Bond Case Briefs

Municipal Finance Law Since 1971

Long Island's Nassau County Can't Catch Break from Bond Analysts.

Long Island’s Nassau County has cut 1,600 jobs, reduced its borrowing to pay for tax appeals and renegotiated labor contracts. That’s still not enough to restore the faith of some bond analysts.

Nassau, which is refinancing $270 million of debt Tuesday with borrowing costs at the lowest since 2013, had its credit- rating outlook changed to negative by Standard & Poor’s last week, indicating it could be downgraded from A+, the fifth- highest investment grade. The company said Nassau exhausted reserves even after the economy recovered from the Great Recession.

The 15th wealthiest county in the United States gets almost 40 percent of its revenue from sales taxes, leaving it vulnerable to a slowing economy, said Ted Molin, senior credit analyst at Wilmington Trust Co., a unit of M&T Bank Corp. that oversees $4 billion of municipal bonds. The company sold its Nassau holdings three years ago.

“Most municipalities that we’ve looked at have built up reserves, and now seem in a better position than a few years ago to withstand an economic downturn,” Molin said. “If a county hasn’t gotten its act together by now, when will it ever?”

Nassau, which borders the New York City borough of Queens to the east, is home to wealthy enclaves like Sands Point and Brookville, as well as middle and working class towns like Massapequa and Roosevelt. More than 1.3 million people live in the county, which has the highest median household income among New York’s 62 counties at $99,035.

While most local governments have boosted reserves as the economy grew during the last six years, the county is still contending with the legacy of the recession. Its property-tax base has declined 20 percent since 2009, according to Standard & Poor’s, as residents and businesses appealed their assessments after real estate prices tumbled. In 2011, a state oversight board imposed a wage freeze after the county failed to balance its budget.

Last year, the county’s sales taxes fell below projections by $42 million, equal to about 4 percent of the total annual collections. To be conservative, Nassau estimates the tax will grow just 1.5 percent this year.

County Executive Edward Mangano, a Republican, has worked down the county’s backlog of refunds for successful property assessment appeals. Next year, it plans to phase out the annual borrowing that it’s been using to pay for them. The county expects that to save $950 million in debt-service costs over 20 years.

Nassau is one of two New York counties responsible for paying the whole tax refund even though property revenue is split between the county, towns and school districts. In other counties, school districts and cities are responsible for their portion of the tax bill that’s contested. For decades, Nassau borrowed as much as $100 million annually to pay the appeals.

Nassau has taken “significant steps” to reduce borrowing, but it has to do more to raise revenue and cut spending, said S&P analysts.

Last week, the rating company revised its outlook on Nassau's $2 billion general-obligation debt to negative because the county had exhausted a $23 million fund balance. S&P rates the county one level higher than Moody's Investors Service and Fitch Ratings.

"We're concerned that even during the recovery following the Great Recession, the county has been unable to build reserves to higher levels," said S&P analyst Ruth Ducret.

The county, which has the third-highest median property taxes in New York, raised them by about $30 million last year.

Eric Naughton, Nassau's deputy county executive for finance brushed off S&P's outlook change, saying the company didn't lower its rating on the county's debt. He expects strong demand for the securities being sold Tuesday, which will save the county $14 million.

"Our first goal is to keep expenses down," Naughton said. The county increased recurring revenue by $46 million for 2016, mostly through real estate and drivers' fees.

The spread, or risk premium, on frequently traded Nassau bonds maturing in 2039 in block sizes between $500,000 and $1 million have declined to 1.38 percentage point over top-rated debt from 1.65 percentage point over the last four months, according to data compiled by Bloomberg.

"We understand their concerns, but the county, we're able to manage even with the narrow reserves," Naughton said of S&P. "We have very proactive management and we're doing many things to improve our structural balance."

Martin Z. Braun, (c) 2016, Bloomberg

(c) 2016, Bloomberg

MSRB to Offer Continuing Professional Education Credit for Webinars and Events.

Washington, DC – Participants in educational webinars hosted by the Municipal Securities Rulemaking Board (MSRB) are now eligible to receive continuing professional education (CPE) credit. The MSRB is a registered sponsor of CPE in accordance with the requirements of the National Association of State Boards of Accountancy (NASBA). The CPE credit applies to both live and on-demand events.

"Joining the ranks of the National Registry of CPE Sponsors affirms the MSRB's ability to provide high-quality educational content that supports market knowledge and compliance with municipal market regulations," said MSRB Executive Director Lynnette Kelly. "The designation is another step in the development of the MSRB's educational offerings."

Certified public accountants and many other professionals that work in the municipal market must earn CPE credit to maintain professional licenses or comply with internal training requirements. The MSRB will provide webinar participants with certificates of attendance for its events upon completing the CPE requirements.

The MSRB's educational offerings include its online Education Center, where investors, state and local governments and others can access free resources about the municipal market, outreach

events and live and on-demand webinars covering new and developing regulations.

Visit the MSRB's new on-demand webinar portal to access all MSRB's webinars currently available for CPE credit.

Date: January 26, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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jgalloway@msrb.org

MSRB to Discuss Bank Loans, Markup Disclosure at Meeting.

WASHINGTON – The Municipal Securities Rulemaking Board plans to discuss bank loans and dealer disclosure of markups to retail customers during its board meeting here next week.

At the meeting on Jan. 27 and 28, the board also will consider academic use of MSRB data, shortening the trade settlement cycle, savings accounts for individuals with disabilities and financial abuse of the elderly, according to an MSRB release.

The MSRB is expected to consider whether it should take action on bank loans. It has focused on bank loans so far by encouraging issuers to voluntarily disclose them. The self-regulator also made adjustments to its EMMA system last August to make it easier for issuers to disclose the loans on their homepages.

"Bank loans have certainly been a rallying cry for this organization," said MSRB executive director Lynnette Kelly. "We'll continue to talk about bank loan issues, what board members are seeing in the market, and any observations that people want to make."

While the board only plans to have a discussion on the topic, Kelly said there is nothing stopping the 21 board members from choosing to go out and solicit comments from the industry or ask the Securities and Exchange Commission for more information.

The board's discussion on markup disclosure in confirmations sent to retail customers will center on the criticisms and other comments market groups made in letters sent to the MRSB about the proposed changes to Rule G-15 on uniform practices.

Dealer groups criticized the proposal for not aligning with similar confirmation rule amendments proposed by the Financial Industry Regulatory Authority. FINRA's changes would require dealers to disclose the differential between the price to the customer and the dealer's reference price. The proposed rule changes also diverge in the timing of trades they would require dealers to consider, with the MSRB rule mandating dealers include trades occurring within two hours of the transaction and the FINRA rule spanning a full day of trading.

The groups also said the MSRB's rule will impose substantial costs on dealers if it is adopted.

No action item is scheduled on confirmation disclosure during the board hearing but Kelly said the next step for the board is to meet with FINRA to see if there can be a "meeting of the minds" on the type of proposal to pursue.

The MSRB board will also discuss a set of comment letters the self-regulator received in September about a proposal to give academics muni trade and pricing data that use anonymous dealer identifiers.

The July 16 proposal would prohibit academics from reverse engineering and redistributing the data. It also would require them to disclose their specific intentions for requesting the information. The data would only be available to academics with institutions of higher education and would have to be more than two years old to be eligible for release.

Researchers who commented on the proposal said the addition of anonymous dealer identifiers would improve liquidity and enhance transparency in the market.

But dealer groups said they were afraid the identifiers would open their members up to having their identities, trading strategies, and inventories discovered through reverse engineering. The groups instead advised the MSRB to release data that combines dealers with similar characteristics and excludes all primary trades.

The board is also planning to talk about several other initiatives the MSRB has focused on in the past, including improving EMMA such as by adding yield curves, and helping facilitate a market transition to a T+2 settlement cycle.

The MSRB’s proposal to change muni trade settlements to two days from three after execution has general support from market groups and is tied to the SEC making similar changes as part of an industry migration that would be completed by the end of the third quarter of 2017.

The MSRB will additionally revisit its Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. A portion of that rule prohibits dealers from trading bonds in amounts below the minimum denominations set by issuers. The minimum denomination is usually set at $5,000 but can be as high as $100,000 if the issuer determines the bonds are unsuitable for retail investors.

The board’s discussion will center on a possible request for comment on amendments that would allow more exceptions from the minimum denomination requirement in certain circumstances, such as beneficiaries of a will receiving set portions of an individual’s bond holdings or parties in a divorce splitting investments.

The goal of any change would be to keep the rule as strong as possible while providing for exceptions that may not meet the rule exactly, but follow the spirit of it, Kelly said. She added a parallel goal would be to never create a situation where a trade creates more people holding a position below a minimum denomination than before.

For example, if an individual were to come into possession of $75,000 of bonds that have a $100,000 minimum denomination, the updated rule may allow the individual’s dealer to sell bonds in an amount below the minimum denomination to individuals who already hold at least $100,000 of the bonds.

The re-evaluation of the rule is part of the MSRB’s larger effort to update its rulebook to reflect current market conditions, Kelly said. Additionally, the MSRB is discussing its possible jurisdiction over tax-advantaged savings programs that help support individuals with disabilities maintain health, independence, and quality of life. The programs are a result of the Achieving a Better Life Experience Act of 2015 and may resemble 529 College Savings Plans in potentially falling under the MSRB’s jurisdiction.

The agenda also includes plans to discuss efforts by state agencies, other self-regulatory organizations, and policy makers to protect elderly investors from the risk of, or actual, fraud. The MSRB does not have a specific rule that applies to the effort, but the board is fully engaged in monitoring the other agencies' activities, Kelly said.

THE BOND BUYER

BY JACK CASEY

JAN 20, 2016 1:32pm ET

Bond Math Bootcamp.

March 14-15, 2016 – New York City

14 CPE Credits

See Full Agenda

Register

The Bond Math Boot Camp program is a two-day training program delivered via interactive lecture format. The BootCamp is facilitated in a fashion that encourages group participation with numerous leading/rhetorical questions to draw the audience into focused discussions. The course concepts and methodologies discussion will be supplemented by in-class hands-on exercises as well as optional homework. This seminar will provide an in-depth exposure to yield, pricing and interest rate conventions for fixed income securities. The session begins with an introduction to such fundamental concepts as time value of money, interest/discount rates as well as the compounding and day count conventions upon which market measures are based.

The balance of the class will be devoted to exploring how these concepts are applied to the determination of price, yield, interest/discount rates, rates of return, accrued interest, etc. The presentation will incorporate the mechanics of the calculation: formula or methodology for determining a numeric value; source and nature of inputs into formula; implicit or explicit assumptions being used. This discussion of conventional calculations will be augmented by an introduction to the interpretation and application of the numbers – how market participants use the numbers for investment/market insights. We strongly recommend that you bring an HP12c calculator or a similar model to ensure you get the benefit of the hands-on activities during this two-day class.

Concepts and measures will be addressed in a pertinent fixed income market context, illustrating these ideas with a discussion of their use by bond traders and portfolio managers when assessing risk and return. The approach taken to address each of the major topics:

First, explain the concept and the related market intuition, what does the concept/number attempt to quantify and how do market participants interpret the number regarding any insight into market conditions/securities valuation

Second, review the specific methodology by which the measure/concept is quantified, what is the structure of the computation or process by which the number is determined, what are the inputs for

the computation/process and how are they obtained as well as any implicit assumptions used in the calculation
Third, illustrate the computation/process using current market data, taking values/rates/contract details of treasury, corporate and mortgage-backed securities. To the extent possible the presentation will be guided by participant questions.

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QUANTIFYING AND MANAGING INTEREST RATE (PRICE) RISK
Factors Determining Sensitivity of Price to Change in YTM
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Callable bonds – embedded options
Quantifying Price Sensitivity to Changes In Market Yields
Modified duration
Effective duration
Dollar duration
Impact of convexity
Non Callable Bonds
Price behavior
Modified duration and convexity
Callable Bonds
Price behavior
Effective duration and convexity
Applications of duration
Portfolio management
Hedging

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Registration Fee: The price for this two-day seminar is $1,695. Group discounts are available.
To Register: Please register online. Call 973-615-8967 or e-mail our registrar with registration questions.

All That Glitters Is Not Gold: An Analysis of U.S. Public Pension Investments in Hedge Funds.

Hedge funds have aggressively pursued U.S. public pension dollars, maintaining that they offer pension funds absolute return and volatility reduction in exchange for the high management and performance fees that they charge. And many public pension systems, with encouragement from their investment consultants, have made significant allocations to hedge funds, chasing the promise of superior returns and downside protection. These pension funds now have sufficient experience to evaluate whether hedge funds have delivered on their promise, and whether the purported benefits are worth the high fees.

This report by Elizabeth Parisian of the American Federation of Teachers and Roosevelt Institute Fellow Saqib Bhatti examines whether hedge funds have, in fact, provided U.S. pension funds better and less correlated returns, and whether hedge fund fees are adequately disclosed and as disproportionately high as critics suggest. In other words, they seek to answer the question: “Would public pension funds have fared better if they had never invested in hedge funds at all?”

To answer this question, the authors analyzed 11 U.S. public pension funds’ experience with investing pensioners’ savings in hedge funds. Using publicly available data and information provided directly by the pension funds, they conducted a simple year-by-year comparison of hedge fund net returns and total fund net returns for each pension fund. They also compared these rates of return to fixed income net returns for each pension fund to determine whether hedge funds delivered on the promise of uncorrelated returns and whether less expensive fixed income strategies do better.

Because hedge fund fees are almost never reported or fully accounted for, Parisian and Bhatti used industry standard fee structures like management and incentive fees then projected actual fees captured by hedge fund mangers based on readily available statements of net return to investors. These calculations, while not precise due to lack of transparency with respect to fees, allow them to draw general conclusions about the performance of pension funds' hedge fund investments.

Read the Report.

Roosevelt Institute | 11.06.15

S&P Live Webcast: State & Local Government 2016 Outlook.

Please join Standard & Poor's Ratings Services on Thursday, January 28, 2015, at 2:00 p.m. Eastern Time for a live Webcast and Q&A on our 2016 outlooks for U.S. states and local governments.

Register for the Complimentary Webcast.

S&P: Collapsing Oil Prices Seep Into State Credit Profiles.

In its recent state sector outlook, Standard & Poor's Ratings Services identified 11 states as coming under negative fiscal pressure at the start of 2016. Low and declining oil prices explain much of the pressure in at least five of these states. Not all states with significant oil producing sectors are faced with fiscal pressure to the same degree, however. There are several variables that explain why some oil producing states are more immediately affected in their budgets by falling oil prices than others. These include:

- What oil price did the state assume in its budget?
- How much does the state's operating budget rely on oil-related tax revenue?
- Did the state accumulate reserves while oil prices were high?

In short, the more aggressive a state was with regard to its assumptions and use of oil-related revenues during the oil boom, the more acute its fiscal pressure now, in the oil price bust. For states with greater budgetary reliance on oil-related revenue, the unrelenting decline in prices places a larger burden on state lawmakers to identify and enact corrective fiscal measures. Short of something not easily forecasted, such as a supply shock stemming from turmoil in the Middle East, it's unlikely that state policymakers will be bailed out by a sharp rebound in oil prices. On the contrary, as of early 2016, and with sanctions on Iran being lifted, oil prices have continued to fall and are now well below what the states had forecasted. At this point, all of the states in our survey still have a higher price forecast for 2016 than does Standard & Poor's ($40 per barrel). For fiscal 2017, only one state (North Dakota) forecasts a price range in line with our forecast price ($45 per barrel); the other states still have a more bullish outlook. This suggests that as they head into budget season, fiscal pressures in these states could be more intense than what their official forecasts currently anticipate. (See "S&P Lowers Its Hydrocarbon Price Deck Assumptions On Market Oversupply; Recovery Price Deck Assumptions Also Lowered," published Jan. 12, 2016 on RatingsDirect.)

Some oil producing states have partially mitigated the effect of commodity market volatility on their

budgets by segregating the oil-related revenue, putting most of it in reserves or special funds. But with producers reining in their operations, economic losses are not confined to just the energy sectors in these states. Overall job growth from among the oil producing states in our survey is now materially lower than for the nation as a whole. According to the Bureau of Labor Statistics, whereas total nonfarm payroll jobs increased 1.9% during the 12-month period through November 2015, the eight states in our survey saw job growth of just 0.9%. Not surprisingly, lower than expected job and economic growth is showing up in the recent revenue data reported by Texas, North Dakota, Louisiana, and Oklahoma, where collections have fallen short of the budget forecast. There are also signs of expenditure side pressure where job losses translate to higher demand for social services. For example, public assistance expenditures in Texas are running ahead of budget in fiscal 2016 while tax collections are lagging fiscal 2015 receipts through the same date. This environment contributes to our belief there is potential for an uptick in rating volatility in the state sector during 2016.

Continue reading.

21-Jan-2016

IRS Examining Arborwood CDD Board, Land Purchase.

WASHINGTON – The Internal Revenue Service is stepping up its audit of $80 million of Arborwood Community Development District's 2006 bonds and appears to be focusing in part on the Florida CDD's board and land
possibly purchased at too high a price.

IRS tax-exempt bond revenue agent Debbie Arceneaux asked for nine items from the CDD last month, including whether any members of the board of supervisors have been elected by CDD residents as well as a list of landowners along with the number of acres they owned and voting units they held when the bonds were issued.

She also asked for the status of the bonds, including how many are outstanding and if any defaulted or were refunded. Arceneaux wanted the sources and amounts of revenues being used to pay debt service and copies of sales or acquisition agreements between the CDD and developers for any transfer of assets using the bond proceeds.

She made the requests in a Dec. 8, 2015 letter that was included in documents recently posted on the Municipal Securities Rulemaking Board's EMMA website. The letter asked for the information to be provided by Dec. 31.

The Arborwood CDD, located near Fort Myers, has been under audit since 2012. This is the IRS' fourth request for information, according to Michael McElligott, who works in finance at Special District Services, Inc., which manages the CDD. The audit is one of a number IRS investigations of CDDs in Florida, one in particular of which is being closely watched by the bond law community. The IRS has claimed the Village Center Community Development District, in Lady Lake, Fla., is not a political subdivision and therefore can't issue tax-exempt bonds because its board is tied to the developer and isn't made up of any elected CDD residents.

Bond lawyers have complained the agency is trying to set new standards for political subdivisions through enforcement cases rather than rulemaking. They typically have defined a political subdivision as one that has been delegated the right to exercise sovereign powers, such as eminent

domain or taxation. As a result of the controversy, the Treasury Department and IRS are working on new rules for defining a political subdivision that they say will be subject to public comment and will be prospectively effective.

Wes Habor, a shareholder at Hopping Green & Sams, counsel to the Arborwood CDD, said it differs from the Village Center CDD in that it has more than 250 residents and its board is elected by residents.

But the website of the Arborwood Homeowners Association, Inc. showed 151 units at the end of 2015, with each charged $115.50 per month for a total of $17,440.50 per month and $209,286 per year. Association officials could not be reached for comment.

Kathleen Dailey, who joined SDS last year and manages the CDD, said the board has been made up entirely of residents since 2014. She didn’t have information on the number of residents but said it could be obtained from the homeowners association.

Dailey said the CDD only oversees the lakes and stormwater system, the acquisition of which was financed with the bonds. The CDD oversees the assessments on property owners used to pay the bonds and obtains permits for the preserved lands and wetlands. Those include a panther reserve and a bat habitat, she said.

There is very little descriptive information about the Arborwood CDD on its website, though its key officials and financial documents are posted. A 2004 engineer’s report provided to the CDD and posted on its website said Arborwood was a proposed 2,467 acre master planned community in Fort Myers, Fla. that was to be approved for 4,050 single family homes, 2,450 multi-family units, 36 holes of golf, commercial space, wetland preserves infrastructure, landscaped roadways and gated entries. Dailey doesn’t know if that’s changed.

McElligott said at least three major developers are currently building homes in the CDD, including PulteGroup, which acquired Centex in 2009. The documents posted on EMMA show the IRS is particularly interested in roughly 561 acres of preserves and wetlands, which the CDD acquired from the developer (under contract at that time to Centex Homes) with proceeds from $67.34 million of bond anticipation notes issued in 2005. The land was used as collateral for $80 million of capital improvement revenue bonds issued in 2006 to refund the 2005 notes.

The documents posted on EMMA include an assessment of the value of the land by senior IRS appraiser Howard Kanter that was sent to IRS officials in September. Kantor said the 561 acres were part of 1,826 acre parcel that was purchased at $67,167 per acre for a total purchase price of $122.65 million in 2003. Kanter said the 561 acres can’t be commercially developed. He estimated their value at $2,500 per acre or $1.4 million.

Vanessa Albert Lowry, a shareholder at Greenberg Traurig in Philadelphia who appears to be representing the CDD in the IRS audit, could not be reached for comment.

The Bond Buyer

by Lynn Hume

JAN 20, 2016 3:32pm ET

TAX SALE - NORTH DAKOTA

Estate of Glasoe v. Williams County, N.D.

Supreme Court of North Dakota - January 19, 2016 - N.W.2d - 2016 WL 225224 - 2016 ND 18

Heirs of property owner brought action to recover and quiet title to property that was sold at public auction following tax lien foreclosure. Following a trial, the District Court dismissed action. Heirs appealed.

The Supreme Court of North Dakota held that:

- Service of notice of foreclosure by certified mail on deceased property owner and by personal service on resident complied with statutory requirements;
- Service of notice of foreclosure on non-resident constituted valid personal service;
- Auditor was not statutorily required to provide final notice of expiration of redemption period; and
- Purchaser's successful bid and county's acceptance of down payment precluded redemption.

TAX - RHODE ISLAND

DePasqual v. Cwiek

Supreme Court of Rhode Island - January 14, 2016 - A.3d - 2016 WL 166477

Taxpayers who allowed installation of wind turbine on their property filed suit challenging decision of Tax Board of Review that denied taxpayers' appeal from local property tax bill based on assessment of wind turbine. The Superior Court entered summary judgment for taxpayers, and assessor appealed.

The Supreme Court of Rhode Island affirmed the decision of the Superior Court, holding that:

- Taxpayers were manufacturers, within meaning of exemption from property tax for manufacturer who used premises primarily for purpose of transforming raw materials into finished product for trade;
- Wind turbine did not come within statutory exception to definition of "manufacturer"; and
- Statute granting municipality authority to enact ordinance exempting from property tax any renewable energy system located in municipality did not impose any qualification on taxpayers' entitlement to exemption from property tax as "manufacturer" of electricity.

Taxpayers who owned property where wind turbine was built were "manufacturers," within meaning of statute granting exemption from tax for manufacturer who used any premises primarily for purpose of transforming raw materials into finished product for trade, where turbine was used exclusively for purpose of transforming raw materials—namely, wind—into finished product—namely, electricity.

Wind turbine that converted wind to electricity, which product was not sold to public but instead was sold directly to National Grid pursuant to standard power purchase agreement, did not come within statutory exception to definition of "manufacturer" exempt from property tax for non-regulated power producer that commenced commercial operation by selling electricity at retail or taking title to generating facilities as of designated date.

Statute granting municipality authority to enact ordinance exempting from property tax any renewable energy system located in municipality did not impose any qualification on existing statutory right of wind turbine owner to exemption from property tax as “manufacturer” of electricity from raw materials, namely, wind, based on use of “any premises, room, or place in it primarily for the purpose of transforming raw materials into a finished product for trade.”

TAX - NEVADA

City of Fernley v. State, Dep't of Tax

Supreme Court of Nevada - January 14, 2016 - P.3d - 2016 WL 166087 - 132 Nev. Adv. Op. 4

City filed complaint against state, challenging constitutionality of Local Government Tax Distribution Account and seeking declaratory and injunctive relief and damages for violations of state constitutional prohibition on special or local legislation.

The First Judicial District Court granted state summary judgment and awarded state costs. City appealed.

The Supreme Court of Nevada affirmed, holding that:

- City knew or had reason to know of its claim for retrospective relief against state on date of it’s incorporation;
- Failure to file claim within default statute of limitations did not bar claim for injunctive and declaratory relief;
- Local Government Tax Distribution Account was a general law; and
- Distribution classifications applied uniformly and legislature had legitimate purpose for enacting different classifications.

Trial court did not abuse its discretion in awarding costs to state in city’s suit against state challenging constitutionality of Local Government Tax Distribution Account and seeking declaratory and injunctive relief and damages for violations of state constitutional prohibition on special or local legislation. Even though city’s lawsuit involved a good-faith challenge to tax distribution legislation, state was prevailing party in action for recovery of money damages where city sought to recover more than $2,500.

City knew or had reason to know of its claim for retrospective relief against state that Local Government Tax Distribution Account was unconstitutional under constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes, triggering default statute of limitations of four years, on date of its incorporation as city, since city was aware that its base distributions under Local Government Tax Distribution Account would be calculated as of that date.

City’s failure to file claim within default four-year statute of limitations that Local Government Tax Distribution Account was unconstitutional under state constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes did not bar city’s claims for injunctive and declaratory relief from allegedly unconstitutional statute. City retained right to prevent future violations of constitutional rights.

Local Government Tax Distribution Account was general law, as required to defeat city’s claim that tax distribution legislation was unconstitutional under state constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes. City was not

singled out in legislation, but rather was classified with similarly situated local governments.

Distribution classifications under Local Government Tax Distribution Account applied uniformly to all entities that were similarly situated and legislature had legitimate government purpose for enacting different classifications, as required to defeat city's claim that tax distribution legislation was unconstitutional under state constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes. Tax distribution legislation did not specify recipients, but rather had different formulas it used for any entity that fell within that classification, and classifications that legislature used when enacting legislation were rationally related to achieve its legitimate government interests of promoting general-purpose governments.

Chicago School Bond Sale May Attract Unusual Investors.

Chicago's struggling public school district could lure hedge funds and other investors with an unusual opportunity to buy high-yield municipal assets while pivoting attention away from Puerto Rico's distressed debts.

The Chicago Board of Education's $875 million bond issue next week comes as the nation's third-largest public school system struggles with a structural budget deficit of at least $1 billion.

Rated below investment-grade, the Chicago Board of Education is likely to attract a new class of investors not typical to the municipal bond market. The new deal may see interest from hedge funds and private equity funds, taxable investors who do not necessarily benefit from tax-exempt paper, said Michael Comes, portfolio manager and vice president research at Cumberland Advisors.

"This is similar to what happened in Puerto Rico, where it shut itself out of the muni market," said Comes. "I think we're at the cusp of that with the Chicago Board of Education deal."

This week, Republican legislators pushed the idea of a state takeover and potential bankruptcy plan, a proposal favored by Illinois Governor Bruce Rauner but quickly shot down by Democrats who control the legislature.

Such distress signs also caught the attention of municipal bond insurers such as Assured Guaranty, MBIA, and Ambac Financial Group, which have until now been focusing intently on developments in Puerto Rico. But news from Illinois served "as a reminder that there are multiple drivers of the insurers' share prices," BTIG Research Group said on Friday.

The district's so-called credit spread widened over Municipal Market Data's benchmark triple-A scale in secondary market trading on Thursday to 464 basis points for bonds due in 19 years from 412 basis points two weeks ago. That signals investors will demand hefty yields for the junk-rated general obligation bonds. Financially stressed Illinois and the city of Chicago were able to sell bonds this month at spreads much narrower than the school district's.

Still, demand for muni bonds is high among investors, as cash saturates the market and supply remains low. Recent trouble in the equity market has intensified investors' interest, as the idea of municipal bonds as a safe haven asset takes hold.

