As guru Michael Curley sums up, “The goal of environmental finance is to bring the greatest environmental good to the largest number of people at the lowest possible cost.” (for this and much other wisdom see his textbook on finance policy). To do this job, finance experts have a toolbox. The Recovery Act used a couple of tools, most notably grant-making and tax incentives. Fortunately, there's also a multi-trillion dollar global bond marketplace.

In order to help attract investors in this market, NRDC is proud to be part of the Green City Bond Campaign (organized by the Climate Bonds Initiative) to help with the certification and issuance of bonds to finance new infrastructure, including clean transportation projects. Green city bonds are similar to municipal bonds, except that they are labeled "green," their proceeds go to green investments and issuers "track and report on the use of proceeds to ensure green compliance." (see the nifty primer on green city bonds here). This is an exciting marketplace for financing sustainability, as you can see from [this graph] drawn from the latest Climate Bonds Initiative (for more info [go to the two-page update] itself):

Even better news is that 2016 started off with a bang, as New York City's Metropolitan Transit Authority (MTA, the nation's largest public transportation agency) issued their first-ever green bond. As the Climate Bonds Initiative noted in its press release quoting my colleague Doug Sims last week, this is also the first U.S. muni bond certified as Low Carbon Transport based on new criteria and the largest certified green bond so far at $500 million.

Proceeds from bond sales go to capital investments in electrified rail, which provides millions of rides to New Yorkers every day. This is an important part of New York's clean transportation future, with subway ridership trending upward about 11 percent from 2009-2014 alone to more than an eye-popping 1.7 billion rides a year. Issuing this historic green bond to support this growth serves multiple purposes as described in the Climate Bonds Initiative's primer – it diversifies the investor base for rail, helps inform and involve residents in the future of rail in New York, and opens up new a collaboration between New York City agencies which might lead to other innovative initiatives.

Now that MTA has blazed the trail for green bonds, other transit agencies should seriously consider using this tool for leveraging public investments. There are trillions of dollars at play in the bond marketplace, and investors, cities and the environment deserve more clean transportation investment opportunities.

Deron Lovaas's Blog

Switchboard is the staff blog of the Natural Resources Defense Council, the nation's most effective environmental group. For more about our work, including in-depth policy documents, action alerts and ways you can contribute, visit NRDC.org.

Posted February 17, 2016

Big Box Tax Appeal Could Cost Indiana Municipalities Big Dollars.

A state tax court ruling that changes the way big box stores are assessed could take a significant financial toll on some local communities, according to financial consultants, who are warning government officials to be prepared in case they have to cover possible shortfalls.

"You can plan for a disaster if you know it's happening," Jim Bennett, Merrillville's financial consultant, told the Town Council recently.

A December 2014 ruling by the Indiana Board of Tax Review found a Meijer store in Marion County should have been assessed according to the value of similar stores nearby that were vacant and sold, not on the sales taking place inside its building.

As a result, the court decided the Marion County store should be assessed at $30 per square foot instead of the $83 per square foot it was being assessed.

The case is still pending before the Indiana Tax Court, and a court conference call is scheduled for Tuesday on the matter, according to online court records.But communities are now bracing for appeals from Meijer and other big box stores — such as Wal-Mart, Target, Lowe’s and Costco — which could see the stores’ tax bills cut substantially as a result.

What’s more, the appeals could cover the past 10 years or more, which means some communities would have to give refunds to stores.

Experts in municipal finance say they don’t know how many appeals there will be but added they could hit some communities harder than others.

“It could hit their bottom lines at the end of the year. It would not be good. We’re talking multimillion dollar refunds, depending on the scope of the appeal,” said Michael Wieser, director of finance in the Lake County Auditor’s office.

Wieser said while he doesn’t know what the scope of any appeals filed would be, he did some preliminary scenarios two years ago when first hearing of the court’s decision. He found that St. John Township, particularly Schererville, would be hard hit in Lake County, due largely to the fact that its big box stores are along U.S. Route 41, which is in a tax increment financing district.

Wieser said he calculated that Schererville could have to give refunds of about $700,000 a year for six years, plus interest.

“Interest in 2009 was 9 percent,” he said.

He said St. John could have to pay a couple hundred thousand dollars a year, but Dyer looks like it will pay next to nothing.

He explained that in a TIF district, the community’s Redevelopment Commission issues bonds that pay for infrastructure improvements in that area to bring in businesses. The increment in the assessed valuation of the businesses in the district is used to repay the bonds.