"There is a lot of interest in muni high yield, and there's not much out there," said Alan Schankel, municipal strategist at Janney Fixed Income Strategy. "Munis outperformed other fixed income asset classes last year, and I think they are likely to do the same thing this year."

Chicago Board of Education's issue includes a refunding and restructuring of outstanding debt to convert variable-rate bonds to fixed rate and to push out maturities on other bonds to free up money for the school system's sagging budget. The issue will also raise money to cover fees to terminate interest rate swaps related to the variable-rate debt.

Tax-exempt bonds totaling $795.5 million will be offered in term maturities in 2035, 2040, and 2044, according to the preliminary official statement. Another $79.5 million of taxable bonds are due in 2033.

Reuters

Jan 22, 2016

(Reporting by Robin Respaut in San Francisco and Karen Pierog in Chicago; Editing by Tom Brown)

Dealer, Advisor Groups Ask for Revisions to MSRB Pay-to-Play Rule.

WASHINGTON – Dealer and advisor groups want revisions to a Municipal Securities Rulemaking Board proposal to extend pay-to-play prohibitions to non-dealer municipal advisors.

The MSRB filed its changes to MSRB Rule G-37 on political contributions, as well as MSRB Rules G-8 on books and records and G-9 on preservation of records, with the Securities and Exchange Commission on Dec. 16.

Rule G-37 already applies to dealers and prevents them from engaging in negotiated transactions with an issuer for two years if the dealer, one of its municipal finance professionals, or a political action committee controlled by the dealer or an MFP makes a significant contribution to an issuer official who can influence the award of muni bond business.

The rule includes a de minimis exception to the ban for individuals who give no more than $250 to any candidate for whom they can vote.

The proposed rule changes would extend both the prohibition and exception to non-dealer MAs, with certain differences depending on whether the MA is a third-party solicitor. The updates to the MSRB's two recordkeeping rules would include documentation requirements to assure compliance with the G-37 amendments.

Terri Heaton, president of the National Association of Municipal Advisors, said NAMA supports the MSRB's effort to extend the rule to MAs, but believes that the proposal will not lead to as a strong a rule as it could.

"We believe that rulemakings could be further strengthened to create a true barrier from allowing political donations to influence business being done in the municipal securities sector," Heaton wrote in her letter. She added NAMA would most like to see an outright ban on contributions to bond ballot initiatives instead of continuing to allow them to be made but with proper disclosure.

Heaton also said the rule needs to more clearly identify the responsibilities and disclosure requirements for dealers and MAs.

"Without such clarifications, municipal advisors may inadvertently omit information that should be

disclosed," she said.

Bond Dealers of America chief executive officer Mike Nicholas agreed with Heaton, saying BDA supports the goal of the rule but would like to see revisions to eliminate "some unnecessary and duplicative regulatory filings for dealers" who may also act as MAs on other transactions.

"Despite our concerns with the proposal's lack of harmonization with contribution limits and record-keeping requirements applicable to other federal pay-to-play regimes, BDA supports the level playing field that applying MSRB pay-to-play rules to non-dealer municipal advisors will create," Nicholas said.

He recommended the SEC ask the MSRB to give guidance in the form of answers to frequently-asked-questions that allow dealer employees who act as both dealers and MAs to avoid keeping dual records and copies of disclosures for the same contributions.

Nicholas also said BDA would like to see the de minimis exception increased to $350 to harmonize the rule with existing de minimis contribution limits for investment advisors and swap dealers under Commodities Future Trading Commission and SEC investment advisor political contribution rules.

Leslie Norwood, associate general counsel and co-head of the municipal securities division for the Securities Industry and Financial Markets Association, said SIFMA "is looking forward to the SEC's approval of the changes" and echoed BDA's comments about the rule leveling the regulatory playing field.

Under the proposed rule changes, dealer and municipal advisory firms would be divided into two broad categories: dealer firms and their MFPs, and municipal advisor firms and their municipal advisor professionals. MAPs would be defined similarly to MFPs. MA firms would be subdivided into MA firms that act as third-party solicitors and those that do not. An MA third-party solicitor generally would be an MA that solicits, will solicit, or wants to be hired to solicit a municipal issuer or other entity for compensation, even if that MA also provides advice. Under the existing rule, a dealer can only be subject to a ban on muni business if a contribution is made to an official who can influence the selection of a dealer. Similarly, under the rule changes, a non-solicitor municipal advisor can only be subject to a ban on MA business if a contribution is made to an official who can influence the selection of an MA. A ban on MA business would include both a ban on advising the municipal entity on certain matters and soliciting the municipal entity on behalf of third-party dealers, MAs, and investment advisors.

But dealers who are also MAs could be subject to a "cross ban" on business, depending on the type of influence of the official they contribute to. A "cross ban" would treat a dealer-MA firm as a single economic unit. For example, if an MFP or MAP of the firm makes a contribution to an official who can influence the selection of dealers and MAs, the firm is subject to a temporary ban on both types of business. But if an MFP or MAP of the firm makes a contribution to an official who only has influence over the selection of underwriters, for example, the firm would be subject to a temporary ban on underwriting business.

For MA third-party solicitors, the ban on municipal advisory business would apply if the official receiving the contribution has influence over selecting MAs, dealers, or investment advisors. If a dealer hires an MA third-party solicitor, the dealer also may be subject to a temporary ban on negotiated municipal securities business if the solicitor contributed to an official who could influence the selection of dealers. Similarly, if an MA hires an MA third-party solicitor, the MA also may be subject to a ban on municipal advisory business if the solicitor contributed to an official who has influence over selecting MAs.

THE BOND BUYER

BY JACK CASEY

JAN 21, 2016 3:04pm ET

Illinois Budget Crisis: Big Banks Aren't Sharing State Debt Woes.

The state of Illinois has been without an official budget since July, and service providers that rely on state funding have felt the squeeze. Programs that deliver hot food to seniors in southwestern Illinois and outside of Chicago, for example, are preparing to halt operations, and low-income college students have seen promised tuition subsidies vanish.

The western Illinois Child Abuse Council has responded to the frozen state budget by reducing therapy services staffing by 20 percent and home visits by 40 percent. The nonprofit's counseling program, which serves children under 5 years old who have suffered trauma and abuse, has begun turning away families as the waitlist stretches to record length.

"We're the only ones providing these services in the community," said Angie Kendall, the organization's director of development. "We don't have an alternative at this point."

Even as crucial social service programs face deep reductions, one set of institutions has enjoyed an uninterrupted flow of funds from Springfield: banks. Financial service providers continue to pull in nearly $70 million a year in payments on complicated public debt deals from the early 2000s.

With the state's financial woes deepening, banks — including JPMorgan Chase, Goldman Sachs and Citigroup — stand to take in as much as $1.45 billion on interest rate swap payments by 2033. That's the conclusion of a new report from the ReFund America Project, which tabulated the costs stemming from the swaps weighing on the state's books.

"These toxic swaps have been an unmitigated disaster for the state, failing in almost every way," said Saqib Bhatti, a fellow at the Roosevelt Institute and one of the report's co-authors, in a statement Tuesday. "If state officials knew then what we know now, it would have been financially irresponsible for them to have signed these deals."

Illinois is just one of many states and municipalities bitten by interest rate swaps gone awry. The list includes the city of Chicago, which has sought to pay around $300 million in penalties to exit its own bad bets after doling out record debt fees in 2015.

"Hindsight is easy," said Richard Ciccarone, president of Merritt Research Services, which specializes in municipal bonds. "But in this case it just looks like it's a bad deal. The markets did not work out in their favor."

Labor leaders, who fear the state's fiscal difficulties will imperil their members' pension payouts, have pressed Illinois to make banks share in the fiscal pain, asking Republican Gov. Bruce Rauner to "aggressively pursue" means of recovering swaps fees, arguing that banks made misrepresentations when they sold the swaps.

Gov. Rauner, whose contested budget plan calls for limits to collective bargaining, rejected provisions related to the swaps in contract negotiations. "The union is concerned that the Rauner

administration is putting big banks first," said James Muhammad, a spokesman for Service Employees International Union Healthcare Illinois.

In a statement to the International Business Times, however, the administration did not rule out seeking a way to limit the damage from the swaps. "The Governor's Office of Management and Budget is doing an in-depth analysis of these swaps in order to reduce the state's payments and minimize its financial exposure," said Catherine Kelly, Rauner's press secretary.

An interest rate swap is type of financial derivative that allows a bond issuer — like the State of Illinois — to limit or manage exposure to fluctuations in interest rates. The issuer pays a fixed interest rate on a floating-rate bond. The bank on the other side of the swap pays the variable rate and pockets the difference between the fixed and floating rates.

When Illinois first entered into the now-costly swap deals in the early 2000s, the intention was to hedge risks and save money on the billions of dollars in variable-interest bonds that state agencies had issued. These bonds, issued under former Gov. Rod Blagojevich, are pegged to fluctuations in the broader interest rate environment.

But in order to lock in what state financiers saw as bargain interest rates, the governor's office entered into swap agreements with 10 major Wall Street banks. Under the deals — which are commonplace in the corporate world — the state would pay the banks a fixed interest rate, while the banks paid bondholders the variable rate. In theory, the maneuver would protect the state from sharp interest rate moves.

The arrangement didn't work that way in practice. When the global financial crisis struck in 2008, the Federal Reserve slashed benchmark interest rates virtually to zero. Unlike mortgage holders other debtors, Illinois wasn't able to refinance at the lower rates. The swaps kept the state locked into rates nearly 4 percent higher than what its bank partners were paying bondholders.

The state has paid $618 million in swap fees since 2003, according to the ReFund America report, with another $832 million yet to come. While Ciccarone noted that those totals include the interest Illinois would have otherwise paid on the variable-interest bonds, they also include tens of millions of dollars in additional costs related to the complex requirements that swaps entail.

Those fees might not be all. Today, with interest rates still scraping historic lows, termination fees totaling $286 million prevent the state from exiting its swap agreements.

The ongoing budget crisis threatens to force a raft of penalties even sooner. Ratings agencies Moody's and Fitch both downgraded Illinois state debt in October. If those ratings drop to junk status — as Chicago's debt did last year — Illinois could suffer automatic terminations written into the agreements. These clauses levy a penalty for exiting the deal early that is based on the present value of future payments on the swaps.

"They'd have to come up with that amount of money right away," said Ciccarone. "It wouldn't be an easy thing to do while they're already so hard-pressed for cash." For their part, the banks would have the option to forgo termination fees in lieu of renegotiating the agreements.

Labor leaders, however, are hoping for a different type of negotiation, one that might recoup past fees from Wall Street. The campaign comes a month after the Chicago Teachers Pension Fund sued dozens of banks over the doomed interest rate swaps that have added to the city's soaring debts.

Bhatti of the Roosevelt Institute said the lawsuit has a chance, noting that while corporate bond issuers generally take out swaps for a relatively safe period of five to seven years, the state

agreements last three decades or more. “We believe the banks that pitched these deals to the state misrepresented the risks,” Bhatti said.

Ciccarone was skeptical that Illinois could prevail in court, given the apparent financial sophistication of state finance officers. As for the banks that profited off of the state’s bad fortune, he said it was luck as much as anything that accounted for the windfalls.

“They made more money than they ever expected,” Ciccarone said. “They were on the right side of the trade.”

INTERNATIONAL BUSINESS TIMES

BY OWEN DAVIS

01/19/16 AT 3:38 PM

TAX - SOUTH DAKOTA

Flandreau Santee Sioux Tribe v. Gerlach

United States District Court, D. South Dakota, Southern Division - December 18, 2015 - F.Supp.3d - 2015 WL 9273931

Following decision by South Dakota Office of Hearing Examiners that nonmember purchases at casino owned and operated by Indian tribe on tribal lands were subject to state’s use tax, brought action in federal court against state and governor, alleging that state lacked authority to impose its use tax scheme on reservation land against nonmember casino patrons. Defendants moved to dismiss.

The District Court held that:

- Under South Dakota law federal claims were not precluded by any res judicata effect of Hearing Examiner’s final order;
- Younger abstention and “Our Federalism” doctrine did not preclude federal jurisdiction;
- Tribe adequately pleaded that state taxation of nonmember purchases of goods and services at casino was preempted by IGRA;
- Tribe’s complaint that imposition of taxes was unlawfully discriminatory met threshold requirement of plausibility;
- Claim was ripe for judicial determination; and
- Tribe adequately pled that tax remittance was unrelated to alcohol regulation, and thus invalid.

Decision by South Dakota Office of Hearing Examiners, in compelled review of state’s alcohol license denial, that nonmember purchases at casino owned and operated by tribe on tribal lands were not subject to state’s use tax, did not consider tribe’s Ex parte Young federal questions of state taxation on reservation land, federal preemption law, operation of IGRA, and jurisdiction over Indian tribes, and which did not involve § 1983 claim, and thus under South Dakota law federal claims were not precluded by any res judicata effect of Hearing Examiner’s final order, which tribe had not appealed to state court, although Hearing Examiner discussed that application of use tax on tribe violated neither IGRA nor Tribal-State Compact.

Younger abstention and “Our Federalism” doctrine did not preclude federal jurisdiction over Indian tribe’s federal claims not yet litigated in state court against state and governor, alleging state’s

taxation on reservation land contravened IGRA, although tribe had initiated state administrative proceeding seeking to compel reissuance of its alcohol license. State proceeding was licensure hearing, not enforcement proceeding, brought by tribe and not state, and thus was not judicial in nature.

Indian tribe, which owned and operated IGRA-sanctioned casino on tribal lands, adequately pleaded that state taxation of nonmember purchases of goods and services at casino was preempted by IGRA. Taxes were result of casino activity, compact existed between tribe and state but did not direct state's authority to tax alcohol sales at tribe's casino, state could have negotiated for taxes on alcohol sales on casino floor depending on use to which those funds were to be put, questions remained regarding whether state waived its right to such tax imposition, and whether sales of alcohol and other services was directly related to gaming, and tax interfered with IGRA's purpose of amplifying tribal development as it related to gaming.

South Dakota's tax imposition on nonmember patrons of casino on reservation land of not only goods presumably purchased by tribe off reservation for resale to casino patrons, but also services provided to patrons on reservation, required weighing of interests of tribe, state, and federal government to determine if taxes were permissible, and thus tribe's complaint that imposition of taxes was unlawfully discriminatory as applied to tribe met threshold requirement of plausibility, as required to adequately plead claim, even though tribe erroneously relied on case involving off-reservation tax.

Indian tribe's claim that South Dakota's use tax and remittance requirements as applied to on reservation patrons and that was necessary to retain alcohol license at tribe's casino were preempted by Indian Commerce Clause of Federal Constitution, federal common law, and infringed on inherent tribal sovereignty was neither hypothetical nor speculative given that state declined to renew tribe's license after tribe failed to collect and remit tax, and thus claim was ripe for judicial determination.

Indian tribe adequately pled that alcohol licenses conditioned on tax remittance was unrelated to alcohol regulation and as such was violative of statute granting state's authority to regulate and control use of alcohol on tribal lands, and thus was invalid as improper exercise of state regulatory authority.

U.Municipal Water Utilities: No News is (Probably) Good News; The Outlook is Stable

As we noted in our recently released criteria, we view the municipal waterworks and sanitary sewer sector as one with very low risk. The sector:

- provides essential services in a monopolistic manner;
- uses proven technology; and
- is characterized by risk-averse management.

It remains a very highly rated sector, and upgrades continue to outnumber downgrades. But that does not mean the sector itself is without risk.

Utilities by nature are extraordinarily capital-intensive, and that capital is generally raised by borrowing; there is no such thing as a municipal initial public offering or equity cushion.

Furthermore, the inherent stability does not completely insulate particular issuers from their own unique challenges. We have observed that most of our downgrades in 2015 were associated with weakened finances, not economic deterioration, and we believe that will continue to be the case. Utility managers and elected officials continue to have to manage the "triple bottom line," balancing a utility's revenue requirements and financial commitments versus social policies versus the utility's role as an environmental steward. If at one end of the scale drinking water is viewed by users as a human right that should be free of price, versus being viewed as a commodity, the United States is somewhere in between. We believe that in the U.S. we are moving in the direction of commodity pricing as Americans slowly gain appreciation for the true value of water, usually only if there is temporary scarcity such as a drought. We also view 2016 as a turning point that will potentially mark the beginning of the first wave of new regulations in a number of years.

Overview

- Utility ratings should remain stable for 2016, but the new criteria may introduce some volatility
- Regulatory risks are looming and could be expensive, but are not necessarily imminent.
- The rate of increase of water and sewer bills continues to be larger than comparable services and even the rate of real personal income growth.

Continue reading.

20-Jan-2016

Cities' Pension Liabilities Are About to Look a Lot Worse.

A new GASB rule affecting cities that are part of state cost-sharing retirement plans will be painful, but it's a step forward.

A new rule from the Government Accounting Standards Board (GASB) requiring municipalities that participate in plans in which they share pension costs with states to allocate and disclose their share of unfunded pension liabilities provides states with some much-needed good news when it comes to pension finances, but it comes at the cost of cities' balance sheets. Hopefully the enhanced transparency will prompt cities to take measures to address their long-term liabilities.

The cost-sharing plans affected by the new GASB rule are those in which pension obligations and assets are pooled and the assets can be used to pay benefits for any participating government employer. A new issue brief from the Center for State and Local Government Excellence samples 173 municipalities and finds that 92 of them are affected by the new rule because they either participate exclusively in a state retirement system or both administer their own plan and pay into a state system.

Most of the largest cities administer their own plans exclusively and are therefore unaffected by the rule. But the impact is significant for cities that are subject to it. On average, their unfunded pension liability as a percentage of own-source revenues rose from 37 percent to 70 percent (the brief is largely based on 2012 reports).

There is a great variation in how much individual cities are affected. As a result of the new rule, unfunded pension liability as a percentage of overall revenue rises by less than 20 percentage points in 37 of the 92 cities, but it increases by over 60 points in 25 of them.

For example, Newark, N.J., doesn't administer its own pension plan and has therefore never been included in studies of local systems. But when its portion of unfunded state pension liability is allocated, the amount is a breathtaking 284 percent of city revenues. Cincinnati, Las Vegas and Portland, Ore., are among other cities in which unfunded liabilities are more than 200 percent of revenues.

Why is the new GASB rule good news for states? While it doesn't change overall liabilities, its requirement that they be allocated and reported results in state liabilities falling by the same amount that municipal liabilities rise.

Nobody likes getting bad news, but it still beats ignorance. For that reason, the new rule is a step forward. Almost a decade ago, when new GASB rules required municipalities to disclose their liability for non-pension post-retirement benefits such as health care, the often-huge numbers caused many municipalities to implement mechanisms to pay down that liability over time. If this newest rule has the same impact, that'll be good news for retirees and taxpayers alike.

GOVERNING.COM

BY CHARLES CHIEPPO | JANUARY 22, 2016

Puerto Rico's First Debt Deal Is Running Up Against a Deadline.

The Puerto Rico Electric Power Authority, the island's government-run utility, needs lawmakers to approve legislation by Jan. 22 that would allow it to close an agreement struck with banks, bondholders and insurers to reduce its $9 billion of debt. It would be the largest ever restructuring in the municipal-bond market and could provide a template for how the U.S. territory can escape from burdensome bond payments that have already pushed the government to default.

The creditors have the option to walk away if a needed bill isn't passed by the deadline. Puerto Rico business and consumer advocates have lobbied against the deal, saying it would give the utility too much power to raise the island's already costly electric rates. Senator Ramon Luis Nieves, who chairs the Senate's energy committee and is working on the bill, said he expects lawmakers to pass it in the next few weeks.

"This bill is very complex and there are a few items we need to discuss further," Nieves said Friday in a telephone interview. "We are working together with the House so when the time comes to vote, we will be voting basically on the same bill."

Many others have much at stake in the deal going through. Insurers would dodge the full brunt of a default. The utility would secure investments needed to upgrade its antiquated electricity system, which may eventually allow it reduce power prices. And investors could get 85 cents on the dollar, well above current trading prices: bonds maturing in July 2037 traded Friday at an average 61.4 cents on the dollar, up from about 50 cents a year ago, data compiled by Bloomberg show.

The creditors have agreed repeatedly to extend deadlines during months of negotiations and may do so again if lawmakers delay. Here's a breakdown of who's involved in the deal and what they stand to receive. The utility is known by the acronym Prepa.

The Utility

Unless the agreement is enacted, the utility — which owes $8.1 billion to bondholders and $700 million to banks who finance its fuel purchases — won't be able to pay $1.13 billion to creditors that's due on July 1, Lisa Donahue, Prepa's chief restructuring officer, told a panel of the House Natural Resources Committee last week.

The deal would reduce Prepa's debt by more than $600 million and, by postponing principal payments, provide more than $700 million of relief over five years. Those savings will be used to help modernize a system in which the median plant is 44 years old, more than twice the average age in the U.S., Donahue said. Prepa relies on fuel oil and coal to generate about half of its electricity, which is more costly than using natural gas or renewable sources.

Bondholders Who Signed On

Angelo, Gordon & Co., BlueMountain Capital Management LLC, D.E. Shaw & Co., Knighthead Capital Management LLC, Marathon Asset Management LP, Franklin Advisers Inc., Goldman Sachs Group Inc. and OppenheimerFunds Inc. signed the accord last month. They hold $3 billion of the authority's bonds.

Called the Ad Hoc Group, they've agreed to exchange all of their bonds at 85 cents on the dollar for debt sold by a new authority, the Puerto Rico Electric Power Authority Revitalization Corp. To protect investors from further losses, the new securities will be repaid from a surcharge to Prepa customers that will flow directly to the bond trustee.

Bondholders will have the option of selecting from two different types of securities: bonds with interest of about 4 percent to 4.75 percent, or convertible capital appreciation bonds, which accumulate — but don't pay — interest for the first five years. After that, those bonds would begin paying annual interest of 4.5 percent to 5.5 percent.

To protect against default, MBIA Inc.'s National Public Finance Guarantee Corp. and Assured Guaranty Ltd. will provide a surety bond of as much as $462 million that will guarantee repayment. National will contribute as much as $344 million of that.

The Outside Bondholders

Mutual funds, individuals and others who weren't part of the negotiations hold $2.7 billion of the bonds. For the agreement to be completed, they must agree to exchange at least $2 billion of them for new bonds or a cash payment, the size of which hasn't been determined. Among the holders are UBS Asset Managers of Puerto Rico, Lord Abbett & Co., Waddell & Reed Financial Inc., MassMutual Financial Group, Dreyfus Group and T. Rowe Price Associates Inc., according to data compiled by Bloomberg using the firms' most recent financial filings.

They're a group with divergent interests. Some, who bought the bonds at par, may bristle at selling for a loss. Others who bought after prices tumbled stand to gain. Persuading the group to exchange the needed $2 billion "will be a challenge," Donahue said.

The Bond Insurers

Bond-insurance companies have guaranteed to pay investors if the utility defaults, so it's in their interest to keep that from coming to pass. National Public Finance, which insurers $1.3 billion of its bonds, and Assured Guaranty Ltd., which backs $831 million, have agreed to the plan. Puerto Rico is still negotiating with Syncora Guarantee Inc., which backs $197 million. By avoided an outright default, the deal would reduce the losses they face from Puerto Rico's fiscal crisis.

Prepa's outstanding insured bonds will be paid off as they mature with the proceeds of new securitized debt.

The Energy Bankers

Because of the need to borrow to keep fuel shipments coming into the island, the utility owes $550 million to Scotiabank de Puerto Rico and $146 million to Solus Alternative Asset Management LP. The loans carry an interest rate of 7.25 percent.

The lenders, which signed on to the deal, will have one of two options: convert the current lines of credit into six-year loans with 5.75 percent interest or take the new bonds on offer to investors.

Bloomberg Business

by Michelle Kaske

January 18, 2016 — 9:01 PM PST Updated on January 19, 2016 — 6:48 AM PST

Illinois GOP Sees Takeover, Bankruptcy for Chicago Schools.

Chicago's public school system should be taken over by the state and potentially file for bankruptcy to escape from its debts, Illinois Republican leaders said, escalating the partisan political clash over its mounting financial strains.

The Chicago Board of Education, the nation's third-largest district, is under fiscal siege because of soaring pension obligations. Its teachers union is threatening to strike, layoffs are looming, and without changes its operating deficit is projected to reach $1 billion a year through 2020. Christine Radogno and Jim Durkin, the state's top Republicans in the legislature, outlined a proposal Wednesday that would allow the state to take control and even push the system, charged with educating almost 400,000 students, into Chapter 9.
"What we're proposing is a lifeline," state Senator Radogno told reporters in Chicago. "We didn't come to this lightly. The track record of Chicago and its public school system is abysmal."

Chicago's schools have sought the state's help to close a $480 million budget shortfall brought on by bills for employee retirement benefits, which it has failed to adequately fund for years. Illinois Governor Bruce Rauner, a Republican who has been at odds for months with the Democrat-controlled legislature over the state budget, has said he won't bail out the schools unless Mayor Rahm Emanuel supports limits on unions or other proposals he's seeking to enact.

'Reckless Smokescreen'

The Republican proposal, which Rauner endorsed, was immediately dismissed by Emanuel, a Democrat, Senate President John Cullerton and the head of Chicago's schools.

"Instead of offering a reckless smokescreen that distracts from the real financial problems facing CPS, the Governor should pass a state budget that treats CPS students equally with the rest of the state," Forrest Claypool, the chief executive officer of the district, said in an e-mailed statement.

The legislation may be filed within the week, Durkin said. It would allow the state superintendent of schools to appoint as many as seven members to an independent authority to run the district. After

the schools' finances steady, the control would be ceded to an elected board, stripping the mayor of his current power to appoint those who oversee the district.

The bill would also allow Chicago and its schools to file for bankruptcy. A proposal introduced last year, which stalled in the legislature, would allow municipalities statewide to file for Chapter 9.

"It would be good, the right thing to do to protect taxpayers and schoolchildren and their parents, to have bankruptcy be an option," Rauner told reporters in Chicago.

Bankruptcy, which could allow the system to seek to cut workers' pension benefits or debts owed to bondholders, is not currently an option for local governments in Illinois. Senator Cullerton said in an e-mailed statement that the Republican plan "is not going to happen."

"Giving control of our children's future to a governor who can't pass his own budget, who is racking up billions in unpaid bills, and who is crippling higher education across the state makes zero sense," Kelley Quinn, a spokeswoman for Emanuel, said in an e-mailed statement.

Chicago's school district bonds have been cut to junk by all three major credit-rating companies. On Tuesday, Fitch Ratings lowered its grade on $6.1 billion of general-obligation debt by three steps to B+, four ranks below investment grade. Bonds due in 2039 traded on Jan. 15 for an average of 88 cents on the dollar to yield 6.5 percent.

The proposed takeover comes as Illinois is in its seventh month without a budget as Rauner, the first Republican to lead the state since 2003, and legislative Democrats remain at an impasse. Without a spending plan in place, Illinois will end the fiscal year as much as $5 billion in the hole.

Bloomberg Business

by Elizabeth Campbell

January 20, 2016 — 8:09 AM PST Updated on January 20, 2016 — 11:22 AM PST

Atlantic City Considering Bankruptcy Filing, Mayor Says.

Atlantic City is considering a bankruptcy filing after New Jersey Governor Chris Christie vetoed legislation aimed at shoring up the finances of the distressed casino resort.

Mayor Don Guardian said he expects to call an emergency meeting for next week to discuss the city's options. He and Council President Marty Small spoke to reporters in Trenton after an hour-long meeting with Assembly Speaker Vincent Prieto. Lawmakers are considering a state takeover of the city as well as ending its four-decade casino monopoly in New Jersey.

Christie, a second-term Republican running for president, didn't sign bills that would have diverted some gambling funds to the city and prevented tax appeals that strain its finances. The rejection came after the Democratic-led legislature complied with changes he suggested. The governor declined to act because the city hasn't dealt with its "structural budget issues and excessive spending," said Kevin Roberts, a Christie spokesman.

"The Governor is not going to ask the taxpayers to continue to be enablers in this waste and abuse," Roberts said Wednesday in an e-mailed statement.

Once the second-largest U.S. gambling market, Atlantic City has seen its key industry crumble as day-trip patrons shift to newer, closer casinos in nearby Pennsylvania and New York. While state aid helped plug a gap this year, the city of 39,000 faces a shortfall of $90 million next year, a third of its budget.

Guardian said bankruptcy would allow the city to emerge with a "clean slate," renegotiate union contracts and write off about $40 million of its debt. The city, which he said has about $240 million of bonds outstanding and owes $161 million in tax appeals, would need state approval to file.

"It would be good from a financial point for Atlantic City," Guardian said. "But it's not good news for the rest of the state and we've said that before. A bankruptcy filing by Atlantic City would mean that every other community could file."

Prieto, after his meeting with city officials, said he's open to discussions on their next step.

"Everybody wants to avoid bankruptcy," he told reporters. "When you do that, your bond rating really goes down and your creditors get less money. If you can avoid that, it would be the right thing to do."

New Jersey, which has some of the most aggressive policies among states to steer local government from financial disaster, hasn't had a municipal bankruptcy since Fort Lee in 1938, according to the Pew Charitable Trusts. When Camden filed for bankruptcy in 1999, its case was dismissed because the city wasn't authorized to do so by the state, said James Spiotto, a bankruptcy specialist and managing director at Chicago's Chapman Strategic Advisors LLC, which advises on financial restructuring.

Lawmakers last week agreed on a plan to ask voters in November to expand gambling to northern New Jersey and share the revenue with Atlantic City. Senate President Steve Sweeney, the highest-ranking Democratic legislator, said the city should declare bankruptcy if the Legislature doesn't quickly approve a plan he has introduced that would put the state in control of city government for 15 years.

"My goal is to save Atlantic City and to avoid bankruptcy," Sweeney said Wednesday in a statement. "State intervention is the best way to bring the city's finances under control."

Without the measures that were rejected this week, the city will run out of cash in April, according to a report released Friday by Kevin Lavin, the emergency manager appointed by Christie.

"That was like taking a knee in the fourth quarter — he's running out the clock," Small said of Christie, promising to fight takeover attempts. "We were counting on that money."

Bloomberg Business

by Terrence Dopp

January 20, 2016 — 7:36 AM PST Updated on January 20, 2016 — 10:28 AM PST

Pension Funding Fight Nears a Climax in Deficit-Stung New Jersey.

The fight in New Jersey over funding government workers' pensions is coming to a head — and no

one disputes that it'll be costly to taxpayers.

With the retirement system facing an $83 billion shortfall, Democrats who control the legislature are pushing for a ballot measure that would require the state to pay what it owes each year to end a bipartisan tradition of shortchanging pensions. Governor Chris Chris Christie, a Republican presidential candidate, has called it a "road to ruin."

The measure promises to add billions of dollars in spending to the budget of New Jersey, whose credit rating has been cut to the second lowest among U.S. states because of the retirement system's strains. Over the past decade, New Jersey paid about $24 billion less than it should have into the funds, freeing up cash to close budget shortfalls, spend or ease taxes, according to data compiled by Bloomberg.

"They're in a damned if you do, damned if you don't situation," said Carl Thompson, a municipal analyst in Boston at Eaton Vance, which holds $30.7 billion of state and local-government bonds, including New Jersey's. "They're probably going to be facing some rating pressure in either situation."

Christie took office in 2010 vowing to tame ballooning retirement debts. In 2011, he signed legislation requiring the state and its workers to boost their contributions. While Christie has put more aside than his predecessors, he's continued to fall short as he wrestled with deficits after the recession.

In 2015, he reneged on the 2011 law and paid about $681 million. That was about $3.2 billion less than actuaries estimated it should pay, according to a 2014 report by the New Jersey Pension and Health Benefit Study Commission. By comparison, the state spends about $2.2 billion a year on universities and colleges.

The measure, which has the support of public-employee unions, was introduced by Senate President Steve Sweeney, a Democrat, after state courts upheld Christie's ability to pay less than called for under the 2011 law. If approved by voters in November, the constitutional change would put the state on track to make full actuarially required payments by 2022, save taxpayer money and cut the unfunded liability by $4.9 billion over three decades, he said.

Fiscal Stability

"The failure to address this problem would only continue the bad budget practices of the past," said Richard McGrath, spokesman for Sweeney. "Projections show that revenue growth is sufficient to ramp up to full funding by 2022, which will put the state on the road to fiscal stability."

Asking residents directly is a way to get around Christie, whose signature isn't needed to place ballot questions before voters. The Democrat-controlled legislature approved the resolution last month. It needs one more vote in each chamber.

Investors say increased payments are necessary to keep the system from going broke. Without a fix, they've been demanding a higher yields to buy its debt instead of top-rated municipal securities: New Jersey's 10-year bonds yield 2.6 percent, about 0.79 percentage point more than benchmark securities, up from as little as 0.19 percentage point in May 2014, according to data compiled by Bloomberg. Only Illinois pays more among the 20 states tracked by Bloomberg.

Ratings companies have cut the state's grade nine times since Christie took office, a record for one of the state's governors. Moody's Investors Service ranks it A2, five steps above junk. In November, the New York-based company warned that the grade "will continue to fall" if it doesn't get a handle

on mounting liabilities, including pensions.

New Jersey has “one of the worst records in the country” for funding its retirement obligations, said Marcy Block, a senior director at Fitch Ratings. In fiscal 2014, the state contributed 18.6 percent of what New Jersey’s pension fund needed, the least of any state, according to Moody’s. It hasn’t made a full payment since 1996, according to figures from the pension commission’s study.

“Something like this is starting to put them on a path of turning things around,” said Thompson, the analyst with Eaton Vance. “I would rather see them to do something than nothing.”

Going Broke

New Jersey has seven plans for workers, teachers and emergency personnel. The primary plan, the Public Employees’ Retirement System, may run out of money by 2024.

The Garden State would join about five others whose constitutions require them to fund their retirement systems, according to Keith Brainard, who tracks pensions at the National Association of State Retirement Administrators.

New Jersey is so far behind, though, that mandated payments in the short term “would significantly reduce the state’s budget flexibility and potentially strain their liquidity,”’ said Moody’s analyst Baye Larsen.

The state would probably cut services and raise taxes to make the obligations, said Rob Amodeo, head of municipals in New York for Western Asset Management Co., which holds $25 billion of the securities. New Jersey’s individual income taxes are already the sixth-highest in the U.S., according to the Tax Foundation, a Washington-based group. It’s ranked No. 1 for property taxes.

“We don’t see a commitment to sound or sincere negotiations,” Amodeo said. “This might be the only remedy.”

Bloomberg Business

by Romy Varghese

January 19, 2016 — 9:01 PM PST Updated on January 20, 2016 — 5:51 AM PST

Treasury's Lew Urges Congress to Grant Puerto Rico Bankruptcy.

Treasury Secretary Jacob J. Lew said that Congress needs to act without delay to help Puerto Rico deal with a worsening fiscal crisis, as he visited the island for the first time to witness the impact on the local economy.

“Only Congress can enact the legislative measures necessary for Puerto Rico to resolve this problem,” he said at a press conference in San Juan Wednesday. “The people of Puerto Rico are sacrificing, but unless that sacrifice is shared by creditors in an orderly restructuring, there is no path out of insolvency and back to growth.”

Lew reiterated the Obama administration call for bankruptcy powers for Puerto Rico, paired with independent fiscal oversight, additional health care funding and employment incentives. Republicans say they need more information about the island’s financial situation before they draft a bill and

some investors oppose granting Puerto Rico restructuring powers, saying that would change the rules under which the debt was issued.

“Without congressional action, Puerto Rico will face a long and difficult recovery that could have harmful consequences for the American citizens who call the island home,” Lew said. “That is why we have called on Congress to act without delay.”

House Speaker Paul Ryan has called for a solution for Puerto Rico by the end of this quarter and Lew described that deadline urgent and meaningful. Puerto Rico’s Government Development Bank owes investors $422 million in May. The commonwealth and its agencies owe $2 billion on July 1, on the heels of an anticipated $923 million negative cash balance in June.

Congressional Republicans are calling for a federal control board. If one is enacted, it must respect Puerto Rico’s rights and has to be paired with access to bankruptcy, Puerto Rico Governor Alejandro Garcia Padilla said at a separate press conference following a meeting with Lew Wednesday.

Lew is meeting with Puerto Rico officials as the commonwealth says its fiscal crisis is worsening. The island now estimates it will be $16.06 billion short in paying principal and interest during the next five years, up from a $14 billion projection in September, according to a revised fiscal and economic growth plan released Monday. That financing deficit will grow to $23.9 billion through 2025.

Debt Exchange

Island officials are working on a debt-restructuring proposal to offer creditors such as hedge funds, municipal mutual-funds and insurance companies that guarantee repayment of commonwealth’s $70 billion debt burden. That plan may involve a debt exchange where investors accept losses on their securities or wait longer to be repaid.

Puerto Rico avoided defaulting on its general-obligation debt at the start of the year by taking revenue originally used to repay agency bonds. That prompted the Infrastructure Finance Authority to miss a $35.9 million interest payment and fueled speculation that other agencies would eventually follow suit.

The commonwealth and its agencies racked up debt after borrowing for years to fix budget gaps as the island’s economy has contracted every year but one in the past decade. Its 12.5 percent unemployment rate is higher than any U.S. state and more than double what it is in the U.S. Residents have left the island to seek work on the mainland, resulting in a 9.2 percent population drop since 2004, according to U.S. Census data.

Bloomberg Business

by Kasia Klimasinska and Michelle Kaske

January 20, 2016 — 6:58 AM PST

Oil's Collapse Hurting States That Were Counting on $50-a-Barrel.

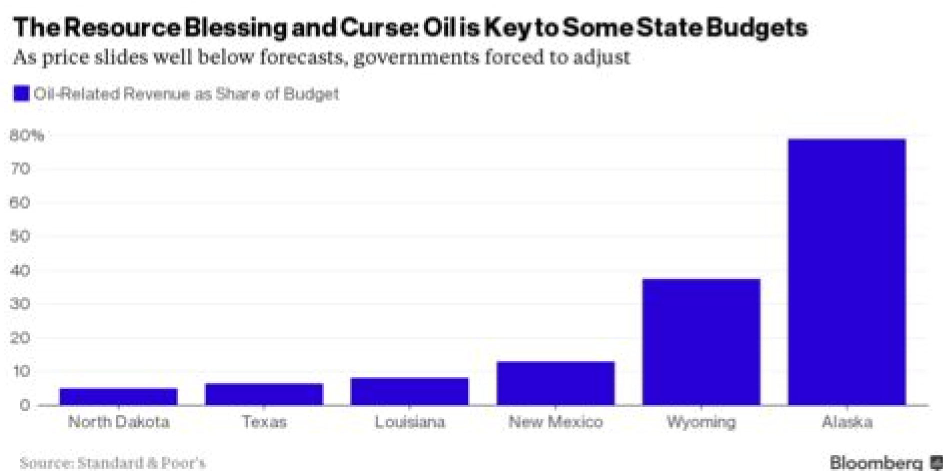
When Louisiana, one of the nation’s biggest energy-producing states, decided how much tax money the government would have to spend this year, it forecast that the price of oil would be almost $50 a

barrel. It’s since tumbled to below $32, casting economic ripples that helped create a $750 million budget shortfall.

The price of crude, which is recovering from a 12-year low, has emerged as a major source of fiscal strain on the nation’s oil-patch states, none of which predicted how swift or deep the drop would be. That’s prompted a reversal-of-fortune in capitals that once reaped revenue windfalls from America’s energy-industry renaissance and are now racing to adjust.

“They’re playing catch-up in getting their estimates in line with what’s happening with spot prices,” said Gabriel Petek, a municipal-bond analyst in San Francisco for Standard & Poor’s who’s been tracking the fiscal impacts, speaking of energy states revising price forecasts. “It doesn’t look like prices are coming up soon, so if the prices stay low it could pressure their budget positions.”

A report released Thursday by S&P said the energy rout is a main culprit in at least five of the 11 states that are facing financial pressure this year as jobs and counted-on tax collections disappear. The price of oil, which traded for more than $100 less than two years ago, has been cut in half since June amid concerns about the slowing pace of overseas economies, even with a rally Friday that pushed it up more than 7 percent.



Besides Louisiana, it’s being felt largely in Alaska, New Mexico, Oklahoma, and North Dakota, the credit-rating company said. But it’s also cropping up elsewhere: In Texas, the largest producer, the impact has crimped sales-tax collections and increased the cost of public-assistance programs for those out of work. In states with the big energy industries, payrolls expanded by 0.9 percent in the year through November, less than half the rate for the U.S., according to S&P.

Sales-Tax Increase

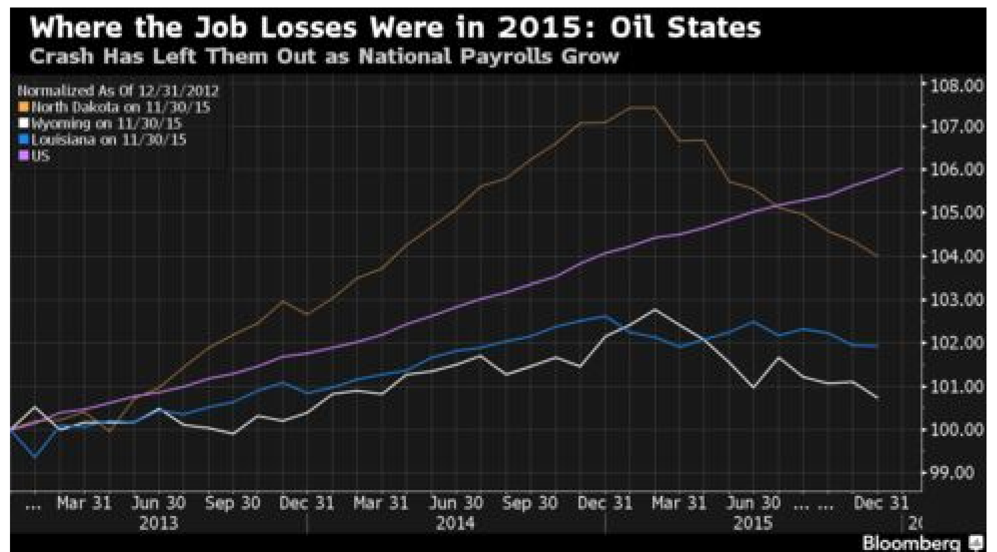
For Louisiana, the lower prices — along with rising health-care costs — are a driver of the projected $1.9 billion deficit for the year that begins in July. With its finances squeezed, investors have demanded higher yields to own some of the state’s debt. Fuel-tax backed bonds maturing in 2041 traded Friday for a yield of 3.17 percent, or 1.48 percentage point more than top-rated securities. That gap is up from 0.78 percentage point in May.

To help close the gap, Governor John Bel Edwards, a Democrat in his second week in office, proposed raising the sales tax by 1 percentage point to 5 percent. That would give the Gulf Coast state the highest average state and local sales-tax rate in the country, according to the Tax Foundation in Washington.

Edwards has also proposed tapping reserves, cutting spending by about 10 percent and drawing on compensation Louisiana received for the BP Plc oil spill.

“The decline in oil prices certainly isn’t helping us,” said Julie Payer, the governor’s deputy chief of staff. “It’s a factor in layoffs that are affecting industries in the state.”

Louisiana may reduce the $48 barrel oil price it used in budget projections in November when it puts out new estimates next month. “It hasn’t been getting any better,” Payer said.



Oklahoma expects tax collections to fall short of its initial estimates by 7.7 percent in the current budget year and by 13 percent in the next, which led Governor Mary Fallin to implement across-th--board spending cuts, according to S&P. Similar reductions are likely in North Dakota.

Alaska, with 79 percent of its operating revenue drawn from oil, lost its AAA rating from S&P this month after its deficit widened. The state assumed prices of more than $67 a barrel when it passed its budget last year, only to cut it later to about $50. The rating outlook remains negative, indicating another downgrade could come if the state fails to curb its deficit during this year’s legislative session. Governor Bill Walker said in a statement this month that the cut “further solidifies the need to address our state’s fiscal challenges.”

“Alaska stands out as the most exposed,” said Petek, the S&P analyst.

Texas Comptroller Glenn Hegar revised his revenue estimate for fiscal 2016 and 2017 down in October to $110.4 billion from $113 billion. Even so, the state’s vast and diversified economy has left it better buffered than other states: The revised figure still exceeds the $106 billion in the current two-year budget, said Chris Bryan, spokesman for Hegar.

The drop in Texas’s collections of energy-severance taxes will cut contributions to the government’s funds that are used to build highways and mitigate the impact of economic slowdowns on the budget. Estimates for contributions to those funds have been cut by half for fiscal 2017. The state’s reserves are still expected to be about $10.5 billion in 2017.

“We’re still way ahead of where we would have to be for energy prices to have an impact on the state budget,” said Bryan.

Bloomberg Business

by Darrell Preston

January 21, 2016 — 9:01 PM PST Updated on January 22, 2016 — 7:26 AM PST

Washington State Refinancing Adds to $1 Billion Budget Relief.

State and local governments that routinely borrow by negotiating with investment banks to sell bonds often cite their ability to control the timing of a bond sale as justification. Officials in the state of Washington don't buy that.

The state sold $673 million of bonds Wednesday through competitive bidding with barely a month to prepare for the sale after the Federal Reserve raised interest rates in December for the first time since 2006. The AA+ state borrowed at 2.02 percent in the 10-year maturity, beating 2.13 percent yield for top-rated debt, according to Municipal Market Analytics Inc. data. JPMorgan Chase & Co. won the bidding.

The state uses competitive bidding for almost all its debt sales except some bonds that rely on unique revenue sources such as so-called Build America Bonds, taxable debt that came with a federal subsidy for two years starting in 2009 to stimulate the economy.

"Washington is a long a way from Wall Street and we want to do everything as transparently as possible, and there's no better way to demonstrate you got the lowest cost of funds than to put it out for bid," said Ellen Evans, deputy state treasurer for debt management, in an interview before the bids were awarded. "We get a fantastic cost of funds."

Historic Lows

Washington state is unique in the $3.7 trillion municipal bond market, where more than three-fourths of all borrowers that sold fixed-rate, long-term debt do so by negotiating with banks. But since 2009 the state has refinanced about $9 billion of debt in more than two dozens sales, cutting annual interest payments by more than $1 billion a year, according to state Treasurer James McIntire.

The state is still benefiting from municipal borrowing costs that remain near historic lows, even after the Fed raised rates. Yields on benchmark 10-year Treasury notes dropped on Wednesday to the lowest level since October as investors sought the safety of sovereign debt as the collapse of oil prices sparked anxiety in markets from stocks to inflation derivatives.

Last year refinancing of outstanding debt accounted for 63 percent of all municipal bonds sold, according to data compiled by Bloomberg. Bank America projected about 60 percent of $450 billion of issuance in 2016 would be to refinance debt to cut borrowing costs.

Escrowed Funds

Washington was planning to sell $530 million of new-money bonds next month after the Fed increased its target rate by 0.25 percentage points Dec. 14. Soon after Evans and her staff realized that while muni rates remained low, the increase in U.S. Treasury rates moved short-term taxable rates high enough the state could fund the escrow needed to advance refund the debt.

In an advance refunding the state borrows to replace existing debt once it is callable by putting the

proceeds in escrowed U.S. Treasuries that are redeemed as refinanced debt matures. The escrowed funds must be invested at just the right rate to repay the debt without generating any surplus under U.S. tax law.

"As December started we had no idea we would be in the money to do this at all," said Evans.

Bloomberg Business

by Darrell Preston

January 20, 2016 — 1:29 PM PST

The Case for Allowing U.S. States to Declare Bankruptcy.

States can't seek legal protection from their debts, but there's a move on to change that.

Puerto Rico is trapped in a financial crisis so deep that President Obama says the only way out for the territory is to make it eligible for a bankruptcy-like process to shed some of its debts. None of the 50 states is nearly as bad off as Puerto Rico. But some influential people are arguing that if a state does get into deep financial trouble, some kind of bankruptcy would be the best option—certainly better than a taxpayer bailout.

States, unlike cities and counties, currently can't declare bankruptcy. The case for allowing it is that a well-run proceeding apportions losses fairly and fast. Lenders and bondholders absorb some of the pain, but so do government workers and retirees. Taxes go up and government services are cut back, but ideally not as severely as in an uncontrolled default. The result is a government that's streamlined, not gutted.

"Bankruptcy lets you get ahead of the problem," says David Skeel Jr., a professor at University of Pennsylvania Law School and a leading advocate of giving federal bankruptcy protection to states. Without that option, he says, "what inevitably happens when you're in deep financial distress is that you have to cannibalize other stuff. You cut police, schools, other services. You reinforce the downward spiral."

In another scenario, a state that goes broke and has no recourse to bankruptcy may end up seeking help from the federal government. "We want to cut off the politicians from assuming that at the end of their wild overspending they can just dump the responsibilities on other taxpayers," says former House Speaker Newt Gingrich.

Gingrich and Jeb Bush co-wrote an op-ed in the Los Angeles Times supporting state bankruptcy in 2011, the last time it was seriously debated. At the time, states were reeling from the aftereffects of the financial crisis. During a congressional hearing that year, Senator John Cornyn (R-Texas) raised the issue with then-Federal Reserve Chairman Ben Bernanke. (Bernanke responded that states "have the tools to deal with their fiscal problems and debt.")

Public employee unions and their supporters trashed the bankruptcy option last time around, afraid that it would give states an easy way to slash their pension obligations. State governments said they didn't want to be eligible for bankruptcy, fearing that the very possibility would spook investors in municipal bonds and drive up their borrowing costs. And some analysts worried that it would reduce the pressure for budget action. "If you had this out, it would make it a little bit more difficult to

persuade people that they need to raise taxes or cut programs," says Elizabeth McNichol, a senior fellow at the Center on Budget and Policy Priorities.

Treasury Secretary Jacob Lew is seeking to wall off federal relief for Puerto Rico from the explosive question of state bankruptcy. In a letter to House Speaker Paul Ryan on Jan. 15, he pointedly didn't ask Congress to make Puerto Rico eligible for protection under the federal bankruptcy code. Instead, he said Puerto Rico needs "an orderly process to restructure its debts," coupled with "strong, independent fiscal oversight." Something like that could be done through the federal law governing Puerto Rico and the other territories, sidestepping the bankruptcy code. Ryan has given lawmakers until March 31 to act.

There are some tricky constitutional issues with state bankruptcy. Juliet Moringiello, a professor at Widener University Commonwealth Law School in Pennsylvania, says it could violate the contracts clause, which prohibits states from interfering with contracts, and the 10th Amendment, which says states are sovereign. (Bankruptcy would put states under the authority of a federal judge.) Penn's Skeel thinks these objections could be surmounted—for one thing, it would be voluntary for states. But he's not sure how current Supreme Court justices would rule.

Legalities aside, the strongest argument for state bankruptcy is that it clearly signals to bondholders that they could lose money if a state behaves badly. Knowing that, investors will demand higher yields from states with bad budget problems, thus encouraging the states to get their financial houses in order. With the notion of state bankruptcy in the air again, "municipal investors should no longer assume that state governments themselves will never have access to protection" from creditors in bankruptcy court, Matt Fabian, a partner in the research firm Municipal Market Analytics, wrote to clients in December.

The principle that states are responsible for their own debts goes back to the 1840s, when Congress refused to assume the debts of states that had overborrowed to finance a canal- and railroad-building craze. Chastened by the episode, many states passed balanced-budget amendments and took other steps to keep their debt under strict control. It was "a pivotal moment in the history of U.S. federalism," Jonathan Rodden, a political scientist at Stanford and the Hoover Institution, wrote in a 2012 paper.

The effects have lasted into the present. A state hasn't defaulted since Arkansas, in the throes of the Great Depression, in 1933. When states behave badly, their borrowing costs rise. The cost of protection against default by the financially troubled state of Illinois is now three times as high as that of California.

Market discipline may be weakening, however. The federal government relies on the states to carry out some programs, such as Medicaid. Investors and state governments could start to conclude that Washington has an implicit duty to come to their rescue if they get in trouble. If so, states would be tempted to overspend and bond investors to overlend. If Washington were on the hook for the states' problems, it would naturally want control over their finances—but under the Constitution, it can't have that.

Making bankruptcy a last-ditch option, writes Stanford's Rodden, would reinforce the U.S. tradition of market discipline. "It is not too late," he wrote in a chapter for a 2014 book, The Global Debt Crisis: Haunting U.S. and European Federalism. "In fact, the timing might be quite good to clarify once and for all that states can and will default if they do not achieve fiscal sustainability."

Bloomberg Businessweek

by Peter Coy

January 21, 2016 — 1:44 PM PST

Bloomberg Brief Weekly Video - 01/21

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

Watch the video.

January 21, 2016

Moody's: Adjusted Net Pension Liabilities Decline for Most U.S. States in FY 2014.

New York, January 15, 2016 — The majority of US states experienced declines in their adjusted net pension liabilities (ANPL) in fiscal 2014, Moody's Investors Service says. Moody's ANPL decreased for 27 states, of which, nine saw a decline for a second year in a row. However, the aggregate 50-state ANPL increased marginally to $1.3 trillion due to rising liabilities in some states.

Strong investment returns drove an average pension liability decline of 15.3%, with median returns for larger plans at 16.1%, Moody's says in "Fiscal 2014 Pension Medians – US States: Robust 2014 Investment Returns Provide Pause in Growth of Adjusted Net Pension Liabilities."

"Double-digit investment returns contributed to reducing pension liabilities. More timely plan disclosures under Governmental Accounting Standards Board (GASB) 67 improve comparison between states," says John Lombardi, a Moody's Associate Analyst.

Also in fiscal 2014, most states made budgetary contributions at or close to their actuarially determined contribution (ADC) levels. Thirty-six states contributed greater than 90% of ADC, with 12 contributing between 60% to 90% and only two funding below 60% of their pension costs.

"The two states most significantly underfunding their pension payments are New Jersey (A2 negative) and California (Aa3 stable) at 18.6% and 48.2%,respectively," Lombardi says.

The median three-year average ANPL as a percentage of governmental revenue remained flat at 53% in fiscal 2014.

However, several states remained outliers with three-year average ANPL beyond 100% of their revenues. The five states with the largest unfunded pension liabilities by this measure were Illinois (Baa1 negative) at 278%, Connecticut (Aa3 stable) at 225%, Kentucky (Aa2 stable) at 182%, Louisiana (Aa2 negative) at 163%, and Hawaii (Aa2 stable) at 149%.

The five states with the lowest three-year average ANPL compared to revenues were Nebraska (Aa2 stable) at 11%, Wisconsin (Aa2 positive) at 14%, New York (Aa1 stable) at 23%, Tennessee (Aaa stable) at 23%, and Iowa (Aaa stable) at 26%.