“There are so many variables, but it could be devastating to Redevelopment Commissions. The bonds are for 25 to 30 years, and the commission has to pay X amount every year. It doesn’t go down as you pay it,” Wieser said.

Karl Cender, the financial consultant for Portage and Valparaiso in Porter County, said he doesn’t know if anyone has done an analysis in Porter County on how communities would be affected.

“It could be substantial,” he said.

Cender said communities should begin looking at ways to protect themselves in the event appeals are made by some of the big box stores and refunds are awarded.

“In general, they need to look at other ways to cut expenses or other measures to increase revenues,” Cender said.

He said Valparaiso should have enough money in its reserves to weather the storm. Portage has some reserves, but should start preparing, he said.

Hobart Clerk-Treasurer Deborah Longer said that city shouldn't be affected too badly as its commercial retail area isn't in a TIF district.

Hobart Councilman Dave Vinzant, D-4th, called this another example of the pro-business state helping businesses and putting the extra burden onto its residents.

Merrillville's Bennett suggested some of the communities work together as a team to fight the assessment change.

Merrillville Town Councilman Shawn Pettit, D-6th, said the town should contact Indiana Association of Cities and Towns about the issue.

"It's important for us to look at this collectively as a group to see what could happen." Merrillville Council President Richard Hardaway, D-2nd, said.

"All we can do is sit back and wait to see what happens," said Merrillville Councilwoman Chrissy Barron, D-5th.

Chicago Tribune

Karen Caffarini

Karen Caffarini is a freelance reporter for the Post-Tribune.

What's Holding P3s Back?

Chris Hamel, managing director head of municipal finance at RBC Capital Markets, hosted the webinar: Why Haven't Public-Private Partnerships Caught on for Infrastructure Financing in the U.S.? In it Hamel addressed what he said was the core infrastructure needs for the U.S.: more funding.

Public-Private Partnerships

Hamel said he believes that through an increased use of public-private partnerships (P3) the U.S. would be able to breakdown greater funding barriers. He says that P3s often mean something different to everyone — comparing the process to six blind men all describing an elephant.

"The municipal government can finance infrastructure cheaper than the private sector because of the roll of prevision tax exemption on their debt. While this may not be the only factor that affects the analysis of the union execution vs. P3, it is an important one that frankly often prevails," said Hamel.

Hamel feels there are three suggested elements for the U.S. to develop its own unique approach to P3s:

- Design-Build: an example is the New York Tappan Zee Bridge, which saved around $1.1 billion over the original estimated cost of $5 billion

- Design-Build-Finance: often used by universities to build housing, combines lower construction costs with the lower financing that comes with tax exempt debt
- Design-Build-Finance-Operate-Maintain: relates to the monetization of non-core assets, the government can evaluate what it has, to convert non-revenue generating assets into sources of revenue

Policy Questions and Problems that Arise

"It comes down to what are we all comfortable with in public and private funding? With the events surrounding the water in Flint, Michigan, would it have done better being handled in the private sector?"

Hamel relates the Internet to a private sector that, in a sense, most are comfortable with. A different example, which may draw different opinions is the public sector gaining revenue through tolls, while in the private sector the naming rights to a bridge (or other structure) are sold to gain revenue.

Another problem Hamel sees is that private sector innovation can have unintended consequences for the state and local government. In the example of the Phoenix airport, Sky Harbor, a great deal of revenue is generated by the airports transportation — but with new transportation apps gaining popularity, Sky Harbor loses that revenue.

"How will the airport re-seize the revenue taken by Uber and Lyft?"

Hamel believes that the key to making P3s and solving the U.S.'s infrastructure challenge is gained through collaboration.

BY MAILE BUCHER ON FEB 18, 2016

Big Taxable Deal Next Week in $7.1 bln of U.S. Municipal Bond Sales.

Feb 19 – University of North Carolina at Chapel Hill will sell $401 million of triple-A rated taxable general revenue refunding bonds, one of the biggest deals in the nearly $7.1 billion of U.S. municipal bonds and notes to price next week, according to Thomson Reuters estimates.

If a similar deal this week is any indication, North Carolina's offering could draw strong demand, according to Dan Heckman, senior fixed income strategist at U.S. Bank Wealth Management.

"Taxable muni spreads on new issues have been attractive and demand has been very strong for those taxable issues if priced attractively," Heckman said.