Moody's anticipates growth of pension liabilities to resume fiscal 2015, as investment performance was much weaker than the prior two years.. Additionally, several states coping with pension underfunding and outsized liabilities will continue to face significant credit challenges.

The report is available to Moody's subscribers here.

BDA Submits Letter to SEC on MSRB Pay-to-Play Rule.

The Bond Dealers of America submitted a comment letter to the SEC on MSRB's proposed pay-t--play rule. You can review the draft letter here.

More specifically, the letter addresses:

- BDA's support of extending MSRB's rule to cover MAs;
- BDA's request for additional guidance on regulatory filings for dealers; and,
- BDA's request to raise the de minimis threshold from $250 to $350 to harmonize the contribution limit with other regulators

Additional information:

- You can view MSRB's filing to the SEC here.
- You can view BDA's previous comment letter to on G-37 here.

The Detroit Bondholders Did Not Get 'Stiffed.'

The settlement votes affirm that the bondholders in the Detroit case felt fairly treated.

In "Fixing Puerto Rico's Debt Mess" (Jan. 6), Prof. David Skeel discusses the Detroit bankruptcy case. He states, "Holders of the city's general-obligation bonds, which had the same priority as pensions, got stiffed, receiving roughly 41% of what they were owed. Pensioners got at least 60%."

This is wrong. The bondholders in the Detroit case did not get "stiffed." Prof. Skeel omits the fact that a much larger class of bondholders, the unlimited tax general-obligation bonds (UTGO) bondholders, received 74%.

Prof. Skeel also ignores that the recoveries in the Detroit case for the bondholder classes and the pensioner classes were the outcome of intense, monthslong negotiations in which all parties were well-represented by expert professionals. As a result of these successful negotiations, the UTGO class voted to accept the plan by 97% and the limited tax general obligation class (the class that did receive 41%) voted to accept the plan by 83%.

These votes affirm that the bondholders in the Detroit case felt fairly treated. After their settlements, they supported Detroit's plan of adjustment. They did not get "stiffed."

Detroit's insolvency required its creditors to accept the shared sacrifice that was necessary for the city to revitalize its services and its economy, and to pay its creditors what it could. Thankfully, after negotiations, its creditors did so. As a result, Detroit is now on the road to a proud and secure future.

THE WALL STREET JOURNAL

Jan. 20, 2016 3:34 p.m. ET

by Steven Rhodes

Ann Arbor, Mich.

Mr. Rhodes, a retired U.S. bankruptcy judge, handled the Detroit bankruptcy case.

Confirmation Disclosure and Bank Loans Among Topics at Upcoming MSRB Board Meeting.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published an agenda for its upcoming Board of Directors meeting, to be held January 27-28, 2016 in Washington, DC. The Board of Directors meets quarterly to oversee the strategic direction of the organization, make policy decisions, and authorize rulemaking and market transparency initiatives.

Among the Board's agenda topics is the MSRB's proposal to require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of principal transactions. The Board plans to discuss public comments received on its proposal, and determine next steps. The mark-up disclosure proposal seeks to enhance the transparency of investor transaction costs and dealer compensation in the municipal securities market.

The Board also will continue its ongoing discussion of secondary market disclosure in the municipal market related to bank loans and other alternative financings. The MSRB has been advocating for voluntary disclosure of this information to investors because of the potential impact of bank loans and other debt-like obligations on the seniority status of existing bondholders, among other implications. At its meeting, the Board will explore possible regulatory action in this area to promote disclosures about bank loans affecting the overall indebtedness of an issuer.

Another topic the Board will discuss is the MSRB's existing rule related to the minimum denomination at which municipal securities can be sold to investors. Minimum denominations have been the focus of recent regulatory examinations and enforcement actions, and the Board plans to discuss potential clarifications to MSRB Rule G-15, on uniform practice requirements for municipal securities dealers, which include provisions on minimum denominations.

Read the MSRB Board of Directors' meeting agenda.

Date: January 20, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

- New MSRB Notice Summarizes Provisions of Municipal Advisor Conduct Rule.
- MSRB Notice Details MA Conduct Requirements; Webinar Planned.

- NABL: SEC Announces 2016 Examination Priorities.
- BDA's January 2016 Member Fly-in Focused on FINRA 4210 Margin Amendments.
- BDA Submits Comment Letter to SEC in Response to FINRA ATS Trade Reporting Amendments.
- Paying for Protection: The Return of Bond Insurers.
- S&P Report Says 2016 Could Be New Era in Bond Refinancing in the Project Finance Sector.
- One of the Biggest Bond Market Players Has No Employees.
- Fitch Updates Criteria for Rating Public-Sector Counterparty Obligations in PPP Transactions.
- *Haggart v. Woodley* – In "rails-to-trails" class action takings claim, Court of Appeals reverses Court of Federal Claims' approval of settlement agreement between U.S. and landowners, disapproving class counsel's methodology (extrapolation) for calculating fair market value for properties and holding that fee-shifting statute (URA) foreclosed application of common fund doctrine to action.
- And finally, Location, Location, Location! is brought to you this week by *Sid-Mar's Restaurant & Lounge, Inc. v. State ex rel. Governor*, in which the state argued that (now submerged) restaurant property had never been eligible for private ownership, as it had formerly been (literally) the bottom of Lake Ponchartrain. Seems like someone may have been a tad unclear on the concept of lake*front* property.

INSURANCE - ILLINOIS

City of Elgin v. Arch Ins. Co.

Appellate Court of Illinois, Second District - December 10, 2015 - N.E.3d - 2015 IL App (2d) 150013 - 2015 WL 8526250

City, which had entered into agreement with developer to develop certain property and make improvements to property, brought action against surety, from which developer had received bonds guaranteeing its performance, and buyer of remaining property after developer went bankrupt, which refused city's demands that it complete improvements required by annexation agreement between city and developer. Surety filed counterclaim against buyer alleging that it should be held primarily liable for improvements. The Circuit Court granted buyer's motion to dismiss surety's counterclaim. Surety appealed.

The Appellate Court held that:

- Buyer assumed developer's underlying obligation to complete improvements to property;
- Surety sufficiently pled claim of unjust enrichment in counterclaim; and
- Surety's failure to name as counter-defendants those individual homeowners who bought home in development did not warrant dismissal of counterclaim.

Buyer of remaining property after developer went bankrupt assumed developer's underlying obligation to complete improvements to property, pursuant to developer's annexation agreement with city, even though surety, from which developer had received bonds guaranteeing its performance, was not party to agreement. Agreement provided that it was binding on successors and assigned that its terms constituted covenant running with land, and obligations secured by bonds arose out of agreement, even if that agreement was not specifically mentioned in bonds.

Surety, from which developer had received bonds guaranteeing its performance, sufficiently pled claim of unjust enrichment in its counterclaim against buyer of remaining property after developer went bankrupt, in city's action against surety and buyer, after buyer refused city's demands to complete improvements to property required by annexation agreement between city and developer. Surety alleged that buyer was primary obliger bounds to perform underlying obligation under

agreement that was secured by bounds issued by surety, that city sought payment from surety because buyer did not perform that obligation, that any recovery city received from surety must have been used to make improvements required by agreement, that buyer would be benefited by those improvements, and that it was unjust for buyer to retain benefit when its own wrongful failure to perform underlying obligation gave rise to surety's liability.

Surety's failure to name as counter-defendants those individual homeowners who had bought homes in development did not warrant dismissal of its counterclaim against buyer of remaining property after developer went bankrupt, in city's action against surety, from which developer had received bonds guaranteeing its performance, and buyer, after buyer refused city's demands to complete improvements to property required by annexation agreement between city and developer. Although counterclaim alleged that buyer was current owner of some or all of property in development, counterclaim did not allege that there were, in fact, any other owners, and causes of action pled in counterclaim did not show that homeowners were necessary parties.

INVERSE CONDEMNATION - LOUISIANA

Sid-Mar's Restaurant & Lounge, Inc. v. State ex rel. Governor

Court of Appeal of Louisiana, Fifth Circuit - December 9, 2015 - So.3d - 2015 WL 8543950 - 15-326 (La.App. 5 Cir. 12/9/15)

Restaurant owners brought action against state for inverse condemnation, alleging that their restaurant property was commandeered/taken by executive order of the Governor for a flood control project after Hurricane Katrina.

Following bench trial for compensation, the District Court entered judgment in favor of restaurant owners for approximately $2.02 million and a separate judgment for attorney fees of approximately $850,000. State moved for suspensive appeal, and owners and estate answered appeal.

The Court of Appeal held that:

- Amendment to eminent domain provision of state constitution and statute did not apply retroactively;
- Owners were not entitled to an award of damages for mental anguish;
- Trial court did not abuse its discretion in awarding ten years of economic damages;
- Interest was due from the date the state took the restaurant's land;
- Owners were not entitled to recover attorney fees that they incurred in related federal litigation; and
- Owners were not entitled to recover appellate attorney fees.

ZONING - MASSACHUSETTS

Parkview Electronics Trust, LLC v. Conservation Com'n of Winchester

Appeals Court of Massachusetts, Middlesex - January 12, 2016 - N.E.3d - 2014 WL 10987315

Property owner brought action in the nature of certiorari contending that town conservation commission's order of resource area delineation (ORAD) was invalid. The Superior Court granted commission's motion for judgment on the pleadings. Property owner appealed.

The Appeals Court held that:

- Commission was permitted to apply both local by-law and state law in determining compliance with wetlands protection standards, and
- By-law's definition of "land subject to flooding" was not so vague as to violate due process.

IMMUNITY - MISSISSIPPI

Crum v. City of Corinth

Supreme Court of Mississippi - January 14, 2016 - So.3d - 2016 WL 159399

City resident filed suit against city for negligence, based on its alleged breach of duty to maintain and repair sewer system, arising out overflow sewage backing up into her home and garage on two occasions.

The Circuit Court granted city's motion to dismiss for failure to state claim, based on determination that city was entitled to governmental immunity, and resident appealed.

The Supreme Court of Mississippi held that:

- Resident stated adequate claim against city for negligence sufficient to survive dismissal on grounds of immunity, and
- Allowing resident to amend complaint, rather than dismissal for failure to state claim, was appropriate remedy for any failure by resident to adequately allege that maintenance and repairs of sewer systems was ministerial, rather than discretionary function of city.

City resident stated adequate claim against city for negligence based on its alleged breach of duty to maintain and repair sewer systems, arising out of sewage overflow that backed up into her home and garage, as required to overcome city's defense of sovereign immunity that was based on assertion that its duty to maintain repair sewer systems was discretionary, and not ministerial. Resident alleged that backflow of sewage into home was due to fault of city in not properly maintaining sewer system and/or its manholes and/or city caused sewer system and/or manholes to flood, and state regulation imposed ministerial duty on city to maintain such systems, and thus, city could not show that there were no set of facts under which resident could survive dismissal on grounds of governmental immunity. (Per Kitchens, J., with one justice concurring in result only, one justice concurring in part and in result, and two justices concurring).

Allowing city resident to amend complaint for negligence against city, rather than dismissal for failure to state claim, was appropriate remedy for any failure by resident to allege that city's duty to maintain and repair sewer systems was ministerial, rather than discretionary, as required to defeat city's governmental immunity from suit, and that her injuries were caused by act done in course of performing such duty made ministerial by statute, ordinance, or regulation.

MUNICIPAL ORDINANCE - MISSOURI

Duffner v. City of St. Peters

Missouri Court of Appeals, Eastern District, Division Two - January 12, 2016 - S.W.3d - 2016 WL 145556

Property owners filed suit against city challenging constitutionality and validity of city ordinance requiring owners to maintain turf grass on at least 50% of residential yard. The Circuit Court granted city's motion to dismiss for lack of jurisdiction, and owners appealed.

The Court of Appeals held that:

- Circuit court had general plenary jurisdiction over owners claims challenging validity of ordinance on grounds that it violated due process and amounted to regulatory taking;
- Claim that ordinance violated equal protection was collateral attack of decision of board of adjustment on application for variance, and thus, petition for writ of certiorari review to circuit was owners' exclusive remedy for that claim;
- Owners did not waive due process and takings claims, so as to deprive circuit court of subject matter jurisdiction, by applying for variance and failing to raise claims with board of adjustment;
- Owners' allegations failed to state claim that ordinance violated their substantive due process right to control their property;
- Owners stated claim for regulatory taking without just compensation; and
- Owners' allegations stated claim that city's enactment of ordinance impermissibly exceeded scope of powers granted by statute.

Allegation that city ordinance requiring owners to maintain turf grass on at least 50% of their residential yards inhibited property owners' use and enjoyment of their yard, regardless of whether city's intention was to benefit public generally or to benefit private owners through subsidizing residential property values, stated claim against city for regulatory taking without just compensation, under Missouri Constitution.

Property owners stated claim that city's enactment of zoning ordinance requiring owners to maintain turf grass on at least 50% of their residential yard impermissibly exceeded scope of powers granted by statute. Owners alleged that requirement of specific amount of land devoted to specific type of plant was not included in general police powers to "promote health, safety, morals or general welfare," and that ordinance did not fall within scope of statutory authority to regulate and restrict height, number of stories, and size of buildings and other structures, to regulate percentage of lot that could be occupied, size of yards, courts, and other open spaces, to regulate density of population, to preserve features of historical significance, and to regulate location and use of buildings, structures and land for trade, industry, residence or other purposes.

EMINENT DOMAIN - SOUTH CAROLINA

South Carolina Dept. of Transp. v. Powell

Court of Appeals of South Carolina - December 9, 2015 - S.E.2d - 2015 WL 8323392

On August 27, 2010, the South Carolina Department of Transportation (SCDOT) filed a notice of condemnation acquiring 0.183 acres of a 2.51 acre tract of unimproved land owned by David Powell. The acquisition occurred in conjunction with a highway improvement project involving nearby Highway 17. SCDOT offered Powell $72,000 for the condemned property. Powell rejected SCDOT's offer and requested a jury trial to determine just compensation.

The Circuit Court entered summary judgment for Department, finding that Powell was not entitled to any compensation Powell appealed.

The Court of Appeals affirmed, holding that any diminution in value of landowner's property as a

result of the change in road access was not compensable.

Any diminution in value of landowner's property as a result of the change in road access was not compensable in condemnation case involving Department of Transportation, which condemned portion of landowner's property as part of its overall road project. Any damage to the remainder of landowner's property as a result of the closure of the intersection of road and highway was not compensable, and landowner had not lost his right of ingress or egress to and from his property.

In condemnation context, landowner has no vested rights in the continuance of a public highway and in the continuation of maintenance of traffic flow past his property.

The taking of part of landowner's property by Department of Transportation was only an incidental result of the closure of highway's intersection and was not indispensable to and inseparable from overall highway project, and thus landowner was not entitled to compensation for loss of access to remainder of his property. Property was taken to round intersection of road and a second highway, and taking of landowner's property was not a substantial part of overall project given that Department could have closed intersection without taking part of landowner's property.

EMINENT DOMAIN - WASHINGTON

Haggart v. Woodley

United States Court of Appeals, Federal Circuit - January 8, 2016 - F.3d - 2016 WL 97520

Landowners filed rails-to-trails class action against United States, claiming that National Trails System Act (NTSA) provision, authorizing "railbanking" as alternative to abandonment of railroad right-of-way that would be operated as recreational trail, effected Fifth Amendment taking of landowners' reversionary rights to property underlying railroad right-of-way.

The United States Court of Federal Claims approved settlement agreement and awarded attorney fees to class counsel under common fund doctrine. Objectors appealed.

The Court of Appeals held that:

- Government had standing to challenge Court of Federal Claims' award of attorney fees;
- Government did not waive arguments;
- Government was not barred, under doctrine of judicial estoppel, from raising arguments;
- Court of Federal Claims abused its discretion in finding that class counsel's explanation of methodology used to calculate fair market value for properties was fair, reasonable, and adequate; and
- Fee-shifting statute foreclosed application of common fund doctrine to action.

Government had standing to challenge Court of Federal Claims' award of attorney fees under common fund doctrine in landowners' class action against United States, in which taking of landowners' reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, since government possessed institutional interest in assuring that court did not abrogate Congress's intent by impermissibly substituting common fund doctrine in place of a fee-shifting statute requiring government to assume litigation expenses of counsel in bringing forth takings claims when awarding attorney fees, and in defending Attorney General's determination that fees determined in accordance with fee-shifting statute constituted reasonable attorney fees.

Government’s failure to take position, before Court of Federal Claims, on issue of class counsel’s disclosure of information to class members or class counsel’s motion for additional attorney fees, in landowners’s class action against United States in which taking of landowners’ reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, did not waive government’s argument, on appeal, that class counsel improperly refused to disclose information necessary to allow class members to asses fairness and reasonableness of proposed settlement, or that award of additional attorney fees to class counsel, under common fund doctrine, was improper.

Government was not precluded, under doctrine of judicial estoppel, from arguing, on appeal from Court of Federal Claims’ decision approving settlement and award of additional attorney fees to class counsel under common fund doctrine, in landowners’ class action against United States in which taking of landowners’ reversionary rights to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, that class counsel improperly refused to disclose information necessary to allow class members to asses fairness and reasonableness of proposed settlement, or that award of additional attorney fees to class counsel was improper, where government did not take position in Court of Federal Claims on issues of proposed settlement agreement or attorney fees.

Court of Federal Claims abused its discretion in finding that class counsel’s explanation of methodology used to calculate fair market value for properties, which served as basis for allocation of settlement award among class members in landowners’ class action against the United States, in which taking of landowners’ reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, was fair, reasonable, and adequate, where, due to large number of individual properties, only certain representative properties were appraised, fair market values of non-representative properties were extrapolated from the appraised properties, and class counsel did not provide class members who owned non-appraised properties with information about properties from which their properties’ values were extrapolated or how any variable inputs were valued in calculating their fair market values, such that class members were unable to determine whether their individual settlement awards were fair, reasonable, or adequate.

Common fund existed in landowners class action against United States, in which taking of landowners’ reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, where, under settlement agreement, lump sum was to be paid by government, and each landowner’s individual ascertainable claim was fair market value of his property.

Inequity existed with respect to class members in landowners’ class action against the United States in which taking of landowners’ reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, as required for common fund doctrine to apply to action, where approximately 27% of class members signed contingency fee agreements with class counsel prior to certification of the class, and were thus contractually obligated to contribute to payment of attorney fees incurred on their behalf, and approximately 73% of class members did not sign contingency fee agreements with class counsel, and were thus not contractually obligated to contribute to payment of attorney fees incurred on their behalves.

Application of common fund doctrine was foreclosed in settlement of landowners’ class action against United States, in which taking of landowners’ reversionary right to property underlying railroad right-of-way, in violation of the Fifth Amendment Takings Clause, was alleged, where statute requiring government to assume litigation expenses of counsel in bringing forth takings claims existed, and government, rather than class counsel or members of class, thus bore the reasonable cost of action, such that inequity between class members did not exist.

EMINENT DOMAIN - WASHINGTON

[TT Properties v. City of Tacoma]

Court of Appeals of Washington, Division 2 - January 12, 2016 - P.3d - 2016 WL 123523

Owner of two properties brought action against city for unconstitutional taking, relating to transit authority's rail service plans. The Superior Court granted summary judgment to city. Owner appealed.

The Court of Appeals held that:

- City's destruction of a property's access to a particular street is not a per se taking;
- Genuine issue as to substantial impairment of access to one property precluded summary judgment;
- No compensable taking occurred as to other property; and
- Genuine issue as to whether city acted in proprietary or regulatory capacity precluded summary judgment.

Placement of utility bungalow on city right-of-way abutting alley near property, which made it impossible for trucks to swing wide across right-of-way to enter alleyway and reach property, did not substantially impair property owner's access to property, and therefore there was no compensable taking. Even though bungalow encroached about one foot into alleyway, encroachment was minimal, remaining width of alley was more than city's minimum required alley width, and owner did not have property right to swing wide over city's property beyond alley to enter alley.

[Best Credit Data Partners with FactSet to Distribute Municipal Bond Pricing.]

BOSTON, Jan. 13, 2016 /PRNewswire/ — Best Credit Data (BCD), a provider of bond pricing data and analytics, today announced a partnership with FactSet Research Systems (NYSE: FDS) (Nasdaq: FDS), to distribute end-of-day municipal bond pricing to FactSet's global clients. FactSet is a leading provider of integrated global financial information and analytical applications for the investment community.

BCD Municipal Bond Pricing provides evaluated pricing for over 1.25 million U.S. municipal bonds every day with eight years of end-of-day history. With this new partnership, FactSet customers have the ability to subscribe to the BCD municipal bond pricing and download the data directly into local databases or analytic tools.

"FactSet's high quality customer service and its ability to seamlessly integrate data within the customer's workflow are only a few of the reasons we are excited about the FactSet partnership," said Pierre Robert, CEO of Best Credit Data Inc. "Having our data available through FactSet gives us a meaningful advantage when it comes to the evaluated pricing space."

"We are pleased to offer BCD pricing data to our clients, giving more FactSet users access to EOD evaluated pricing data," explained Robert Robie, SVP, Director of Global Fixed Income of FactSet. "This partnership gives our clients another perspective into the highly illiquid Muni Bond Market and reinforces our commitment to provide high-quality and unique content to empower clients in their decision-making."

About Best Credit Data Inc.

Best Credit Data is a Boston based provider of US bond pricing and analytics. By using observation driven methodology and big data cloud computing technology, BCD is changing the bond pricing and analytics world by providing cost effect alternatives to pricing bonds. Best Credit Data expects to close its next round of funding in Q1 2016.

About FactSet

FactSet, a global provider of financial information and analytics, helps the world's best investment professionals outperform. More than 63,000 users stay ahead of global market trends, access extensive company and industry intelligence, and monitor performance with FactSet's desktop analytics, mobile applications, and comprehensive data feeds. The Company has been included in FORTUNE's Top 100 Best Companies to Work For, the United Kingdom's Great Places to Work and France's Best Workplaces. FactSet is listed on the New York Stock Exchange and NASDAQ (NYSE: FDS) (NASDAQ: FDS). Learn more at www.factset.com, and follow us on Twitter: www.twitter.com/factset.

Assured, Orrick Lead the Charge In Banner Year for Bond Insurers, Counsel.

The municipal bond insurance industry took another step forward in their comeback, wrapping almost 36% more in par value in 2015 and increasing market share to the highest in five years.

Assured Guaranty led the charge again, as the par value of bonds wrapped and number of deals insured surged. Orrick Herrington & Sutcliffe maintained its position atop the bond counsel rankings.

Municipal bond insurers guaranteed $25.21 billion of bonds in 1,880 transactions, up from $18.54 billion in 1,403 transactions in 2014, according to data from Thomson Reuters.

The insurance penetration rate increased to 6.36% from 5.56% in 2014. This is the highest the rate has been since 2009 when it was 8.64%.

Assured improved on the par amount of deals wrapped, number of deals and market share, finishing the year with $15.14 billion in 1,009 transactions and 60.2% market share. In 2014, Assured has $10.74 billion, 697 transactions and 57.9%. The data includes Assured's subsidiary Municipal Assurance Corp.

"Demand for bond insurance grew in 2015, with primary-market par insured increasing 36%, far outpacing market growth of 20%," said Robert Tucker, managing director communications and investor relations at Assured. "We continue to see increased demand for our insurance in 2015. We led the market in terms of both par and the number of transactions insured during the year, capturing 60% of all insured new-issue par and 54% of the insured transactions. "

Tucker said Assured increased primary market transaction by 41% over 2014 and improved liquidity in its insured paper with the average trading volume exceeding $500 million per day.

"In 2015, we were the insurer of choice for smaller bond issues, bonds in amounts of $10 million or less, leading the industry with 662 transactions totaling $3.4 billion in par insured. Counting secondary market activity, our total 2015 US public finance par insured reached $16.1 billion,"

Tucker said.

Tucker also said for the fourth quarter of 2015, Assured Guaranty insured 203 new issues to produce an industry-leading par of over $3.2 billion.

"In the secondary market, we increased par insured by 16% and doubled the number of transactions we insured compared to the fourth quarter of 2014. Assured Guaranty's total par insured across both the primary and secondary municipal markets was $3.4 billion in the fourth quarter of 2015," Tucker said.

Build America Mutual insured $9.57 billion in 849 transactions, up from $7.47 billion in 705 transactions, though its market share dropped to 38% from 40.3% the previous year.

"We were pleased to see a strong increase in the use of insurance across the industry, and BAM's growth played an important role in driving that," said Bob Cochran, BAM's chairman. "Our gross par insured reached $23.5 billion by the close of 2015, up more than 80% over the year, and the number of municipal issuer members increased to more than 1,700. Importantly, those consistent results in the market allowed BAM to increase our claims-paying resources in every quarter of 2015."

Cochran said that BAM has now published 2,500 Obligor Disclosure Briefs on the insurer's website, and the number of downloads more than doubled in 2015.

"These credit summaries of every bond issue insured by BAM provide an important and easily accessible source of information for investors and other market participants who want to learn more about the small- and medium-sized issuers that make up BAM's core market," Cochran said.

National Public Finance Guarantee, the municipal arm of MBIA Inc., wrapped $496 million over 22 deals, up from $332 million in three deals during 2014. NPFG started writing new business in the third quarter of 2014. NPFG's market share stayed steady at 1.8% from last year.

"For our growth, we are also diversifying our base. In addition to new deals, there have also been a number of secondary market transactions that we have done," said Tom Weyl, managing director, head of new business development at National. "We are expanding that area, as well. We also did some competitive deals recently. There have been 2 or 3 transactions that were awarded to us, that had little to no spread compared to our competitors. We are positioning ourselves for growth, we are building a base. It's been slow-going, but we'll be well-positioned when interest rates become more favorable."

Weyl said National expects refunding activity to continue even as short term rates go up, as the volume of 2006 and 2007 muni debt with 10-year call dates is significant. He said the company's new business production depends more on longer term rates, which rely on factors beyond Fed rate hikes.

"We ended 2015 with the same basic story. We are building our new business team and expanding our market knowledge. As interest rates raise and we get into a more normal interest rate environment, then bond insurance will have a better chance to compete. In the meanwhile, we have been staffing up and we are now seeing and winning more transactions," Weyl said.

Orrick Again Tops Bond Counsel Rankings

Law firms benefited from last year's growth in the municipal bond industry, as all top 15 firms posted improved par amounts from the prior year. The top firms posted a par amount of $374.53 billion in 12,009 transactions in 2015, compared to $314.22 billion in 10,115 transactions in 2014.

Orrick had a par amount of $37.55 billion in 391 deals, which accounts for 10% of market share. This is an improvement upon the firm's 2014 numbers of $30.38 billion in 321 deals and 9.7% market share.

"We are, of course, pleased to be ranked number one as bond counsel and number one as disclosure counsel, as we have each year for well over a decade," said Roger Davis, chair of Orrick's public finance department. "We attribute our consistent standing at the top of the league tables to the quality of our bond and tax lawyers, the supportive and creative services they provide to our clients, which has led many of those clients to turn to us, repeatedly, for their public finance needs, which is more important to us than the rankings."

Hawkins Delafield & Wood LLP remained in second place from a year ago with $23.08 billion in par amount in 396 issues and 6.2% market share, up from $16.45 billion in 321 issues and 5.2% market share.

"We once again had the most bond volume of any law firm as underwriters' counsel," said Howard Zucker, managing partner at Hawkins. "We are fortunate to have many very loyal clients across the nation; but by 'fortunate', I do not mean 'lucky.' We know that we cannot rest on our laurels; we understand that we have to come to work each and every day to earn and deserve the trust and confidence of our clients. "

Hawkins was the top underwriters' counsel with $17.37 billion in 147 deals, according to Thomson Reuters.

Zucker also mentioned that the trend for many years has been for greater specialization in the bond legal practice. This is a reflection of the increased complexity of municipal bond issues, the highly extensive regime of federal tax regulations, as well as the heightened disclosure expectations of the market and of the SEC.

"Today law firms that want to be active in this field have to be truly dedicated, and have to commit significant resources to have the depth and breadth of expertise in order to be able to advise issuers and others in the navigation of the matrix of issues across the full range of sectors of public finance," Zucker said.

Zucker said Hawkins is now in its 162nd year and has over 135 years acting as bond counsel.

"Three months ago we opened an office in Michigan, our ninth office, and as of Jan. 1, we added three new partners to our ranks. We look forward with excitement and great expectations to 2016 and beyond," he said.

McCall Parkhurst & Horton LLP came in third place with $14.50 billion in 436 deals or 3.9% to remain in third place.

Norton Rose Fulbright jumped to fourth place from seventh, finishing the year with $13.40 billion or 3.6% market share, improving upon 2014's numbers of $8.14 billion and 2.6% market share.

Bob Dransfield, Norton's U.S. head of finance said that he attributes the firms good year to its commitment to client service as well as the favorable interest rate environment that was present in 2015, which enabled Norton to assist its' clients in achieving substantial savings through refundings and restructurings, as well as raising capital for new projects at attractive interest rates.

"We listen to the needs and goals of our clients and work collaboratively with them to help them reach those goals," said Dransfield. "We work hard to understand the business of our clients which

enables us to help them evaluate their options in light of their business goals and we work to make sure they understand the alternatives that may be available with any particular financing structure so that their business decisions are based on a complete understanding of the issues."

Kutak Rock LLP rounds out the top five, with $13.33 billion, also a 3.6% market share.

Gilmore & Bell PC, Ballard Spahr LLP, Sidley Austin LLP, Chapman and Cutler LLP, Squire Patton Boggs, Stradling Yocca Carlson & Rauth, Greenberg Traurig LLP, Bracewell & Giuliani LLP, Mintz Levin Cohn Ferris Glovsky & Popeo PC and Chiesa Shahinian & Giantomasi PC round out the top 15.

Davis said that Orrick expects 2016 to be somewhat more challenging, as market activity has been slowing for several months, refundings are becoming fewer, rates are rising, municipal revenues are improving, but slowly and offset by rising pension and OPEB liabilities. He also said that regulation and enforcement are rapidly increasing and changing a market that until recently has been characterized by being largely unregulated and lightly enforced, and this election year, which is always distracting.

"On the other hand, we see activity increasing in specific sectors, like multifamily housing, student housing, health care, charter schools, cultural facilities, public private partnerships, PACE and other alternative energy programs," Davis said. "We are starting 2016 busy and expect that to continue."

THE BOND BUYER

BY AARON WEITZMAN

JAN 13, 2016 3:22pm ET

Paying for Protection: The Return of Bond Insurers.

Some municipal bond investors have had it pretty hard of late. For the holders of the debt of Puerto Rico, Detroit, Stockton, CA, Ferguson, MO, and Jefferson County, AL it's been a parade of deteriorating financial performance, defaults and bankruptcies. In Detroit's final bankruptcy agreement, for example, bondholders of the unlimited tax general obligation debt received a haircut down to 74% of their principal.

Yet some other Detroit bondholders got 100% of their principal, never missed an interest payment and generally saw better valuation on their bonds throughout the bankruptcy proceedings. So how did those bondholders walk away with full wallets while others lost $260 on every $1,000 invested? They had bought bonds wrapped with a bond insurance policy–a policy that unconditionally guarantees payment of principal and interest on the debt.

The days of bond insurance were assumed long gone after the collapse of nearly all of those businesses during the financial crisis of 2008. As of August 2015, there were $18.1 billion of insured bonds, up from a low of $11.4 billion in 2013, but still a far cry from the $191.3 billion of bonds insured in 2006. In fact, just two public companies survived that tumultuous period—Assured Guaranty (NR/AA) and National Public Finance (the restructured company of the insurer formerly known as MBIA) (A3/AA-).

But in a sign of renewed life, a new mutual insurance company was recently formed, Build America Mutual (NR/AA), which is owned by the municipalities it insures. Under revised rating agency

guidelines, no financial guarantor can receive the formerly vaunted “AAA” rating. However, each bond insurer enjoys a “AA” level rating by Standard & Poor’s and each is focused on municipal bond insurance as a core business. In fact, Assured Guaranty established a separate insurance subsidiary, MAC, which will only insure municipal bonds.

Benefits of Insurance

Given that municipal bond defaults are still rare (less than 0.05% according to a Moody’s study of ten-year cumulative default rates), investors might reasonably ask why they should bother purchasing insured bonds. After all, like any insurance, bond insurance costs money. For investors that extra cost is in the form of lower yields for insurance bonds than for similar uninsured bonds.

It’s a fair question, but there are several reasons to consider insured bonds. First, keep in mind that the municipal bond market is extremely diverse. There are more than 50,000 borrowers across more than 15 sectors, from local governments to industrial development bonds. Even the most diligent individual investor probably doesn’t have the technical expertise to analyze the creditworthiness of a borrower and value its bonds appropriately.

Another consideration is that when municipal bonds do default—however infrequently—it’s a real mess. Not only are numerous stakeholders and creditors fighting vociferously for a very small pie, any resolution is tempered by the fact that the municipal entity must emerge from the negotiations strong enough to continue serving the public. In almost any scenario, an investor will get a haircut on principal and, as the resolution process drags on, face the added uncertainty of when you are going to get paid either principal or interest again.

Bond insurance eliminates all of this. In the event of a default, the bondholder never misses a payment of either principal or interest. But insurance is not only useful in the event of default, it also cushions against a ratings downgrade—which have become more frequent.

Consider the City of Chicago. When the general obligation debt of the city was downgraded in May 2015 to Ba1 by Moody’s (its highest junk bond rating), the value of the uninsured ten-year maturity bonds dropped nearly $80 per $1,000 bond, or 8%, by the end of the week. However, investors holding these insured Chicago bonds remained valued slightly above $1,000 during that period.

Another benefit of insurance is liquidity. Tens of millions of dollars of bonds backed by bond insurers are traded daily. Meanwhile, buyers of distressed bonds often demand substantial discounts—when they can be found.

Strength of Insurers

In light of recent history, some investors have voiced concern about whether insurers could maintain their ratings and fulfill their obligations in the event of a big municipal default. For example, both Assured Guaranty and National Public Finance insure the bonds of one or more of Puerto Rico’s troubled municipal borrowers.

But even with Puerto Rico’s default on some of its bonds, it’s critical to remember that a default on an insured bond does not mean the entire outstanding par amount of those bonds become immediately due and payable. The bond insurer simply continues to pay principal and interest on the originally mandated dates.

In the event of a default and subsequent claim, the bond insurers have strong covenants and legal provisions protecting them. These will be vigorously enforced and litigated, if history is any guide.

The insurer will have to pay something, but the recovery on the bonds is often far greater than zero.

Moreover, bonds coming out of default are often restructured and refunded. This is an important consideration. As soon as any refunding occurs, the existing holders of the insured debt are made whole, the bond insurer's commitment ceases, any reserved capital is freed up and any unearned premiums become earned immediately. There are tremendous incentives to resolve a bankruptcy expeditiously by refunding the outstanding defaulted debt.

Lastly, these companies are very well capitalized, with capital positions that are arguably better, and books of business that are certainly stronger, than prior to the credit crisis. In the event of a claim, the bond insurer continues on with business as usual. New policies are written, older policies roll off as bonds mature and the portfolio capital continues to earn money which can (and is) applied to paying on outstanding claims.

For all of that, bond insurance is not an investment panacea. It does not guarantee a risk-free investment; instead, investors take on the risk—however slight—of the bond insurer itself. In other words, bond insurance is transferred and diminished risk, not the elimination of risk. You still have to do your homework.

FORBES

BARNETT SHERMAN, CONTRIBUTOR

JAN 14, 2016 @ 04:08 PM

Barnet Sherman is a director and the portfolio manager of the TIAA-CREF Tax-Exempt Bond strategy at TIAA-CREF, a national financial services organization.

U.S. Muni Bond Sales to Slip to $5.66 bln Next Week.

U.S. municipal bond supply will fall to $5.66 billion next week from about $8.77 billion this week as the muni market will be shuttered on Monday for the Martin Luther King Day holiday, according to Thomson Reuters estimates on Friday.

The lower supply comes amid falling yields and strong investor demand for tax-exempt debt. So far this year, yields on Municipal Market Data's benchmark triple-A scale have tumbled to 1.79 percent from 1.92 percent for 10-year bonds and to 2.74 percent from 2.82 percent for 30-year bonds.

Muni bond fund net inflows continued to garner strength at nearly $995 million in the latest week, following flows of $992.7 million in the week ended Jan. 6 and $1.3 billion the week ended Dec. 30, according to Lipper, a unit of Thomson Reuters. Flows have been positive for 15 straight weeks.

Next week's biggest muni offering comes from the state of Washington, which is selling $529 million of general obligation refunding bonds and $143.6 million of motor vehicle fuel tax GO refunding bonds in competitive bidding on Wednesday.

The AA-plus-rated bonds carry maturities in 2016 and in 2019 through 2033, according to the preliminary official statement.

The District of Columbia Water and Sewer Authority will sell $372 million of public utility

subordinate lien revenue refunding bonds through Loop Capital Markets on Wednesday. The bonds are structured with maturities in 2019 and from 2029 through 2039, according to the POS.

New York's Triborough Bridge and Tunnel Authority has a $300 million general revenue bond issue through Citigroup that will be offered to retail investors on Wednesday with institutional pricing on Thursday. The bonds mature in serial maturities of 2016 through 2036, according to the POS, which also lists two term bonds.

Reuters

Fri Jan 15, 2016 1:06pm EST

(Reporting By Karen Pierog; Editing by Diane Craft)

Janney Municipal Bond Market Monthly

Municipal Bond Market Monthly – Outlook 2016 and Puerto Rico Update

Janney Fixed Income Strategy

More Reason to Love Munis.

Municipal bonds had a strong 2015, but low oil prices and a volatile stock market will cause many states to struggle. Even so, munis seem like a good bet.

Investors who liked municipal bonds in 2015 are really loving them so far in 2016. Munis had the highest returns of any fixed-income sector last year, and are shining brighter than ever as stocks have been roiled by concerns about slowing global growth.

"Munis have started off the year with an unexpected surge, not only in performance but also in popularity," says Jim Colby, municipal strategist at Van Eck Global.

That's great for investors who own munis, but if you're looking for a safe place to hide as equities turn treacherous, note that the easy money in munis may have already been made. "They've gotten to levels that are a bit rich relative to Treasuries," admits Hugh McGuirk, who runs municipal bond investing at T. Rowe Price. In recent years, 10-year muni yields were very close to Treasuries, which made them much more attractive on an after-tax basis. Now, intermediate munis yield about 85% of Treasuries. For example, seven- to 12-year munis yield, on average, 1.7%, versus 2% for the 10-year Treasury. The tax benefit still makes munis attractive, but not as much.

"It dampens my enthusiasm moderately," McGuirk says, "but I still see the benefits of munis as a very defensive investment when global markets are volatile."

Limited supply of new munis in November and December is a big reason why they outperformed Treasuries late last year, says Vikram Rai, Citi Research muni strategist. But now new issuance is picking up. "That will cause munis to cheapen slightly," he says. There will be better entry points for new investors after January, he believes.

THERE ARE OTHER looming risks muni fans should keep in mind. A couple are well known: Puerto Rico will likely default on billions in debt this year, and some states, like New Jersey and Connecticut, have growing pension liabilities they need to address.

But Standard & Poor's highlighted additional worries for state finances in a report issued last week. Energy-producing states like North Dakota, Louisiana, and Oklahoma are likely to face particular fiscal strain as companies scale back on production in response to the crash in crude oil prices. Alaska has already been downgraded. Pennsylvania and Illinois are in political gridlock over budgets. Plus, some states can expect less revenue growth, due to lower capital-gains income (fewer investors are selling at a gain). S&P has a negative outlook for seven states, which means they may be downgraded in the future. "The state sector is currently poised for some volatility in terms of credit," says Gabriel Petek, the main analyst on the report.

Active municipal bond-fund managers say credit research—their long suit—can manage those risks. "We're continuing to emphasize revenue bonds over general obligation bonds, in no small part because of concerns about state and local governments addressing long-term liability issues," says McGuirk. Peter Hayes, who heads the muni bonds group at BlackRock, says he's taking a barbell approach to credit risk, buying high-yield munis, such as tobacco bonds, as well as A-rated revenue bonds.

At least interest-rate risk has dissipated. Last year, concerns that the Fed was about to embark on a rate-hike cycle dampened muni demand. Now, even as the new-issue calendar builds, Hayes expects demand from investors to absorb the new supply. Rai expects muni rates to nudge up this year, but thinks the coupons earned on most maturities (except for the 10-year) will result in positive 2016 returns.

It makes sense for investors looking for safety to turn to munis. But chasing the recent strong performance could result in disappointment. "Munis aren't quite as attractive as they were a year ago," concedes Colby. "But they still have a lot going for them—including very high average credit quality and significantly lower volatility."

Given how markets are acting, that's a pretty good argument for owning them.

BARRON'S

AMEY STONE

January 16, 2016

S&P Report Says 2016 Could Be New Era in Bond Refinancing in the Project Finance Sector.

OVERVIEW

- We believe that 2016 could usher in a new era in bond refinancing in the project finance sector.
- Our research shows that institutional investor interest and refinancing conditions for loans made and priced at the height of the global financial crisis are now ripe for capital market takeouts.
- Assuming that deal flow matches the high demand for infrastructure investment within the institutional investor market, we believe financing conditions for long-dated debt transactions in the capital markets can

only get better.

LONDON (Standard & Poor's) Dec. 22, 2015–With the end of the low interest rate cycle now clearly in sight, and the likely consequence of this on swap rates, Standard & Poor's believes 2016 could herald a new era in project finance bond refinancings.

"Assuming that deal flow matches the high demand for infrastructure investment within the institutional investor market, we believe financing conditions for long-dated debt transactions in the capital markets can only get better," said Standard & Poor's credit analyst Michael Wilkins, in the report published today, "Project Finance: Rate Rise May Herald A Wave Of Refinancing In The Bond Market."

Rising rates could actually provide a boost to refinancings of infrastructure project debt in the capital markets.

In today's low-yield environment, insurers and asset managers are particularly eager to invest in real assets such as infrastructure. That's because these projects provide inflation-linked, relatively attractive risk-adjusted returns, with a low correlation to the economic cycle and healthy cash flow and income yield. Also, those low interest rates have meant banks have been able to fund themselves at a historically low cost. This has led to ample liquidity in the market and has helped increase bank lending to project finance and infrastructure (see "Are Rumors For Global Project Finance Bank Lending's Demise Greatly Exaggerated?" published Jan. 14, 2015, on RatingsDirect).

At the same time, the amount of issuance in the project bond market has ticked higher over the last couple of years, which has also been partly due to low interest rates. Low interest rates have also been a factor in the upsurge in direct lending and private placements to infrastructure projects from institutions. Yet the number of capital market refinancings of bank loans via new project bond issues hasn't matched this trend, partly due to the disincentives of breaking the swaps associated with bank financings.

However, with the prospect of a low-rate cycle coming to an end, this picture changes. As swap rates go up, the breakage costs for swaps are reduced on a mark-to-market basis, making breakage costs less punitive. Accordingly, refinancings of infrastructure project debt in the capital markets may receive a boost as a consequence.

Standards & Poor's Ratings Services' research shows that institutional investor interest and refinancing conditions for loans made and priced at the height of the global financial crisis are now ripe for capital market takeouts. Our simulations show that the mark-to-market swap breakage cost saving could be as high as 40% for some project loans if swap rates rise by 100 basis points (bps) from where they are today.

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. Alternatively, call one of the following Standard & Poor's numbers:

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Moody's Requests Comment on Proposed Approach and Methodology for Assessing Green Bonds.

New York, January 14, 2016 — Moody's Investors Service is requesting market participants to comment on its proposed approach and methodology for evaluating an issuer's management, administration and reporting on environmental projects financed through green bonds.

The Green Bonds Assessment (GBA) described in Moody's proposed approach and methodology will apply to fixed-income securities — both taxable and tax-exempt — that raise capital for use in projects or activities with specific climate or environmental sustainability purposes.

These include debt obligations with direct recourse to issuers, project finance or revenue bonds — with and without recourse to issuers — and securitizations that collateralize projects or assets whose cash flows provide the first source of repayment.

A reported $36.6 billion of green bonds were issued during 2014 and an additional estimated $42.0 billion came to market during 2015.

Moody's proposed assessment of green bonds will focus on five primary factors: (1) organization structure and decision making, (2) use of proceeds, (3) disclosure on the use of proceeds, (4) management of proceeds, and (5) ongoing reporting and disclosure.

As part of the proposed approach and methodology, Moody's is introducing a scorecard that will assign weights to each of the aforementioned factors, which Moody's considers most important in assessing the framework adopted by green bond issuers.

GBAs are not credit ratings; rather, they are forward-looking opinions of the relative effectiveness of the issuer's approach for managing, administering, allocating proceeds to and reporting on environmental projects financed by green bonds.

As such, GBAs assess the relative likelihood that bond proceeds will be invested to support environmentally beneficial projects as designated by the issuer.

Moody's is seeking market feedback on its proposed methodology by February 12, 2016 and will adopt and publish its GBA following appropriate consideration of any comments it receives. Market participants should submit their comments on the Request for Comment page on www.moodys.com.

For more information, including the full text of the RFC, please access this link. (Subscription required.)

Recent Moody's publications on the credit implications of these developing environmental trends are

available [here.]

This publication does not announce a credit rating action. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on www.moodys.com for the most updated credit rating action information and rating history.

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Fitch: California Budget Proposal Continues Path of Fiscal Restraint.

Fitch Ratings-New York-12 January 2016: Last week, Governor Brown of California released his proposed budget for fiscal year 2016-2017, which will begin July 1, 2016. The budget proposal is based on robust revenue growth that reflects the continued expansion of the California economy, according to Fitch Ratings. The governor continues his policy of restraining growth in on-going spending while paying down long term liabilities and funding the rainy day fund (the Budget Stabilization Account or BSA). This approach has contributed to improved fiscal stability and has led Fitch to upgrade the state's general obligation (GO) bond rating (rated 'A+' by Fitch) twice in the past three years. Fitch believes the approach taken in the budget proposal is prudent and bodes well for continued fiscal stability in light of the state's volatile revenue stream and the possibility of future economic downturn.

The governor is proposing to set aside $3.6 billion in the state's rainy day fund, $2 billion above what would be required by law. This would bring the balance to $8 billion by the end of fiscal 2017, approximately 2/3 of the target 10% of tax revenues detailed in Proposition 2. Budgetary borrowing would also be reduced from $3.9 billion to $2.5 billion by the end of fiscal 2017, as the state repays special funds, uses one-time funds to 'settle-up' prior year Proposition 98 obligations, and repays transportation loans.

The budget proposal for the state's General Fund assumes 3% growth in revenues over the current

fiscal year to $125.1 billion, before transfers including to the BSA. The state is also now estimating that current year fiscal 2016 revenues will exceed budget forecast by $3.5 billion (3%) and total $121.5 billion, also prior to transfers including to the BSA. Much of the increase in revenue will be automatically allocated to K-14 education under Proposition 98 but will also support increased spending for Medicaid and higher education. Rather than expanding on-going programs, the governor is proposing an allocation of $2 billion to non-recurring spending for deferred maintenance and state facilities renovations and replacement, in addition to the $2 billion allocated to the rainy day fund. California is estimating that its share of the optional expansion of Medicaid under the Affordable Care Act will total $740 million in fiscal 2017, as a small portion of costs that were fully covered by the federal government for the first three years of implementation are partially shifted to the state. The governor's proposed revisions to the managed health care tax, which is estimated to generate approximately $1 billion, would compensate for this growing expense.

The budget proposal appears prudent in terms of restraining spending growth in favor of retaining flexibility for future economic weakness. The budget assumes solid economic growth in both fiscal 2016 and 2017, but notes the potential for a future downturn as well as risks associated with slower global growth or a stock market correction. As is the case in the current fiscal year, the state does not anticipate the need to issue cash flow notes in fiscal 2017.

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Fitch: Tax-Supported Criteria Revision to be Published by End of 1Q16.

We are in the process of making modifications to address broad-based, constructive market feedback on our US state and local government rating criteria. We expect the final criteria to be published by end of 1Q16.

Overview

Unprecedented challenges in US Public Finance and a divergence of opinion between major credit rating agencies led Fitch Ratings to conduct an in-depth review of factors that drive resilience—and spur divergent recoveries—in municipal credits. Leveraging qualitative judgment, fundamental data and an experienced analytical team, we are proposing revisions to our approach to state and local government ratings to more clearly articulate our assessment of credit quality to the market.

The criteria revision designates key factors that help differentiate credits in a concentrated, municipal ratings scale and shows why some credits are more resistant to risk than others. The framework also better differentiates between credits, defines triggers that change ratings, improves consistency of rating assessments, and highlights our through-the-cycle rating approach.

The comment period for the proposed changes has closed. We will be assessing all comments provided and will be finalizing the criteria by the end of 1Q16.

Fitch: Pennsylvania Interim Budget Supports Value of School Credit Enhancement Programs.

Fitch Ratings-New York-11 January 2016: Pennsylvania's interim budget reinforces Fitch Ratings' belief that the commonwealth remains committed to supporting full and timely payment of school district debt service commitments despite its ongoing budget contention. Fitch rates the commonwealth's pre-default school aid intercept (per section 633 and 785(a) of the School Code) and direct-pay (section 785(b) of the School Code) enhancement programs 'A+' with a Stable Rating Outlook, one notch below Pennsylvania's 'AA-' general obligation (GO) rating (also with a Stable Outlook).

In August, Fitch commented that the credit quality of the school credit enhancement programs (and of the commonwealth and its appropriation-backed debt) were not affected by the budget impasse because the commonwealth remained committed to ensuring timely debt service payment. Fitch maintained its ratings through the ongoing impasse. The interim budget signed by the Governor on Dec. 29, with significant line item vetoes, provides six months of Basic Education Funding for school districts. More importantly, it provides for a full year of appropriation authority in other line items for school districts, including special education and transportation aid, and thereby establishes a clear path for the commonwealth to direct revenues to bond trustees as needed for the school credit enhancement programs.

Since the beginning of the impasse, the commonwealth actively engaged with school districts and helped those facing fiscal pressure through measures including advancing funding available from prior year appropriations, or assisting districts in securing short-term borrowings backed by future state aid payments. The interim budget signed by the Governor last week provides further relief for school districts. Approximately $3 billion in immediate aid went out last week, and several hundred million in additional state and federal aid will be paid to districts over the remainder of the fiscal year.

While the interim budget does not fully fund the Basic Education subsidy for school districts (the largest share of state aid), it does fund all other state and federal aid for school districts through the full fiscal year. This full-year funding provides appropriation authority and revenue streams the state Treasurer and Department of Education can utilize to meet school district debt service obligations under terms of Pennsylvania's school credit enhancement programs.

The interim budget also fully appropriates for debt service payments the commonwealth and related entities make from state revenue sources. This includes the Commonwealth Financing Authority and Pennsylvania Economic Development and Financing authority appropriation-backed bonds rated by Fitch ('A+'/Outlook Stable and 'A'/Outlook Stable, respectively).

The commonwealth still faces fiscal challenges ahead, at a level consistent with the 'AA-' GO rating

that trails most states. The governor and legislature will enter a new budget season in just a few short weeks, facing significant structural budget challenges. The recent opening of a $2 billion line of credit with the state's Treasury (from which the Commonwealth borrowed $1 billion to date) reflects those pressures. Pennsylvania also lacks any balance in its dedicated budgetary reserve funds, limiting its fiscal flexibility in the next downturn in the economic cycle. Fitch views these challenges as substantial, but manageable at the 'AA-' rating level given the state's large, diversified economic base and moderate tax burden which provides some capacity to match expenditure growth.

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Fitch Updates Criteria for Rating Public-Sector Counterparty Obligations in PPP Transactions.

Fitch Ratings-New York-15 January 2016: Fitch Ratings has published an update of its 'Rating Public-Sector Counterparty Obligations in PPP Transactions'. The updated report replaces the existing criteria (published July 23, 2015) without modifying Fitch's analytical approach. There will be no rating changes as a result of the updated criteria.

The criteria establish a globally consistent framework to determine if the public private partnership (PPP) framework agreement qualifies for assignment of a counterparty rating. It then defines the extent of notching from the general credit quality of the public sector counterparty applied to reflect any perceived higher risk of default under a framework agreement. It also provides guidance on how to consider the PPP obligation in the public sector counterparty's general credit rating as well as how late payment or rejection of an obligation under the framework agreement would be reflected in the counterparty's Issuer Default Rating (IDR).

The updated report notes that where the debt of a project company is to be rated either publicly or privately on a monitored basis, the public grantor's IDR and counterparty obligation ratings will also be subject to monitoring, but not necessarily on the same basis (public or private). There are no other changes to the criteria.

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Thornburg 4Q 2015 Municipal Bond Commentary.

It finally happened. After waiting for what seemed like an eternity, the Federal Reserve moved the target on short-term interest rates up 25 basis points (0.25%) with indications of future rate increases to come. The market reaction? Unimpressed. All who predicted doom and gloom from an interest rate increase were quickly reminded that while the Fed has some power, the mechanics of supply and demand inevitably determine the value of interest rates.

While we are all left to ponder the future path of interest rates and Federal Reserve Board actions, it is probably more prudent to discuss where we have been and what that may mean for the future than to try and speculate about where interest rates may be at the end of 2016.

In the fourth quarter of 2015, we held to our philosophy of striving to ensure we are paid appropriately for any risk we add to the portfolios. While that may seem simple, it has become more and more difficult to implement as low interest rates have pushed investors out the risk spectrum in search of better returns and more attractive income.

Municipal investors have a few levers they can pull to try and increase returns. The most effective typically affect credit quality and duration. An investor seeking to generate more yield can always buy a bond with a longer maturity. And bonds of lower credit quality can also be purchased to drive up yield. In both instances the investor is taking on more risk in hope of higher returns.

At Thornburg, we constantly evaluate both of these options, but in the fourth quarter of 2015, as in the previous quarter, we found them less than optimal. Real rates remained low during the entire quarter, and the yield curve was flat. Investors looking for yield by stretching for longer maturities were actually picking up very little relative to the duration risk that comes with longer-dated bonds. Similarly, credit spreads remain at extremely tight levels. Investors who seek to boost returns by purchasing debt from lower-rated issuers were essentially buying the weakest credits at the most expensive levels they have ever seen. Not a great strategy.

The only logical solution for an investor to take when they aren't being paid to take risk is to take less of it. That is exactly what we have been doing in the Thornburg municipal funds for quite some time. All of the portfolios are being managed on the bearish (shorter) end of their respective duration ranges. We have also sought, actively, to increase the average credit quality (at least at the

margins) of all of the portfolios. Finally, cash reserve positions are also being managed conservatively.