For example, this week Missouri's Health and Educational Facilities Authority issued $403 million of triple-A rated taxable revenue bonds for Washington University in St. Louis. The deal was at least 3.5 times oversubscribed, Heckman said.

"Taxable munis give buyers an attractive option to corporates and with less spread risk in many cases," he said.

Investors have poured money into municipal bond funds for 20 consecutive weeks, according to data from Lipper, a unit of Thomson Reuters.

The biggest deal next week is from New York City, which plans to price $800 million of general obligation bonds through lead manager Jefferies.

Investors "will want to watch spreads and demand, given the weakness in capital markets and its impact on NYC," Heckman said.

While the city's strong liquidity, budgetary flexibility, management and economy continue, its debt and contingent liability profile is "very weak," said Standard & Poor's Ratings Services, which assigned an 'AA' rating with a stable outlook.

The city has "some exposure to interest-rate risk given maximum bank rates on its variable-rate debt of up to 25 percent," S&P said.

The city's debt plans also include $6.2 billion of GO bonds and Transitional Finance Authority future tax-secured bonds annually in fiscal 2017 and 2018.

Furthermore, its pledge to fund $2.5 billion of the Metropolitan Transportation Authority's five-year capital plan could "create additional financing needs."

Finally, New York City's public pension and retiree healthcare benefits are another source of pressure. Those costs, in addition to debt service, were 26.2 percent of total government expenditures in 2015, which S&P said was "elevated."

Reuters

(Reporting by Hilary Russ; Editing by Bernard Orr)

Assured Guaranty Provides Secondary Market Municipal Bond Insurance Pricing on Bloomberg Terminals' "ALLQ" Page.

HAMILTON, Bermuda–(Business Wire)–Bond insurers Assured Guaranty Municipal Corp. (AGM) and Municipal Assurance Corp. (MAC), subsidiaries of Assured Guaranty Ltd. (NYSE:AGO) (together with its subsidiaries, Assured Guaranty), are providing on Bloomberg terminals indicative pricing for secondary market insurance on municipal bond issues they have pre-qualified. The current list of pre-qualified municipal bonds comprises approximately 8,000 issuers and 45,000 CUSIPs.

"We are pleased to have worked with Bloomberg to add this valuable feature for its subscribers. Traders, institutional investors and retail trading desks that are considering adding bond insurance to municipal bonds in the secondary market may now find indicative insurance availability and pricing information for AGM or MAC insurance on the Bloomberg All Quotes page. 'ALLQ' is the same page used for bond pricing information, trade history, valuations, and offering levels," said Bill Hogan, Senior Managing Director, Public Finance. "Adding municipal bond insurance in the secondary market may enhance a bond's market liquidity: approximately $500 million of bonds guaranteed by Assured Guaranty companies are traded daily."

AGM and MAC municipal bond insurance policies unconditionally and irrevocably guarantee payment of a bond's principal and interest when due. Assured Guaranty companies currently protect municipal bonds with an outstanding gross par amount of almost $300 billion. In addition, Assured Guaranty secondary market insurance may allow an investor to meet portfolio rating requirements; provide significant downgrade protection; and reduce the capital requirement for a regulated holder of the bond.

AGM and MAC are rated AA+ (stable outlook) by Kroll Bond Rating Agency and AA (stable outlook) by Standard & Poor's Ratings Services. AGM is also rated A2 (stable outlook) by Moody's Investors Service.

To view AGM and MAC insurance pricing, users simply load a nine-digit municipal CUSIP and navigate to the All Quotes page with the command ALLQ (e.g., {123456789 Muni ALLQ }). Indicative prices for AGM and MAC to insure $1 million in par amount appear in the Ask Price column, expressed as the price per bond. The amount of insurance potentially available is also displayed if the user activates the Show Bid/Ask Sizes column in the ALLQ Settings menu.

The list of eligible CUSIPs and the related indicative price and capacity information are updated for each business day. To initiate a purchase of insurance, users may contact Assured Guaranty's secondary market desk over the Bloomberg network by sending messages to Richard Cassata, rmc176@bloomberg.net, Leonard Lasek, llasek@bloomberg.net, or Dana Villanova, dvillanova2@bloomberg.net. Users may also telephone (212) 408-6067.

If no insurance pricing is shown on Bloomberg for a municipal bond on which a user wishes to obtain bond insurance, users are encouraged to use the contact information above to request approval and a quote.

Feb 16, 2016 20:53 UTC