Following this management style has meant that we have had to sacrifice some performance. However, we are more than happy to give up some short-term gain for the long-term good of the portfolios. More importantly, the actual sacrifice was muted by the fact that, given the current market environment, even taking a lot of risk is not supremely additive to portfolio returns. The Limited Term Municipal, Intermediate Municipal, and Strategic Municipal Income Funds returned a reasonably attractive 1.89%, 2.41%, and 2.61%, respectively, (I shares) for the year ended 12/31/2015.

So, what's next, and what does it mean for investors? Whether you believe that the Federal Reserve is going to move interest rates up by 100 basis points in 2016 (its projection), or whether you believe it will prove a more muted 50 basis points (which is roughly what the market is guessing), we at Thornburg will continue to try to ensure we are paid adequately for any risk we take.

Whatever happens, it seems certain that volatility is on the horizon. Liquidity in the fixed income markets has been, to some extent, sapped by government regulations. We have already seen firms that manage portfolios in the taxable market sacrifice investment prudence in the hopes of higher returns, only to be crushed by their inability to liquidate high-risk securities. It is certainly possible that those same dynamics could bleed into the more conservative fixed income areas, including municipal bonds.

Should we see a dramatic rise in rates and a selloff in the municipal market, the Thornburg municipal portfolios are well positioned to take advantage of the weakness. Higher cash reserve positions allow us the dry powder to enter the market as a liquidity provider instead of as a liquidity taker—during troubled intervals. Rocky times are often the best times to take a little risk, because the market is paying generously to offload said risk. Given that the portfolios have been managed quite conservatively of late, they will each have the ability to not just enter the market, but also to materially extend duration and take advantage of wider credit spreads.

The Thornburg municipal portfolio management team believes that 2016 has the potential to be an interesting year for fixed income, and we look forward to taking advantage of attractive opportunities for the portfolios. No matter what happens, rest assured we will continue to do what we have always done: provide investors with tax-exempt laddered (except in the case of the opportunistically managed Strategic Municipal Income Fund) bond portfolios that aim to generate attractive levels of income, while attempting to preserve principal and minimize volatility. And, of course, we'll only assume the risk for which we believe we are adequately compensated.

Performance data shown represents past performance and is no guarantee of future results. Investment return and principal value will fluctuate so shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than quoted. For performance current to the most recent month end, see our prices and performance page or call 877-215-1330. The Low Duration and Limited Term funds have a maximum sales charge of 1.50%. The Intermediate Municipal Fund and the Strategic Municipal Income Fund have a maximum sales charge of 2.00%.

Important Information Before investing, carefully consider the Fund's investment goals, risks, charges, and expenses. For a prospectus or summary prospectus containing this and other information, contact your financial advisor or visit our literature center. Read them carefully before investing.

Investments carry risks, including possible loss of principal. Portfolios investing in bonds have the same interest rate, inflation, and credit risks that are associated with the underlying bonds. The value of bonds will fluctuate relative to changes in interest rates, decreasing when interest rates rise. This effect is more pronounced for longer-term bonds. Unlike bonds, bond funds have ongoing fees and expenses. Investments in lower rated and unrated bonds may be more sensitive to default, downgrades, and market volatility; these investments may also be less liquid than higher rated bonds. Investments in derivatives are subject to the risks associated with the securities or other assets underlying the pool of securities, including illiquidity and difficulty in valuation. Investments in the Fund are not FDIC insured, nor are they bank deposits or guaranteed by a bank or any other entity.

The views expressed by the portfolio managers reflect their professional opinions and are subject to change. Under no circumstances does the information contained within represent a recommendation to buy or sell any security.

Class I shares may not be available to all investors. Minimum investments for the I share class may be higher than those for other classes.

Income earned from municipal bonds is exempt from regular federal and in some cases, state and local income tax. Income may be subject to the alternative minimum tax (AMT).

There is no guarantee that the Fund will meet its investment objectives.

Please see our glossary for a definition of terms.

Thornburg mutual funds are distributed by Thornburg Securities Corporation.

Thornburg Investment Management, Inc. mutual funds are sold through investment professionals including investment advisors, brokerage firms, bank trust departments, trust companies and certain other financial intermediaries. Thornburg Securities Corporation (TSC) does not act as broker of record for investors.

January 15, 2016

by Chris Ryon, Nick Venditti
of Thornburg Investment Management

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MSRB Sends SEC Revised Proposal to Lengthen Board Terms.

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange Commission to approve its slightly revised proposal to lengthen board members' terms to four years from three.

Market participants will have 21 days after the SEC publishes the filing in the Federal Register to submit comments to the commission on the proposed changes to MSRB's Rule A-3 on board membership. Most groups were supportive of the initial proposal in the first round of comments.

The MSRB board currently has 11 public and 10 regulated members who served staggered three-

year terms. Each MSRB fiscal year, which begins on Oct. 1, seven members leave the board and seven new members join. The MSRB names each incoming group of seven the "class" of the year they leave the board.

The MSRB in its initial proposal, released on Oct. 25, said the increased board terms would "improve continuity and institutional knowledge of the board from year to year, while retaining the benefits of the regular addition of new members." The board said new members must overcome a learning curve that can keep them from being fully effective until they are more than a year into their service.

Under the proposal, the three classes of seven members that serve on the board at any given time would change into four classes, three of which would have five members and one of which would have six. The new structure would maintain the majority-public nature of the 21-member board, the MSRB said.

This latest version of the proposal differs slightly from the initial one in terms of how the transition to four board classes would occur. The initial one circulated by the MSRB for comment would have put a committee of board members not being considered for extensions in charge of nominating the members who would be eligible. Then the full board would vote on those nominees.

This latest version would make any previously elected board member whose term will expire on or after the end of MSRB fiscal year 2016 on Sept. 30 eligible for a one-year extension. The full board would then vote by ballot to determine who receives the extensions.

The MSRB says it made the change after further considerations led it to believe that it would be hard to create a special committee of members that represented the board when 18 of them could not be considered for the committee because of their eligibility for extensions. Any concerns about potential conflicts of interest in the newly proposed selection process should be mitigated by the large number of members both voting and eligible for extensions, making it difficult for any one member to affect the outcome of the election.

The MSRB proposal also describes the process it will use to transition to a four-class board, which will begin with the class selection for fiscal year 2017.

One public representative from the class of 2016 will receive a one-year extension and six new members will join the board. Then, for fiscal year 2018, one public and two regulated representatives from the class of 2017 will receive one-year extensions and five new members will join the board. Finally, for fiscal year 2019, three public and two regulated representatives from the class of 2018 will receive a one-year extension and five new members will join the board.

By fiscal year 2020, no new extensions will be needed and five new members will join the board. In fiscal 2021, there will be six new members and then five in each of the next three years. The cycle will be repeated every four years.

In addition to changing the number of board classes and the length of tenure, the proposal would also limit the number of consecutive terms a board member could serve to two and eliminate a requirement that each class must have at least one non-dealer municipal advisor.

Board members can currently only serve a consecutive term if they receive an invitation to do so because of a board-determined special circumstance or if they are filling a vacancy and are therefore only serving a partial term. The rule would keep the special circumstances rule and add the two consecutive term limit for a maximum service limit of eight years.

The elimination of the non-dealer municipal advisor requirement would prevent the MSRB from

mandating that every board has four non-dealer municipal advisors. The MSRB was concerned that such a requirement could limit the representation from other regulated entities.

THE BOND BUYER

BY JACK CASEY

JAN 15, 2016 5:29pm ET

NABL: SEC Announces 2016 Examination Priorities.

On January 11, 2016, the Securities and Exchange Commission announced the 2016 examination priorities for the Office of Compliance Inspections and Examinations' (OCIE).

The priorities include public pension advisers, focusing on pay-to-play, including undisclosed gifts and entertainment. OCIE also expects to allocate examination resources to newly-registered Municipal Advisors to assess compliance with recently adopted SEC and MSRB rules.

The SEC press release is available here.

The OCIE 2016 examination priorities are available here.

OCIE's August 19, 2014 letter concerning the Municipal Advisor Examination Initiative is available here.

Investors Opt for Munis as Stocks, Commodities Plunge.

Municipal bonds are getting a boost as investors look for stability after international and domestic equity markets tumbled.

"A lot of things are going right for our asset class here at the beginning of the year," Jim Colby, senior municipal strategist and portfolio manager at Van Eck Global, said in an interview on Tuesday. Municipals are benefitting from the asset reallocation by investors after the Chinese stock market sold off on concern over an economic slowdown, he said.

The Dow Jones Industrial Average on Jan. 13 was down almost 10% from its highs of late last year, as investors flocked to safer assets.

"With China seemingly in a downward spiral having suspended their stock trading and with oil seemingly in a free fall, and equities down 5% to 6% at the start of the year, some advisors are saying munis are a spot of choice – at least right now – not just domestically, but worldwide," Colby said.

Demand for municipals – including the $3.7 billion of assets in Van Eck's Market Vectors suite of municipal ETFs overseen by Colby – has surged.

"It's been a wild two and half to three weeks" thanks to a significant amount of cash inflows in a short period of time, he said. "We have seen quite a bit of cash come into the ETFs here, and I can't

remember a recent January that was quite this way.

“Given everything that is happening right now, the muni marketplace with its low volatility and high credit quality has to remain right up there at the top of anyone’s list as the asset of choice,” Colby said.

On Jan. 13, 10-year municipal bonds were yielding 86.2% of their 10-year Treasury counterpart, while the ratio of 30-year municipals to comparable Treasuries was 95.6%, according to Municipal Market Data. Those ratios compare with averages of 89.9% and 98.8%, respectively, over the three month period between Oct. 22 and Jan. 13, according to MMD.

Colby said the attractive ratios add to the sector’s appeal.

Even though his ETFs seek to mirror and/or track the performance of a selected benchmark index instead of investment strategies used to achieve performance and value on its own, Colby said he does have some advice for investors.

He said in the midst of the reallocation trend the long end of the municipal market should be favored not feared, especially as the Federal Reserve Board has begun its slow and steady pace of raising rates.

“Don’t fear the long end of the market,” Colby said.

Although it has been 10 years since the Fed last began raising rates aggressively, when that phenomenon took place back in 2006, the long-end remained relatively stable while the short end gave ground, Colby recalled.

“The performance lay in munis 10 years and longer – and little damage was done in duration extension,” the strategist said.

Colby said the long end of the yield curve finished 2015 with evidence of strong performance.

In fact, municipal bond outperformed Treasuries and corporates in December and emerged as the best-performing fixed income asset class of 2015, according to BlackRock Inc. in its municipal market update dated Dec. 31, 2015.

Municipals were “propelled once again by favorable supply-demand dynamics,” BlackRock analysts Peter Hayes, Sean Carney, and James Schwartz wrote in the report.

The S&P Municipal Bond Index returned 0.71% in December and 3.32% for 2015, making it the leading fixed income asset class of the year.

The long end of the curve led performance monthly in December with returns of 1.08% and 4.45% year to date, while the intermediate range was also attractive as it returned 0.62% for December and 3.27% year to date, according to the S&P data used in BlackRock report.

“The yield curve flattened significantly, with the short end rising as the Fed lifted its target short-term interest rate for the first time since 2006 and the long end holding steady as global growth disappointed and oil prices approached a six-year low, muting inflation expectations,” the analysts wrote.

Hayes is the managing director and head of the municipal bonds group, Carney is the director and head of municipal strategy, while Schwartz is the managing director and head of municipal credit

research.

Going forward, Colby believes that history will repeat itself.

"Once there is a clear path for the Fed to raise rates in a regular fashion and wages start to lift a little bit to compliment the strength in the labor force and auto and housing industries, then the Fed might feel more empowered to raise rates," Colby said.

However, with an ongoing series of rate increases dependent on further economic and wage growth, Colby said the intermediate part of the curve is an attractive and stable alternative in the meantime.

"There's plenty of bonds in this part of the curve; deals come with significant tranches in 10 to 15 years, and the yield curve is still steep, so you can find opportunities to position yourself where you are getting incremental returns relative to the two ends," Colby said.

The 10-year triple-A general obligation scale on Jan. 13 yielded 1.78%, while the 15-year part of the scale yielded 2.22% — both unchanged from the day before, according to MMD.

"Banks like that part of the curve, and insurance companies like that part of the curve," Colby said. "They tend to buy at whole prices in a relatively steady market environment."

He said this is part of the attractiveness of tax-exempt securities as investors seek cover from volatility outside the municipal world, Colby noted.

"Given the relative attractiveness and low volatility of the asset class as a whole, the strategy ought to be to continue to keep your foot in the game with munis," Colby said.

The BlackRock analysts share a similar view.

"We have a constructive outlook for municipals in 2016 given their high-quality nature and unique ability to provide tax-free income and solid risk-adjusted returns with less volatility than other fixed income assets," BlackRock's analysts wrote.

THE BOND BUYER

BY CHRISTINE ALBANO

JAN 14, 2016 2:12pm ET

Nossaman: Top Public Finance Attorneys Urge Regulatory Changes To Foster More P3's.

We all know how hard it is to change federal statutes these days—you need an Act of Congress and the President to sign the bill. Last week, a group of the top public finance lawyers in the US offered an approach relating to the use of tax exempt bonds that wouldn't require a change in tax statutes but instead could be accomplished through a change in the regulations relating to the so-called "private use" test. As the group pointed out in its letter to high ranking US Treasury officials, Congress itself has made it clear that Treasury had the authority to adopt other, more flexible rules.

The US is unique in the world in its use of tax exempt financing to finance a variety of infrastructure. To benefit from this source of debt capital, a project must not have private use nor can debt service

be repaid from private business revenues. The issue for P3's arises because of the long-term operation and maintenance responsibilities that are a feature of many P3 contracts. Current IRS rules limit the length and method of compensation payable to a private party in a way that makes it almost impossible to effectively transfer long-term life cycle risk to the private sector. There are notable exceptions to these rules for specific types of infrastructure, such as qualified transportation facilities, airports and ports and water/wastewater facilities but in many cases there are so many requirements applicable to issuing these "private activity bonds" tax exempt financing is not available.

The question for P3's is when do long-term operation and management services and payment for these services create "private use" for purposes of the tax exempt bond rules? In the past the IRS has published somewhat prescriptive revenue procedures that describe "safe harbor" provisions for management contracts relating to the term of the contract and the manner of compensation. The problem is these "safe harbor" provisions predate the development and growth of the P3 delivery model. Over the last several years, through published notices and private letter rulings, the IRS has indicated that strict adherence to the "safe harbor" provisions may not preclude the use of tax exempt financing. Furthermore, the IRS recently published regulations relating to the allocation and accounting of revenues from a bond financed facility that recognize merely sharing these revenues with a private entity will not adversely impact the tax exempt financing for the project. And recent private letter rulings for water/wastewater facilities, solid waste disposal facilities and electrical transmission and distribution systems recognize the need for flexibility in this area. The Treasury Department released a 2014 white paper on "Expanding our Nation's Infrastructure through Innovating Financing" describing in detail the use of an availability payment contract where the public owner makes service fee payments to a private manager subject to compliance with specific performance standards and provided the facility is available for general public use.

In addition to several specific "fixes" to the "safe harbor" provisions on the term of the contract and how compensation is paid, the attorney group is proposing a general framework that focuses on the primary purpose of the project—is the arrangement designed to transfer the benefit of the lower cost of tax exempt financing to a private party or are there sufficient controls on the activities of the private party exercised by the public owner to achieve the primarily public purpose of the project.

This simple fix to the current "safe harbor" rules relating to private management contracts could go a long way to increasing the use of the P3 delivery approach for much needed public infrastructure.

Last Updated: January 12 2016

Article by Barney A. Allison

Nossaman LLP

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.

TAX - OHIO

Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision

Supreme Court of Ohio - January 13, 2016 - N.E.3d - 2016 WL 147273 - 2016 -Ohio- 78

City board of education appealed decision of the Board of Tax Appeals, which found that the value of a racetrack was approximately $30 million less than the purchase price at a bankruptcy sale six months after tax-lien date.

The Supreme Court of Ohio held that:

- Purchase price did not establish true value, and
- Evidence was sufficient to support valuation.

Purchase price of racetrack at bankruptcy sale six months after tax-lien date did not establish property's true value, and therefore Board of Tax Appeals properly considered appraisal evidence in valuing property, where racetrack was sold at auction, which was forced sale other than in ordinary course of business and not between typically motivated parties, and sale occurred at least in part to liquidate assets for benefit of creditors.

Evidence was sufficient to support Board of Tax Appeals' decision to value racetrack at $13.8 million, as opposed to $43 million, which was purchase price at bankruptcy sale, as advocated by board of education. Board of education presented nothing apart from price at forced auction to establish value of property, purchaser's appraisal indicated that $27,950,000 of purchase price was attributed to obtaining racing license and that furniture, fixtures, and equipment were worth approximately $1,200,000, and other evidence, including recitals in purchase agreement, corroborated appraisal's valuation.

MSRB's Net Assets for FY-15 Almost Triple from Five Years Ago.

WASHINGTON — The Municipal Securities Rulemaking Board had $69.52 million of net assets at the end of September, nearly triple the $25.94 million it had five years ago, according to MSRB financial documents.

Additionally, almost all of the self-regulator's revenues from fees rose in fiscal 2015, especially underwriting revenues from fees, up almost 30%, and revenues from enforcement agency actions, which more than tripled.

The only drop in revenue was from data subscriber fees, which fell about $34,425 or 1.85% to $1.82 million from $1.85 million.

The figures are from the MSRB's financial statement for fiscal year 2015, which ran from Oct. 1, 2014 through Sept. 30 of last year.

The board's $69.52 million of net assets for fiscal 2015 was up $9.1 million or 15% from $60.39 million at the end of the previous fiscal year. The board's net assets have been steadily growing for five years, after dropping for two fiscal years.

The board's total revenues for fiscal 2015 rose almost $9.34 million or 29% to $41.33 million from $31.99 million.

Its total expenses rose $2.72 million or 9.2% to $32.20 million from $29.48 million in 2014. Market information transparency programs and operations, at $15.56 million, made up almost half of the MSRB's expenses in fiscal year 2015. The next greatest expenses were $6.85 million for rulemaking and policy development and $5.56 million for administration.

In the revenue category, underwriting fee revenues rose to $12.99 million in fiscal year 2015 from about $9.98 million the previous year. Revenues from municipal advisor professional fees followed suit rising to $1.34 million compared to $968,700 in 2014. Fiscal 2015 was the second year MSRB collected those fees.

Revenue from rule violations also rose to more than $2.65 million from $709,523 in 2014. The Dodd Frank Act allowed the MSRB to collect a share of enforcement revenues from both the Securities and Exchange Commission and the Financial Industry Regulatory Authority.

This huge increase does not take include any enforcement revenue from either of the two sets of settlements that groups of underwriters entered into with the SEC under its Municipalities Continuing Disclosure Cooperation initiative, but may include enforcement revenue from the Edwards Jones case where Edward Jones paid $15 million in penalties to settle a case involving primary market pricing abuses.

While technology fee collections appeared to increase substantially to $7.27 million in fiscal 2015 from nearly $3.70 million, the latter figure does not take into account a $3.6 million partial rebate the MSRB gave to dealers in 2014 because the technology fund had exceeded its reserve target.

The MSRB’s investments showed a gain of $8 million, growing to $57.93 million in fiscal 2015 from $49.77 million in 2014.

Underwriters, who have traditionally paid the large majority of the collected MSRB fees, have consistently complained that newly regulated municipal advisors should have to shoulder more of the burden. Responding to such concerns, the MSRB proposed a plan last August to better distribute costs among regulated entities based on their level of involvement in market activities.

The self-regulator also decided it would raise its initial and annual fees, which all regulated members pay starting on Oct. 1, 2015 and would lower its underwriting fee starting on Jan. 1 of this year.

The initial fee rose to $1,000 from $100 and the annual fee changed to $1,000 from $500 while the underwriting fee dropped to $0.0275 per $1,000 of the par value of primary offerings from the current $0.03 per $1,000.

The MSRB also made the previously temporary technology fee permanent at $1.00 per transaction for each interdealer and customer sale report to the board and said it would no longer use the technology fee money solely for capitalized hardware and software expenses but instead would use it wherever the organization deemed appropriate.

Dealer and advisor groups both criticized the change, saying it treated members unfairly.

Michael Decker, managing director and co-head of municipal securities with the Securities Industry and Financial Markets Association, said in September that the MSRB failed to address the previous inequities to underwriters and suggested the self-regulator instead impose an activity-based fee structure on MAs that would mimic the current underwriting fee.

Terri Heaton, president of the National Association of Municipal Advisors, said in September that small MAs will face an undue burden as they are forced to absorb the increased initial and annual fees.

THE BOND BUYER

BY JACK CASEY

JAN 11, 2016 4:33pm ET

Deloitte Power & Utilities Accounting, Financial Reporting, and Tax Update.

We are pleased to announce the release of the Power & Utilities Accounting, Financial Reporting, and Tax Update. The publication includes the latest information on accounting, tax, and regulatory matters, including SEC, FASB, and tax updates, and focuses on specialized industry accounting matters frequently seen by P&U companies, including rate-regulated entities. The annual update also includes a section on accounting and reporting matters specific to renewable energy.

New sections in this edition include:

- The new leases standard, expected to be issued in early 2016
- Alternative revenue programs
- Asset retirement obligations

Additionally, to address potential challenges in accounting and reporting related to topics on which the FASB has recently issued proposed guidance or final standards that are not yet effective or available for adoption, we have included a section about Board proposals and have highlighted nuances that could affect the industry.

January 2016

New MSRB Notice Summarizes Provisions of Municipal Advisor Conduct Rule.

The Municipal Securities Rulemaking Board (MSRB) today published a regulatory notice detailing the development of its core conduct rule for municipal advisors and summarizing each of the new rule's provisions. MSRB Rule G-42, taking effect in June 2016, was approved by the Securities and Exchange Commission (SEC) in December 2015. Read the MSRB approval notice.

To facilitate compliance, the MSRB will host a free educational webinar in advance of the effective date of Rule G-42. The webinar will be held on Thursday, April 28, 2016 from 3:00 p.m.-4:00 p.m. Register for the webinar. Submit questions in advance of the webinar to MSRBEvents@msrb.org.

Also, the MSRB, in conjunction with the SEC and the Financial Industry Regulatory Authority (FINRA), will host a general compliance outreach program for municipal advisors in Philadelphia, PA and via live webcast on Wednesday, February 3, 2016. Register to attend.

TAX - VERMONT

Rasmussen v. Town of Fair Haven

Supreme Court of Vermont - January 8, 2016 - A.3d - 2016 WL 99839 - 2016 VT 1

Taxpayer appealed Board of Civil Authority (BCA) decision finding taxpayer withdrew his property

assessment appeal. The Property Valuation and Review Division's Property Tax Hearing Officer concluded that the BCA had correctly dismissed taxpayer's appeal. Taxpayer appealed.

The Supreme Court of Vermont held that:

- Taxpayer's refusal to allow a complete inspection of the properties comprising his single parcel, including an inspection of the interior of any dwelling, constituted a withdrawal of his assessment appeal, and an affirmance of the lister's assessment of the property, and
- Town did not need to file an objection to taxpayer's appeal in order to enable the hearing officer to consider if he had the authority to consider the appraised value of the property de novo.

Because taxpayer's lands were one parcel for tax purposes, he was obligated to make any lands comprising the parcel available for inspection, and thus, his refusal to allow a complete inspection of the properties comprising his single parcel, including an inspection of the interior of any dwelling, constituted a withdrawal of his assessment appeal, and an affirmance of the lister's assessment of the property.

Inspection of a taxpayer's property for property tax assessment by town listers, the Board of Civil Authority (BCA), or a Property Valuation and Review Divsion's Property Tax Hearing Officer, would not constitute an unreasonable search under the Fourth Amendment. While a taxpayer could refuse to allow an inspection, the consequence would be that the taxpayer would not be allowed to challenge the assessment of his or her property.

The scope of taxpayer's appeal of a Board of Civil Authority (BCA) decision finding that taxpayer withdrew his property assessment appeal when he refused to allow an inspection of a portion of his property was not limited to the issues identified by taxpayer in his notice of appeal, and town did not need to file an objection to the appeal in order to enable the hearing officer to consider if he had authority to consider the appraised value of the property de novo. Due to taxpayer's refusal to allow an inspection, the BCA could not and did not make any findings or rulings on the merits.

S&P Live Webcast: U.S. Higher Education 2016 Outlook.

Please join Standard & Poor's Ratings Services on Thursday, January 21, 2016 at 3:00 p.m. Eastern Time for a live Webcast and Q&A discussion on the major trends facing the higher education sector and their possible credit implications, as well as a review of our major rating actions from 2015.

Register for the complimentary webcast.

S&P Live Webcast and Q&A: U.S. Municipal Housing 2016 Outlook.

Please join Standard & Poor's Ratings Services on Wednesday, January 20, 2016, at 2:00 p.m. Eastern Time for a live Webcast and Q&A on the U.S. Municipal Housing sector.

Register for the complimentary webcast.

U.S. Local Government: Growing Tax Bases and Good Management Underpin Stable Outlook, Despite Some Pension and OPEB Stress.

The local government sector has historically been characterized by solid credit quality and stable rating performance. Following this trend, Standard & Poor's Rating Services expects this sector to demonstrate another year of stable credit quality in 2016. Despite a small handful of struggling issuers (including Chicago, Detroit, and Atlantic City), we believe that the overall stability and growth of local economies, generally strong-to-very strong institutional framework (IF) scores, managements' ability to direct revenue and spending, and reliability and resilience of local revenue sources such as the property tax (even through the Great Recession) continue to support the stable credit quality outlook. This outlook is Standard & Poor's view of possible rating performance within the sector or specific geographic region in the medium term as gauged in part by the ratio of upgrades versus downgrades, a trend of positive versus negative outlooks, and broader key trends and issuer-level credit drivers.

The macroeconomic conditions and general financing conditions in North America, as well as those risks identified by Standard & Poor's Credit Conditions Committees, provide the foundation for our U.S. Public Finance sector outlooks (see "Volatility Risk Lingers As North America Readies Itself For Less Accommodative Credit Conditions," published Dec. 4, 2015, on RatingsDirect). Our rating outlooks are informed by our macroeconomic forecast of the U.S. down to the regional and sector level, if applicable (see "U.S. Public Finance 2016 Credit Conditions Outlook: Expect Growth But Hold The Cheer," published Jan. 11, 2016). Our focus in this article is on those broader industry trends that can have a large impact across our rated universe as well as developments we are seeing at the issuer-level that could drive credit quality.

Overview

- The local government sector has historically been characterized by solid credit quality and stable rating performance.
- We expect our ratings on local government to remain stable in 2016 thanks to consistent tax bases and continued growth, along with increased reserve levels and improved management practices.
- Although the overall local government sector is stable, challenges lie ahead, especially for those governments with large pension and other postemployment benefit liabilities.
- Local governments continue to benefit from a low interest rate environment, but if further rate increases occur, governments that wait to borrow could miss the opportunity to finance capital needs at historically lower rates and subsequently affect costs in future budgets.Continue reading.

13-Jan-2016

S&P: U.S. Higher Education – Amidst Continuing Pressures, the Ratings Outlook is Bifurcated.

For 2016, Standard & Poor's Ratings Services' outlook on the U.S. higher education sector is bifurcated. Higher education in the U.S. has always been a relatively stable sector, and we've generally affirmed most of our ratings in any given year. During the past few years, of the rating changes we have seen, downgrades have outnumbered upgrades by a significant and increasing ratio. Although we expect downgrades to outpace upgrades again this year, we anticipate fewer

downgrades than in previous years. In addition, while the sector continues to face longer-term challenges and opportunities, we believe most institutions have adapted to the "new normal" of more competition for students and limited tuition flexibility and are taking advantage of their individual strategic positions to continue operating successfully. However, these factors are not affecting all institutions equally. Schools with national or international reputations and growing resources will likely be able to capitalize on opportunities to further strengthen their positions, while smaller, regional schools will continue to struggle to differentiate their brands, which will require additional investment and resources that could weaken their credit profiles in 2016.

This outlook is our view of possible rating performance within the sector over the intermediate term, as gauged in part by the ratio of upgrades to downgrades, the trend in positive versus negative outlooks, broader key trends, and issuer-level credit drivers. The macroeconomic conditions and general financing conditions in North America, as well as those risks Standard & Poor's Credit Conditions Committees have identified, provide the foundation for our U.S. public finance sector outlooks. (See "Volatility Risk Lingers As North America Readies Itself For Less Accommodative Credit Conditions" dated Dec 4, 2015). Our macroeconomic forecasts for the U.S., down to the regional and sector level, if applicable, also inform our outlooks. (See "U.S. Public Finance 2016 Credit Conditions Outlook: Expect Growth But Hold The Cheer" dated Jan. 11, 2016.)

We recently published revised criteria for rating not-for-profit colleges and universities. This outlook and the following discussion of overall trends in the sector reflects our view of the possible effects such trends could have on the credit of a college of university, without regards to changes in our rating methodology. For additional information on our revised criteria, please see "Methodology: Not-For-Profit Public and Private Colleges and Universities" published Jan. 6, 2016, on RatingsDirect.

Overview

- Higher education institutions with strong demand, growing resources, and national or international reputations will continue to improve their credit quality in 2016.
- Smaller, regional institutions will continue to struggle to differentiate their brands, which will require additional investment and resources that could weaken their credit profiles in 2016.

Continue reading.

14-Jan-2016

MSRB Notice Details MA Conduct Requirements; Webinar Planned.

WASHINGTON – The Municipal Securities Rulemaking Board on Tuesday released a regulatory notice detailing new core conduct requirements for municipal advisors.

The MSRB also plans to hold a webinar to discuss Rule G-42's requirements on April 28 before they are implemented in June.

Rule G-42 was approved by the Securities and Exchange Commission on Dec. 23. The MSRB first proposed Rule G-42 in January 2014 and, after making several changes, filed it with the SEC for approval in April 2015. The SEC twice extended the time to consider the rule and the MSRB filed two amendments — one tightening and clarifying language contained in the rule and the second allowing for a limited exception to a controversial principal transaction ban for MAs.

A central portion of the rule defines the fiduciary duty MAs owe their clients to include both a “duty of care” and a “duty of loyalty.”

The duty of loyalty is owed to an MA’s municipal issuer clients and requires the advisor “without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client’s best interests without regard to [its] financial or other interests.” The duty prevents an MA from engaging with municipal issuer clients if the MA cannot manage or prevent conflicts of interest.

The duty of care is owed to all clients and requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a “reasonable inquiry” into the facts relevant to a client’s request before deciding whether to proceed; and undertake a “reasonable investigation” to determine their advice is not based on bad information.

Whether providing direct advice to a client or reviewing a third party’s recommendation to a client, the MA has to show that it has a reasonable basis for the conclusions it shares with its client. To fulfill the obligation, the MA must tell its client about: the evaluation of material risks, potential benefits, structure and other characteristics of the recommended muni transaction or financial product; the basis for the advisor’s belief that the transaction or product is suitable for the client; and whether the MA has investigated or considered other alternatives for the client. The MA must take into account such things as the client’s financial situation and needs, objectives, tax status, risk tolerance, and liquidity needs, according to the notice.

Another part of the rule requires MAs to document their advisory relationships in writing before, at the start, or promptly after the start of their advisory activities with a client. The documentation portion of the rule requires seven pieces of information, including a description of the scope of municipal advisory activities and any conflicts of interest, the disclosure of which is described in a different section of the rule.

The rule does not provide an exhaustive list of reportable conflicts of interest, which must be reported before or at the start of the relationship, but lays out several examples, including: MA payments to be made to an issuer official to obtain an engagement for services; any advice an affiliate of the MA provides to the client that is directly related to the municipal advisory activities of the MA and; any fee-splitting arrangements involving the MA and a provider of investments or services to the client.

Conflicts of interest that are disclosed in writing must be detailed enough to tell the client the nature, implications, and potential consequences of each conflict and must include an explanation of how the MA plans to address each instance, the MSRB said.

If an MA uses “reasonable diligence” to conclude it does not have any conflicts of interest, it must inform its issuer client or other borrower in writing that it came to that conclusion.

Additionally, if an MA gives advice to a client inadvertently, it does not have to follow the disclosure and documentation requirements. Instead, the MA could give its client a document that includes a disclaimer explaining and identifying the inadvertent advice and stating the MA is no longer giving that client advice. The MA must also review its supervisory procedures to better prevent inadvertent advice in the future.

The rule includes a list of specified prohibitions on MA activity, including excessive compensation in relation to the advice given, inaccurate invoices for advisory work, and false or materially misleading representations of an MA’s expertise. MAs also cannot enter into fee-splitting arrangements with

an underwriter on a transaction for which the MA is providing advice or with regard to an undisclosed relationship with an investment or service provider for a municipal entity or obligated person client of the MA.

A final and controversial portion of the rule bans MAs from acting as a principal in a transaction with a muni issuer client that is directly related to a transaction on which the MA is providing advice. The transaction would include any bank loan if its amount exceeds $1 million.

The proposed rule contained an outright ban on principal transactions for most of the time it was considered and drew strong criticism from dealer and issuer groups. They claimed the ban was overly burdensome and would drive up costs for issuers.

Rule G-42 now includes a narrow exception to the ban for registered broker-dealers on sales to, or purchases from, a municipal client of U.S. Treasury securities, agency debt securities, or corporate debt securities. The exception allows MAs to either make written disclosure on a transaction-b--transaction basis and receive the issuer's written or oral consent or meet several additional procedural requirements so that the MA could make oral rather than written disclosure.

The Bond Buyer

by Jack Casey

Jan 13, 2016

New England Tax Wars.

With Massachusetts' unofficial nickname being "Taxachusetts," some may be wondering why General Electric (GE) announced this week that it's moving its corporate headquarters from Connecticut to Boston. The move follows a contentious fight in Connecticut over the state's corporate tax structure that would have eventually increased GE's tax burden.

The bulk of the fight was over Connecticut's move toward "combined reporting," which basically makes a corporation declare any tax havens it may have in other states that presumably have lower (or no) taxes on corporate and individual income. About half the states have implemented combined reporting as a way of discouraging companies from using havens to evade taxes. If GE stayed in Connecticut, its income earned elsewhere would have been subject to the state's 9 percent corporate tax rate, which is one of the highest in the country. Connecticut has also increased taxes several times in recent years, and a committee is currently studying broader tax reform.

When GE threatened to leave Connecticut over these changes last year, Gov. Dannel Malloy quickly backtracked and delayed the tax hikes until this year. But it turns out he was just buying time for GE to scout out its next move.

Oddly enough, Massachusetts already has combined reporting requirements and a similarly high corporate income tax rate. But it has a much lower individual income tax rate (a flat rate of 5.1 percent, versus Connecticut's highest tax bracket of 6.99 percent). Massachusetts and Boston also sweetened GE's deal by providing tax credits totaling $145 million.

After spending the past 40 years in Connecticut, GE's relocation sends a sobering message to states as they continue to see their revenue from corporate income taxes shrink. "[General Electric]

becomes just another company that has chosen to relocate due to a state's decision to alter its tax code," said Nicole Kaeding of the Tax Foundation.

GOVERNING.COM

BY LIZ FARMER | JANUARY 15, 2016

Mediation Ends Longstanding Firefighter Pension Dispute in New Orleans.

In several cities where pension reform has failed, this type of problem-solving has proved beneficial.

Earlier this month, New Orleans Mayor Mitch Landrieu stood with Nick Felton, president of the firefighters union, at a press conference calling for voters to approve a small property tax increase. The symbolism was significant. Felton and Landrieu had been on opposite sides in a bitter battle over firefighter pension funding and backpay for the past half-decade. The tax increase they're asking for would help the city meet its part of a deal that would put an end to the longstanding dispute.

What finally got both sides to budge in a fight that predates Landrieu's administration was going through a roughly 14-month mediation. The process involved a pension task force made up of business and community members who worked with consultants to find a unanimous plan for saving the failing pension.

New Orleans is now the third city to turn to this type of help for pension reform, and the process is so far proving successful in places where tensions are running high and strong-arming — by both sides — has failed. New Orleans has been the toughest test yet, said consultant Vijay Kapoor, who has been a mediator for pension task forces in Chattanooga, Tenn., and Lexington, Ky. "The first time we brought everyone together, it lasted 20 minutes before [each side] was shouting," Kapoor said. "We decided to meet separately after that."

The issues and resentments on both sides were deep. Despite several court rulings, the city still had not paid firefighters the $75 million it owed them in backpay. The dispute had been going on so long — the original lawsuit dates back to the mid-1990s — that dozens of firefighters have died without getting what they were owed. At one point in 2014, Landrieu had agreed to pay the settlement, but then balked, saying the city first had to get relief from its mounting pension bill.

That pension, which Kapoor said was in the "worst shape I'd ever seen for a public fund of its size," was nearing insolvency and putting unprecedented pressure on the city's budget. In 2016, the city's actuarially required contribution was set for $60 million — more than five times its entire parks department budget. The high bill is because the pension has about one-fifth of the money it needs to meet its liabilities.

From the city's viewpoint, the pension's leaders were mainly to blame. In the 2000s, the pension board sucked millions out of the fund via botched investments and now-defaulted loans to the entertainment industry. When Landrieu took office in 2011, he cited the city's fiscal crisis as his reason for continuing the previous administration's underfunding of the pension. Still, not putting more money into the system at a time when the stock market has gained two-thirds in value only worsened the pension's financial state.

Kapoor, who was hired in 2014 as a consultant by the New Orleans Business Council, said it took

months for the two sides to even agree on the numbers — this, despite the help of an actuarial firm. Six months into negotiating a funding plan, it became clear that the firefighters union wouldn't agree to anything until the city paid what it owed in backpay. Without a unanimous agreement, the outside task force dissolved. Still, the parties kept working at a solution.

Late last year, the long process paid off. The two sides struck a deal that puts in place a 12-year payment plan for the $75 million in backpay, including $21 million upfront; triples the city's contribution to the pension plan to about $32 million this year and guarantees that payments will stabilize going forward; eliminates retirees' cost-of-living increases until the pension is nearly fully funded; and gives the city oversight of the fund's investments and governance.

Kapoor believes New Orleans' complicated story shows how this type of problem-solving could be beneficial for other cities facing sticky pension issues, but others note that mediation should be a last resort. "If we thought we could have gotten the city council to pay out [the backpay] more quickly," said Pension Board Treasurer Thomas Meagher III, "then we would have proposed legislation and gone that route."

GOVERNING.COM

BY LIZ FARMER | JANUARY 14, 2016

One of the Biggest Bond Market Players Has No Employees.

One of the most prolific issuers in the $3.7 trillion municipal market is a Wisconsin agency with no employees, coveted tax-exempt bond status and a nationwide client list.

The Public Finance Authority last year issued bonds for more than 30 charter schools, senior living facilities, universities and real estate developers in 15 states. None were from Wisconsin. The University of Kansas sold $327 million of tax-exempt bonds last week through the authority for the first time so it didn't have to wait on the legislature's approval to raise money for a new 285,000 square-foot science building, a student union and housing.

"We're expecting a larger class in 2017," said Theresa Gordzica, the university's chief business and financial planning officer. "We needed to keep the project moving so we can get the residence hall done."

The deal highlights an obscure corner of the state and local-government debt market where pass-through agencies rent out their ability to sell tax-exempt bonds to out-of-state companies and non-profits in exchange for a fee. The practice has drawn criticism from some public officials, who say it can allow debt issuers to skirt their oversight by financing projects through authorities beyond their jurisdiction.

"The university is owned by the state, both the facilities as well as the good faith and credit," said Representative Mark Hutton, a Wichita Republican, who called the university's decision a "dangerous" precedent. "The reality is that they answer to the taxpayers of the state of Kansas, and we're that voice."

Such agencies sell securities and immediately lend the proceeds to borrowers, whose projects qualify for the tax exemption the federal government awards to debt for public works. The authorities aren't on the hook if the money isn't repaid. That makes the bonds among the riskiest in

the municipal market: They make up as much as 30 percent of outstanding debt but account for almost 60 percent of defaults, according to Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics.

State Competition

Wisconsin is one of seven states, including Florida and Arizona, that allow so-called conduit authorities to issue debt for projects beyond their borders, according to the Columbus, Ohio-based Council of Development Finance Agencies.

Wisconsin lawmakers approved legislation in early 2010 that allowed for the creation of the Madison-based PFA, which has since sold $3.4 billion of bonds. Started by the Wisconsin Counties Association, working with the National Association of Counties and the National League of Cities, its goal is to provide governments and eligible private entities with access to low-cost financing for projects that contribute to social and economic growth. Last year, the PFA was the most active conduit issuer, according to data compiled by Bloomberg.

Mike LaPierre, president of Walnut Creek, California-based GPM Municipal Advisors, which manages the day-to-day operations of the PFA, said all of its bond sales are first approved by local governing bodies such as city councils. The university's board of regents authorized last week's sale.

"We're going to the elected body most impacted by the projects," said LaPierre, whose firm was paid $1.5 million by the authority in 2014. "We're not doing anything unless that local agency has vetted it before a public hearing."

"As local public officials ourselves, we want to to ensure that those most impacted by the project have a chance to weigh in," said William Kacvinsky, the former Bayfield County supervisor who chairs the PFA.

Most of the authority's bond sales have been for out-of-state issuers. About $150 million of the money it has raised was for nine standalone Wisconsin projects and four multi-state deals for work based in the state, according to LaPierre.

Last year, 17 of its bond issues, or more than half, didn't have credit ratings, a step frequently used by borrowers that are unlikely to receive an investment grade, according to data compiled by Bloomberg. Only qualified institutional buyers or accredited investors can buy those securities, and those rated below BBB-, LaPierre said.

No Defaults

No PFA debt has had a payment default. But one charter school in Palm Beach County, Florida, that borrowed through the agency has had to draw on its reserves to pay bondholders, a sign of distress.

"The investors are big boys, they're doing their due diligence," LaPierre said. "We don't want unrated debt being held in the hands of mom and pop."

The PFA shares a mailing address with the Wisconsin Counties Association in a building across the street from the state capitol. Its seven-member board includes four directors nominated by the counties group, and one director each from the National League of Cities, the National Association of Counties and the League of Wisconsin Municipalities. The groups receive fees for endorsing the PFA. Last year, the National Association of Counties received about $130,000, said spokesman Brian Namey.

The University of Kansas, with 25,000 students at its main campus in Lawrence, sold debt to finance projects include a $138 million science building. It was the first time the university used an out-o--state conduit, said Rebecca Floyd, the general counsel of the Kansas Development Finance Authority, which handles bond deals for local borrowers.

"I think it was one of those circumstances that the legislature didn't foresee," she said.

Some charter schools in North Carolina have turned to the PFA rather than issue debt through North Carolina's Capital Facilities Finance Agency. Pamela Blizzard, the managing director of the Research Triangle High School near Durham, said the North Carolina authority's conditions were more restrictive and would have delayed the sale by months.

Other conduits have also been competing for business. In Connecticut, a retirement community last March used the PFA to issue $34.5 million of bonds rated BB, two steps into junk. After the deal, Connecticut's Health and Educational Facilities Authority dropped its policy of only issuing investment grade bonds. It will now allow for public offerings of bonds rated BB and BB+ and sold to qualified institutional buyers or accredited investors, said Executive Director Jeanette Weldon.

"We wanted to make sure we're giving these borrowers the access to capital that they need," Weldon said.

Bloomberg Business

by Martin Z Braun

January 12, 2016 — 9:01 PM PST Updated on January 13, 2016 — 6:28 AM PST

Illinois Penalized as It Ends Hiatus From Muni Bond Market.

Illinois, the worst-rated state in America, returned to the $3.7 trillion municipal-bond market for the first time in almost two years and paid a price for its financial turmoil.

The state, now in its seventh month without a budget, sold $480 million of general-obligation bonds to pay for transportation projects. The federally tax-exempt securities maturing in 2041 sold at a top yield of 4.27 percent, according to data compiled by Bloomberg. That's about 1.5 percentage points more than benchmark debt. When it last sold bonds in April 2014, that gap for debt due in 2039 was about 0.4 percentage point less.

"It's generally a good result in line with or better than expectations given the credit deterioration since the last sale," said Paul Mansour, the head of municipal research for Conning, which oversees $11 billion of state and local debt, including Illinois securities.

Since Illinois's 2014 sale, its credit rating has been cut and temporary tax increase have expired, leaving Republican Governor Bruce Rauner and Democratic lawmakers deadlocked in the longest budget impasse in the state's history. The state supreme court also threw out Illinois's plan to reduce pension costs and shrink a $111 billion retirement-fund deficit.

Bank of America Merrill Lynch submitted the winning bid at a true interest cost of 3.99 percent, said Catherine Kelly, a spokeswoman for Rauner. That is a better rate than the last four tax-exempt GO sales, she said. The true interest cost represents the total cash amount of the interest payments and

the time of the interest and principal payments.

“The State experienced strong investor interest on the bonds,” Kelly said in an e-mailed statement after the sale. “We are also pleased that we were able to borrow at less than 4 percent and continue to provide funding for essential Illinois construction projects.”

Moody’s Investors Service dropped Illinois to its lowest investment-grade tier in October as the political stalemate dragged on. Despite the fiscal troubles, municipal analysts say they aren’t worried about an Illinois default.

“They have sufficient liquidity and cash flow to continue making their monthly set aside for monthly debt service,” said Ty Schoback, a senior analyst in Minneapolis at Columbia Management Investment Advisers, which handles about $30 billion in municipal bonds.

Bloomberg Business

by Elizabeth Campbell

January 14, 2016 — 10:23 AM PST Updated on January 14, 2016 — 2:38 PM PST

State Street Pays $12 Million for SEC's Pay-to-Play Allegations.

State Street Corp. agreed to pay $12 million to settle U.S. Securities and Exchange Commission claims that a former senior vice president helped route illicit cash payments and political contributions to win lucrative contracts to service Ohio pension funds.

Vincent DeBaggis, who headed State Street’s public funds group at the time, hired an immigration attorney with no lobbying experience to funnel money to Ohio’s then-deputy treasurer Amer Ahmad, according to a statement Thursday from the SEC. DeBaggis also worked with a State Street lobbyist, Robert B. Crowe, to give at least $60,000 to the incumbent Treasurer’s election campaign.

From February 2010 to April 2011, State Street paid the attorney, Mohamed Noure Alo, $160,000 in fees with a substantial portion sent to Ahmad. Ahmad and Alo have been criminally convicted for other misconduct during Ahmad’s tenure and are in federal prison.

“Pension fund contracts cannot be obtained on the basis of illicit political contributions and improper payoffs,” Andrew J. Ceresney, head of the SEC’s enforcement division, said in the statement. “DeBaggis corruptly influenced the steering of pension fund custody contracts to State Street through bribes and campaign donations.”

Wall Street’s main regulator has been cracking down on the so-called pay-to-play scandals in the $3.7 trillion municipal bond market. In one of the largest, former New York State Comptroller Alan Hevesi spent 20 months in prison after pleading guilty to directing $250 million in pension funds to an investment firm in exchange for travel, gifts and more than $500,000 in donations.

State Street, which didn’t admit or deny the SEC’s findings, agreed to pay an $8 million penalty and $4 million in disgorgement and interest. The firm is a custody bank, and keeps records, tracks performance and lends securities for institutional investors including mutual funds, pension funds and hedge funds.

“The SEC’s allegations regarding Mr. Crowe are patently untrue,” his attorney Arthur McMahon said in a statement. “We are disappointed that Mr. Crowe will be required to defend himself and his reputation in a case that the SEC has no basis for bringing.” Crowe is a partner at Nelson Mullins Riley & Scarborough.

The Ohio Public Employees Retirement System said in a statement that unlike most pension funds in U.S., it has no authority to contract, select or dictate terms with custodial banks and supports changes to the selection process in Ohio.

Requests for comment from an attorney representing DeBaggis weren’t immediately returned. State Street didn’t immediately return a request for comment.

Bloomberg Business

by Matt Robinson

January 14, 2016 — 11:51 AM PST Updated on January 14, 2016 — 3:06 PM PST

Day of Reckoning Near as Detroit Schools Pushed to Fiscal Brink.

When Roosevelt Bell’s daughter Roshauna left Detroit’s Cooke Elementary for a charter school, she joined an exodus that sent the district’s finances into free fall. Every student that leaves costs $7,434 in state aid. In the past decade, it’s lost 84,000.

“The school was really raggedy,” said Bell, a 58-year-old carpenter who pulled Roshauna out four years ago because of over-crowded classrooms and a building in need of repair. “The kids had to wear their coats in the classrooms.”

More than a year after Detroit emerged from a record-setting bankruptcy, cutting its debt in an effort to revive from a decades-long population decline, the independent school district is still flirting with insolvency. In February, the amount of state aid that’s siphoned off by debt will jump to roughly what is spent on salaries and benefits, and it may run out of cash in April. This week, the frayed finances sparked a staff revolt: More than half the schools closed Monday after teachers called in sick to protest dilapidated conditions.

“It’s not sustainable,” said Hetty Chang, a vice president with Moody’s Investors Service, which rates the district’s bonds Caa1, seven steps below investment grade, lower than any other U.S. public-school system. If nothing happens soon “they will run out of money.”

Detroit isn’t alone, with many urban school systems struggling, including Philadelphia’s and Chicago’s. But nowhere has the financial pain been as acute or persistent as in Detroit, where the long-running disappearance of automobile-industry jobs caused the biggest population decline ever seen in an American city, leaving much of it vacant. With fewer residents, enrollment in its schools has plunged 65 percent since 2006.

With about $1.7 billion of outstanding bonds, the district has been run by a state-appointed emergency manager since 2009, a step aimed at keeping it out of bankruptcy. Republican Governor Rick Snyder last year proposed an overhaul that would keep its debt from crowding out classroom spending. Drawing on that plan, Republican state Senator Goeff Hansen Thursday introduced legislation that would effectively create two districts — one to pay off $715 million of debt and

another to run the schools.

“We have to get them back to solvent,” Hansen said in an interview. “You can’t have a robust, strong Detroit without having a good school system.”

Governor’s Priority

Dave Murray, a spokesman for Snyder, said providing a permanent fix for the schools is one of his administration’s top priorities this year. Michelle Zdrodowski, a spokeswoman for Detroit’s schools, didn’t respond to phone and e-mail messages seeking comment.

To help close budget shortfalls, the district’s reliance on short-term loans has grown. In September, it sold $121 million of notes that mature in August for a yield of 5.75 percent, about $13 million more than it issued a year earlier. Because of that borrowing, the amount of state aid that goes to debt service will jump by 22 percent to $26 million next month, according to disclosures made for the note offering.

“Things are looking rough, they’re coming to a head,” said Craig Thiel, senior research associate with the Citizens Research Council of Michigan, which released a report this month on the district’s debt. “The state sends its checks to the district after holding out money to repay short-term borrowings. Whatever is left is available to pay teachers, buy books and turn on the lights.”

Bondholder’s Shelter

That diversion of aid, which is a result of the control exerted by the state, has sheltered bondholders. A Detroit school bond maturing in 2029, one of its most active securities, last traded for an average yield of 2.9 percent in November, or 1.3 percentage points more than benchmark debt, according to data compiled by Bloomberg. That was down from about two percentage points in April.

“It’s upsetting to see the poor conditions of the Detroit school system, but as bondholders, we are largely insulated because of the strong support provided to the bonds by the state,” said Paul Mansour, the head of municipal research at Conning, which oversees $11 billion of state and local debt, including some from Detroit’s schools. “Detroit public schools is not so much a concern over debt repayment, but it’s much more of an issue for the provision of services.”

To deal with the declining enrollment, the school system has eliminated almost 10,000 jobs since 2005 and closed more than 150 schools, helping reduce expenses by $800 million. There are some signs of stabilization: Enrollment was down by just 1.7 percent in the current year, the smallest drop in at least a decade. Emergency Manager Darnell Earley said in a statement last month that the district is “making strides to address the serious financial challenges that have been plaguing it for decades.”

More than 60 schools were closed Monday because teachers called out sick during the protest over derelict conditions. By Wednesday, the number of closings dropped to at least five, according to the Associated Press.

The teachers are upset because of the worsening school conditions, including broken heaters, rodents, cracked ceilings and mold, said Margaret Weertz, a spokeswoman for the Detroit Federation of Teachers. She said the protest wasn’t condoned or organized by the union.

“The frustration level is very, very high,” Weertz said.

Irving Bailey, 51, felt it years ago. He pulled his 9th grade daughter out of John R. King Academic

and Performing Arts Academy, worried about a lack of academic standards, and enrolled her in the Jalen Rose Leadership Academy, a charter. Now she attends Central Michigan University.

“Her Detroit school was crowded and I didn’t feel like it was preparing her for college,” said Bailey. “It’s not getting better in the Detroit schools. It’s getting worse.”

Bloomberg Business

by Darrell Preston and Elizabeth Campbell

January 14, 2016 — 9:01 PM PST Updated on January 15, 2016 — 9:10 AM PST

Bloomberg Brief Weekly Video - 01/14

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

Watch the video.

10:18 AM PST
January 14, 2016

BDA’s January 2016 Member Fly-in Focused on FINRA 4210 Margin Amendments.

BDA member firms met with senior regulatory staff at the SEC and FINRA and senior congressional staff in DC to discuss FINRA’s proposed margin amendments for the mortgage market.

On Thursday January 7th, as part of BDA’s member fly-in initiative, BDA member firms and BDA staff met with the SEC, FINRA, and senior staff at the Senate Banking Committee and the House Financial Services Committee to discuss the proposed TBA, CMO, and specified pool margin amendments to Rule 4210 that FINRA filed with the SEC. BDA submitted a comment letter in October 2015. The proposed rule can be read here.

Participants included:

- Erica Willems and Nick Pruhs from Baird
- Chris Melton from Coastal Securities
- Jason McCloud and Jeffrey Skinner from Stifel Nicolaus
- Allen Riggs from Vining Sparks

Meetings included:

- SEC Office of Trading and Markets
- FINRA senior regulatory staff
- Senate Banking Counsel
- House Financial Services Counsel

BDA members in attendance focused on the various compliance burdens the rule presents that are listed below. In addition, BDA expressed concerns to the SEC and senior congressional staff with SRO overreach in violation of congressional intent.

- Advocating for at least an 18 month implementation timeframe if this rule is approved.
- The burden of establishing margin agreements with all of a dealer's exempt and non-exempt accounts that trade mortgage products. And the fear that many dealer clients (large and small) will choose not to enter into margin agreements or that smaller dealers that do a small amount of mortgage business will chose to exit the market.
- Managing and tracking exposures to retail clients that do not present systemic risk and will very rarely have exposures that will exceed the proposed rule's $250,000 minimum transfer level. BDA firms also advocated for higher minimum transfer and gross open position limits.
- The inconsistency of the margin and liquidation time requirements compared to existing rules for other securities.

Bond Dealers of America

01-11-16

BDA Submits Comment Letter to SEC in Response to FINRA ATS Trade Reporting Amendments.

BDA submitted a comment letter to the SEC on SR-FINRA-2015-055, a Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide FINRA with Authority to Grant Exemptions from TRACE Reporting for Certain ATS Transactions.

Please review BDA's comment letter to the SEC here.

- The proposed rule creates a process for ATSs to be exempt from certain TRACE reporting responsibilities if certain conditions are met. For an ATS to be exempt, the ATS and a dealer will be required to have a written agreement in place which states that the dealer (and not the ATS) is responsible for reporting trades to TRACE.
- Additionally, dealers will be required to add ATS MPIDs to the TRACE reports for exempted trades. BDA's letter objected to the fact that FINRA filed these rule changes as "non-controversial" for immediate effectiveness with a July 18, 2016 implementation date without a sufficient public comment period.
- Additionally, BDA argues that dealers should be given more time to work with compliance personnel, third-party vendors, and ATSs before the implementation date.

Bond Dealers of America

01-13-15

Supreme Court to Weigh Public-Sector Union Dues.

Plaintiffs say they oppose union goals that may benefit them, like higher pay; labor groups argue they need mandatory fees to do their work effectively

WASHINGTON—The Supreme Court on Monday will consider eliminating a pillar of public-sector union strength in more than 20 Democratic-leaning states: the ability to require workers, including those who don't join the union, to pay for representation.

The high court ruled in 1977 that such provisions—known as union security, agency fee or fair-share clauses—were constitutional for public employees, as they have been for private-sector workers.

The current case, brought by the Christian Educators Association International and nine California teachers, asks the justices to overrule the precedent and effectively end the practice.

The challengers in the case, Friedrichs v. California Teachers Association, argue they shouldn't have to pay for any union services, on the theory that even basic functions such as collective bargaining are political speech because they involve requesting action from a government agency.

The ability to collect fees from dues-paying members and workers who don't join has bolstered the strength of public-sector unions, which typically represent all workers in a bargaining unit regardless of membership status. Union officials say removing that ability would make their work harder, if not insurmountable.

Nearly half of public employees in states with such provisions were represented by unions, compared with 17% in states that prohibit the fees, according to an October report from the left-leaning Economic Policy Institute. Of the latter group, between 2000 and 2014 about 20% were workers who declined to pay dues, the institute said.

The plaintiffs, all Republicans or independents, say they oppose union bargaining goals that may benefit them, such as higher pay or seniority protections.

“In my district, we have 70% of our students on free and reduced lunch. It's a very low-income area and our community cannot support higher salaries,” said plaintiff Harlan Elrich, a math teacher at Sanger High School in Fresno County, Calif. Mr. Elrich, who said he has been teaching nearly 30 years and makes about $75,000 annually, added that while “seniority is great,” teacher performance should also affect job security.

Among states that forbid the fees, the landscape for unions varies considerably. Wisconsin, which all but eliminated organizing rights for most public employees in 2011, represents one extreme.

Wisconsin Republicans led by Gov. Scott Walker left police and fire unions intact. But they placed restrictions on unions representing other government workers, banning collective bargaining and prohibiting payroll deduction of voluntary dues. Since then, the American Federation of State, County and Municipal Employees lost two-thirds of its membership, while the statewide teachers union shrank 50%, said Paul Secunda, a labor law professor at Marquette University in Milwaukee.

What those unions do today is “collective begging. It's not collective bargaining,” he said.

Not all states that prohibit the fees are so restrictive. But without provisions compelling membership, union officials must continuously attend to organizing and membership retention, reducing resources they can devote to bargaining and contract enforcement, said Ann Hodges, a labor law professor at the University of Richmond in Virginia.

A blow to unions would reverberate into the political arena, she notes: “Unions are one of few large institutional players that support Democrats historically. Not just with money but with boots on the ground.”

If the unions lose, Ms. Hodges expects their strength to decline more in some categories than others. Unions representing workers with "a shared culture, a shared profession"—such as teachers, police officers and firefighters—are better poised to survive, she said.

Union leaders are already looking to their counterparts in states that don't allow mandatory fee collection for advice on how to navigate possible changes.

Virginia prohibits collective bargaining for public employees. In Norfolk, the school board negotiated a de facto contract with the Norfolk Federation of Teachers, an affiliate of the American Federation of Teachers, in the early 1980s. Although the memorandum of understanding isn't enforceable in court, it has remained the basis of employee relations in the school system ever since.

"We would call it a best practice," said the school-board chairman, Rodney Jordan. "Now, they challenge us, they advocate for their members, but we also work together," he said, citing joint lobbying of the city council to increase education funding.

Mr. Jordan said Norfolk's "respectful relationships" with the federation and the Education Association of Norfolk, affiliated with National Education Association, helps in other ways.

"As an urban district surrounded by suburban districts that may have more resources than we do, I think it's also a competitive advantage for us" in attracting or retaining teachers, he said.

The Norfolk federation president, Thomas Calhoun, said that just under half the teachers, and about a third of other district employees, choose to join the union, paying about $700 in annual dues.

Because nonmembers automatically get whatever benefits the union negotiates, "there's nothing you can offer them to entice them to come over" unless they believe in the cause, Mr. Calhoun said. That drives the federation to work constantly to prove its worth, he said.

"We go out there every day," he said. "I try to be involved in the community, and with the League of Women Voters and the NAACP" and other civic organizations, he said.

Despite Norfolk's experience, Mr. Calhoun said no other Virginia district has followed its example and voluntarily instituted collective bargaining.

"It's clear that it hasn't caught on," he said.

THE WALL STREET JOURNAL

By JESS BRAVIN and MELANIE TROTTMAN

Jan. 10, 2016 4:30 p.m. ET

Write to Jess Bravin at jess.bravin@wsj.com and Melanie Trottman at melanie.trottman@wsj.com

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The Hidden - and Outrageously High - Fees Investors Pay for Bonds.

If you are a retail investor who purchases or sells corporate or municipal bonds, do you know the costs you are paying to transact in those securities? Chances are you don't. Because of a regulatory loophole, broker-dealers are currently allowed to withhold essential pricing information from retail investors in fixed-income transactions.

When a retail investor purchases stocks, the broker-dealer is required to disclose the transaction costs the investor paid in the form of a commission on the customer's confirmation statement. However, when a retail investor purchases bonds, the broker-dealer is not required to provide comparable disclosures of the transaction costs the investor paid in the form of a markup or markdown.

Because broker-dealers are not required to provide transaction cost information to retail customers in fixed-income transactions, and because retail investors don't see any transaction costs on their confirmation statements, retail investors may mistakenly believe that they aren't paying any trading costs at all. This opacity allows broker-dealers to charge higher transaction costs than they otherwise would if they were required to disclose.

As a result, retail investors pay substantially more to trade in corporate and municipal bonds than they pay to trade in stocks, where disclosure is required. And, they pay substantially more to trade in corporate- and municipal-bond transactions than sophisticated traders, who are better informed than retail investors and know where to access and how to interpret this information.

Research on retail investors' trading costs for municipal bonds has found that the average cost of a $20,000 municipal-bond trade to be almost 2%. That cost arguably would be quite high even in the context of a normal interest-rate environment. However, in today's low-interest-rate environment, that cost would be even more pronounced–equivalent to almost eight months of the total annual return for a bond with a 3% yield to maturity. Retail investors simply can't afford to pay these sorts of high transaction costs on a low-yield investment.

Relevant cost information is available on FINRA's Trade Reporting and Compliance Engine (TRACE) (for corporate bonds) and MSRB's Electronic Municipal Market Access (EMMA) (for municipal bonds) websites, and some astute investors may know how to find and interpret that data. However, most retail investors likely are not in a position to use those websites with any reasonable degree of expertise. Doing so would require the investor to know not only that those websites exist, but also how to find the precise information one is looking for and, most critically, how to understand and make use of that information to determine the costs one is paying and whether those costs are fair.

The only way to ensure that retail investors receive critical cost information is to provide it directly to them. Such cost information would put them in a better position to assess whether they are paying fair prices and allow retail investors to make more informed investment decisions. That would have the added benefit of fostering increased price competition in fixed-income markets, which would ultimately lower investors' transaction costs.

Even within the highly fractured Securities and Exchange Commission, there seems to be unanimous support among the commissioners to require broker-dealers to disclose transaction costs directly to their retail customers. Commissioner Mike Piwowar has gone so far as to characterize this issue as "low-hanging fruit."

But while there seems to be bipartisan support for forceful action, the two self-regulatory organizations tasked with addressing the issue, FINRA and the MSRB, have offered differing proposals. In my view, FINRA's proposal is stronger and less susceptible to evasion by broker-dealers than the MSRB's proposal and, therefore, any final coordinated approach should follow FINRA's proposal.

Meanwhile, as the respective regulatory agencies debate the technical details of the various proposals, which is likely to complicate and lengthen the process, retail investors remain in the dark.

THE WALL STREET JOURNAL

BY MICAH HAUPTMAN

Jan 13, 2016

Micah Hauptman (@MicahHauptman) is the financial services counsel for the Consumer Federation of America.

US Treasury Secretary Demands Action on Puerto Rico's Crisis.

SAN JUAN, Puerto Rico — U.S. Treasury Secretary Jacob Lew urged Congress on Friday to pass legislation by March to help ease Puerto Rico's economic crisis before it's too late.

Lew made the request in a letter to U.S. House Speaker Paul Ryan, a Wisconsin Republican, as he announced an upcoming trip to the island to meet with government officials and business leaders to talk about the financial situation.

"Although there are many ways this crisis could escalate further, it is clear that Puerto Rico is already in the midst of an economic collapse," Lew wrote. "It is time for Congress to act to provide order to a chaotic and worsening situation."

Puerto Rico is struggling with $72 billion in public debt that the governor has said is unpayable and needs restructuring. The island recently defaulted on $37 million in interest on bonds and faces its first lawsuit over how it has diverted funds to meet certain bond payments. Gov. Alejandro Garcia Padilla has already warned that Puerto Rico doesn't have money for upcoming bond payments including $400 million due in May.

Lew is scheduled to meet on Wednesday with officials and community leaders to talk about the proposal that President Barack Obama's administration presented Congress to create a territorial bankruptcy regime that would allow Puerto Rico's government to restructure its debt and impose new oversight on finances and expand Medicaid benefits, among other things.

Puerto Rico does not have access to any local or federal bankruptcy laws. Meanwhile, the U.S. Supreme Court recently announced it would hear an appeal on a ruling that barred Puerto Rico from giving municipalities the power to declare bankruptcy.

A spokeswoman for Ryan did not respond to a request for comment. Ryan has previously pledged that the House will come up this year with "a responsible solution" for Puerto Rico's debt problems.

Republican leaders including Sen. Orrin Hatch, R-Utah, have demanded to see audited financial statements from Puerto Rico, but they have not materialized. Jesus Manuel Ortiz, public affairs secretary for the Puerto Rican government, said Friday that the statements are nearly ready and would be produced soon, although he didn't specify a date.

Puerto Rico is struggling with an increasingly dwindling cash flow that has threatened to cut off gasoline and electricity to certain public and private institutions. Almost 10 percent of Puerto Rico's population has left since 2006 and hundreds of businesses have closed, with Walmart announcing Friday that it would shutter seven supermarkets on the island as part of a global restructuring.

Lew noted in the letter that Puerto Rico has not had access to the municipal bond market for more than two years and ran out of funding sources commonly used to finance government operations more than six months ago.

"More recently, Puerto Rico has resorted to a series of onerous and unsustainable emergency liquidity measures, including selling assets from already depleted pension funds; borrowing from the workers compensation and other insurance funds; and withholding hundreds of millions of dollars in tax refunds," he wrote.

Pedro Pierluisi, Puerto Rico's representative in Congress, said he expects to meet with Lew and stress that immediate measures are needed to avoid what he said would be enormous government defaults.

By THE ASSOCIATED PRESS

JAN. 15, 2016, 12:51 P.M. E.S.T.

GFOA: Lend Your Support to Preserve the Tax Exemption on Municipal Bond Interest.

As Congress and the White House return to discussions on comprehensive federal tax reform in 2016, GFOA is urging our members to help engage federal lawmakers regarding the need to preserve the tax exemption on municipal bond interest. In addition to the resources already available for your use on our federal government relations page, GFOA is urging members to sign their jurisdictions onto this letter to the leaders of the House and Senate tax writing committees, expressing support for the tax exemption. Beyond GFOA's membership, the letter is also being distributed by our colleagues at the National League of Cities, U.S. Conference of Mayors, National Association of Counties, and the National Association of State Treasurers. Our aim is to secure the support of hundreds of jurisdictions on this letter to demonstrate to Congress the immense support for this provision of the tax code. Jurisdictions that are interested in signing on should contact Emma Heydlauff by February 15.

Download:

Letter Expressing Support for Tax Exemption

Thursday, January 14, 2016

CUSIP Issuance Trends Report.

CUSIP Request Volume Trends Downward in December, Forecasts Continued Volatility in Corporate and Municipal Bond Issuance.

"A great deal of the activity in corporate and municipal bond issuance over the course of 2015 was defined by speculation around interest rates," said Richard Peterson, Senior Director, S&P Capital IQ. "It is fitting, then, given the December move by the Fed that we're now seeing a slow-down to the fever pitch of bond issuance we saw earlier in the year. Expect that trend to continue throughout

the first part of this year."

Read the Press Release.

To view a copy of the full CUSIP Issuance Trends report, please click here.

- Kramer Levin: Sorting Through the Options as Green Bonds Gain Popularity.
- The Tougher U.S. Pension Rules in Puerto Rico's Rescue Plan.
- CDFI Fund Opens Application Period for FY 2016 CDFI Bond Guarantee Program.
- NABL: ABA Section of Taxation Submits Issue Price Comments.
- MSRB Proposes Rule Changes on Interdealer Transaction Failures.
- *Gillette Co. v. Franchise Tax Bd.* – Supreme Court of California holds that Multistate Tax Compact is not binding under state constitutional contract clauses, and thus the state Legislature may properly preclude a multistate taxpayer from relying on the Compact's election provision.
- *Employers Mut. Cas. Co. v. Helicon Associates, Inc.* – In action to recover losses incurred in unauthorized bond issuance, Court of Appeals holds that issuer's insurer was not liable for indemnity coverage, as unauthorized issuance triggered the "fraud or dishonesty" exclusion of the Linebacker policy.
- And finally, the Supreme Court of Washington held this week, as a matter of first impression, that the right to bear arms protects only instruments that were designed as weapons traditionally or commonly used by law abiding citizens for self-defense, thus nixing dude's attempt at Federal protection for his paring knife. Unclear if your editor's deployment of the fetal position and a pool of his own urine as his traditional self-defense protocol is affected by this decision.

BANKRUPTCY - CALIFORNIA

In re Community Facilities District No. 1990-1 (Wildwood Estates), Nevada County, California

United States Bankruptcy Court, E.D. California, Sacramento Division - November 23, 2015 - Slip Copy - 2015 WL 7568566

Bankruptcy Court adopts Findings of Fact and Conclusions of Law in Support of Order Confirming Amended Plan for Adjustment of Debts for the Community Facilities District No. 1990–1 (Wildwood Estates), Nevada County, California.

Uncontested proceeding with only two proofs of claim filed. The first by the Fiscal Agent on behalf of the holders of Special Tax Bonds, Series E–1990 (Base CUSIP® No. 64126M) in the current principal amount of $4,840,000 secured by a special tax lien on the property within the boundaries of CFD 1990–1 and the second by the County for unreimbursed amounts paid by the County to satisfy the administrative expenses of CFD 1990–1 for the past several years, which amounts are also secured by the special tax lien on the property within the boundaries of CFD 1990–1.

PUBLIC UTILITIES - CALIFORNIA

San Pablo Bay Pipeline Company, LLC v. Public Utilities Commission

Court of Appeal, Fifth District, California - December 22, 2015 - Cal.Rptr.3d - 2015 WL

9412765 - 15 Cal. Daily Op. Serv. 13, 531

Pipeline company petitioned for writ of review of a ratesetting decision of the Public Utilities Commission (PUC) requiring a refund to pipeline users.

The Court of Appeal held that PUC had authority to bifurcate the matter into two phases and to conclude the limitations period did not run after initiation of the first phase.

The Public Utilities Commission (PUC) acted within its constitutional and statutory authority in tolling or stopping the running of the two-year statute of limitations for a complaint resulting from a violation of the Public Utilities Act between the filing of the initial complaint in oil shippers' bifurcated proceeding for a refund from a pipeline company and the initiation of the second phase, even though the PUC used the unusual procedural device of an administratively final decision to conclude the first phase, and the PUC used the equally unusual procedural device of initiating the second phase by the filing of new complaints and a ratemaking application.

Public Utilities Commission's (PUC) bifurcation of oil shippers' proceeding for damages from a pipeline company under the Public Utilities Act into separate jurisdictional and ratemaking phases did not offend constitutional limitations relating to statutes and due process, even though the PUC tolled or stopped the running of the statute of limitations between the filing of the initial complaint and the initiation of the second phase, where the parties agreed to the bifurcation of the proceeding, and the PUC explicitly found the pipeline company advocated and benefited from the bifurcation of the proceedings.

The Public Utilities Commission (PUC) acted within its equitable authority in tolling the two-year statute of limitations for a complaint resulting from a violation of the Public Utilities Act between the filing of the initial complaint in oil shippers' bifurcated proceeding for a refund from a pipeline company and the initiation of the second phase, even though the PUC used the unusual procedural device of an administratively final decision to conclude the first phase, and the PUC used the equally unusual procedural device of initiating the second phase by the filing of new complaints and a ratemaking application.

MUNICIPAL ORDINANCE - ILLINOIS

Blanchard v. Berrios

Appellate Court of Illinois, First District, Second Division - December 8, 2015 - N.E.3d - 2015 IL App (1st) 142857 - 2015 WL 8328321

County independent inspector brought action to enforce subpoena that Office of Independent Inspector General (OIIG) directed to county assessor. The Circuit Court entered order requiring assessor to produce subpoenaed documents. Assessor appealed.

The Appellate Court held that county did not exceed constitutional authority in enacting ordinances empowering OIIG to issue subpoenas.

Ordinances purportedly empowering the Office of the Independent Inspector General (OIIG) to issue subpoenas directed to elected county officials and requiring the officials to cooperate with the OIIG did not exceed county board of commissioners' constitutional home rule authority. Board had the power to investigate allegations that county officials had abused their powers or committed fraud in their official capacities, as the corruption of county officials pertained to the county's government and affairs within the meaning of the state constitution.

INSURANCE - MICHIGAN

Employers Mut. Cas. Co. v. Helicon Associates, Inc.

Court of Appeals of Michigan - December 1, 2015 - N.W.2d - 2015 WL 7738601

This case arose out of the outcome of a prior federal suit initiated by several fund (Funds) in this matter against parties who were insured by Employers Mutual Casualty Company (EMC). Briefly, the Funds had purchased approximately $7 million in bonds issued by a charter school operated by Helicon Associates, Inc. The charter school was, however, not legally authorized to issue its own debt. Facing the threat of having its charter revoked, the school had to unwind the bond issue and the Funds accepted $3.2 million in newly issued bonds in lieu of their original $7 million investment.

In the ensuing federal court securities action, the Funds pursued claims pertaining to the bond issuance, including violations of various securities and "blue sky" laws, in addition to tort claims. The federal action resulted in a consent judgment acknowledging violation of the Connecticut Uniform Securities Act and awarding the Funds more than $4 million.

EMC provided Helicon with a defense in the federal action under a reservation of rights, but commenced this declaratory judgment action seeking to establish that indemnity coverage was not available, under its Linebacker or Umbrella policies with Helicon, for the claims asserted in the federal action. EMC did not dispute that Helicon was an insured, but argued that four separate exclusions (return of remuneration, personal profit or advantage, guarantee on bonds, and fraud or dishonesty) applied, each of which would independently preclude coverage. Helicon counterclaimed for breach of contract and "bad faith." The trial court found that three of the four cited exclusions applied, and it therefore granted summary disposition in favor of EMC.

The Funds appealed.

The Court of Appeals affirmed, holding that the "fraud or or dishonesty" exclusion of the Linebacker policy applied, as Helicon had committed acts amounting to fraud and dishonesty and the consent judgment constituted a "judgment or adjudication."

"Based on our finding that the trial court correctly determined the applicability of the fraud and dishonesty exclusion, we need not consider the remaining policy exclusions."

BONDS - MICHIGAN

Sylvan Tp. v. City Of Chelsea

Court of Appeals of Michigan - November 24, 2015 - N.W.2d - 2015 WL 7459035

In September 2000, several qualified electors petitioned the State Boundary Commission (the Commission) to consider the incorporation of Chelsea as a home rule city. Chelsea was a village at the time. The petitioners' proposed boundaries for the city included all the territory of the village and some territory from Sylvan and Lima Townships. Beginning in March 2001, Sylvan opposed Chelsea's petition to incorporate before the Commission and in Ingham Circuit Court.

In October 2001, representatives from Chelsea, Sylvan, Lima Township, and a representative of the petitioners for incorporation entered into a joint settlement agreement. As part of the settlement, Chelsea agreed that it would annex less territory from Sylvan and Sylvan agreed to no longer oppose the incorporation of Chelsea as a home rule city. Chelsea became a city in March, 2004.

In March 2014, Sylvan sued Chelsea for declaratory relief. It alleged that, under MCL 117.14, Chelsea assumed a proportionate share of Sylvan's liabilities when it became a city, which included a share of Sylvan's liability for the repayment of the bond debt incurred to construct improvements for the treatment of waste water. Sylvan asked the trial court to declare that Chelsea was liable for a proportionate share of Sylvan's liabilities under the bond contracts, must reimburse Sylvan for Chelsea's share of the debt already paid by Sylvan, and was obligated to pay its share of all future payments on the bonds as they came due.

Chelsea moved for summary disposition, arguing that Sylvan specifically waived any right to contribution that it might have had when it settled its dispute over Chelsea's petition to incorporate. Chelsea further maintained that Sylvan's claim was barred under the doctrine of res judicata because Sylvan raised the issue with the Commission and the Commission did not require Chelsea to assume any portion of Sylvan's liabilities as part of its decision. Chelsea also argued that Sylvan had to assert its right to a division of liabilities under MCL 117.14 at the time of the city's incorporation and failed to do so. For that reason, Chelsea asserted, Sylvan's complaint for declaratory relief was untimely. Chelsea similarly argued that Sylvan unduly delayed asserting its claim, which prejudiced Chelsea, and engaged in inequitable conduct that warranted barring the claim under the doctrines of laches and equitable estoppel.

The trial court granted Chelsea's motion and Sylvan appealed.

The Court of Appeals reversed, holding that:

- The Commission had no authority to make an equitable division of the assets or determine liabilities as provided under MCL 117.14 arising from Chelsea's incorporation as a city.
- Sylvan did not affirmatively waive its rights under MCL 117.14 in the settlement agreement and, for that reason, the agreement could not have induced Chelsea to believe that Sylvan would not assert its rights.
- Because a new city assumes its share of the township's liabilities by operation of law, the township has no obligation to take steps to formalize the assumption of liability by the newly formed city.
- The six-year period of limitations provided under MCL 600.5813 applies to an action to enforce MCL 117.14.
- Sylvan's claim against Chelsea for an accounting of the debts and liabilities accrued when Chelsea first failed to pay its share of the assumed liability, without regard to whether Sylvan itself paid Chelsea's share.
- Chelsea did not assume any liability related to the bonds incurred post-incorporation.
- Further development of the record was necessary in order to determine when it was practicable for Sylvan to assert its claim before the court could rule on Chelsea's laches defense.

The Commission had no authority to make an equitable division of the assets or determine liabilities as provided under MCL 117.14 arising from Chelsea's incorporation as a city. Because the parties could not have resolved the issues involved in this suit before the Commission or in the related litigation concerning the Commission's actions, the trial court erred as a matter of law when it applied res judicata to bar Sylvan's claim.

Sylvan did not affirmatively waive its rights under MCL 117.14 in the settlement agreement and, for that reason, the agreement could not have induced Chelsea to believe that Sylvan would not assert its rights. There was no evidence that Sylvan stood by and neglected its rights under MCL 117.14 while Chelsea changed its position in reliance on Sylvan's silence. In the absence of such evidence, the trial court should have denied Chelsea's motion to the extent that it argued that Sylvan's claim was barred by equitable estoppel.
Sylvan did not waive its right to enforce MCL 117.14 in the settlement agreement, and thus the trial

court should have granted Sylvan's request for summary disposition on this defense.

The Legislature did not provide any specific procedure for effecting the assumption of liabilities under MCL 117.14. The statute merely provides that, for a new city, the liabilities "shall be … assumed" by the new city effective "as of the date of filing the certified copy of the charter" and using "the same ratio" provided for cases where a city annexes a portion of a township. MCL 117.14. Because the new city apparently assumes its share of the township's liabilities by operation of law, the township has no obligation to take steps to formalize the assumption of liability by the newly formed city; the township may rely on MCL 117.14 and require the new city to meet its share of the township's obligations as those obligations come due.

Because no specific period of limitations encompasses an action to enforce MCL 117.14, we conclude that the six-year period of limitations provided under MCL 600.5813 applies.

Any claim that Sylvan had against Chelsea for an accounting of the debts and liabilities accrued when Chelsea first failed to pay its share of the assumed liability, without regard to whether Sylvan itself paid Chelsea's share. To the extent that Sylvan incurred new or additional liabilities related to the bonds after the date of Chelsea's incorporation (such as by increasing the obligations through misconduct), Chelsea did not assume any portion of the new or additional debt.

In this case, the trial court did not grant Chelsea's motion for summary disposition on the grounds that it was time-barred and the parties did not develop the record sufficiently to identify the applicable accrual date as a matter of law. It is unclear whether and when Chelsea might have become obligated to make a payment on the shared liability (assuming there to be a shared liability). For example, Sylvan's agreement with the county provides that the township will pay principal and interest on the bonds without regard to the source of the funds used to make the payments. Stated another way, the obligation appears to be absolute—it does not apparently depend on whether there are special assessments. Thus, Chelsea might have been obligated to pay its share of the payments immediately after it incorporated, notwithstanding that there were special assessments available to Sylvan to make the payments. For that reason, Sylvan's failure to assert its rights under MCL 117.14 might be time-barred as to the earlier payments. But see Dearborn Twp, 308 Mich. at 295–296 (noting that the right to have contribution does not arise until a contingent liability becomes a fixed liability). It is also unclear how the refunding of the bonds might have affected the nature and extent of the liability at issue. Because the parties did not adequately address these issues and did not have occasion to develop the record concerning the timing and nature of the required payments, we decline to further address whether and to what extent Sylvan's claim might be barred under the applicable period of limitations.

For similar reasons, we decline to consider whether laches might properly apply to bar Sylvan's claim in whole or in part; as we have explained, the primary inquiry when applying the doctrine of laches is whether the plaintiff's failure to earlier assert his or her claim prejudiced the defendant.

In order to determine whether Chelsea suffered prejudice as a result of Sylvan's delay, it is essential to determine when it was practicable for Sylvan to assert its claim. Sylvan argues that it was not practicable until it became necessary for Sylvan to refinance the bonds and raise taxes to cover the expenses. But that assertion may be incorrect. If Chelsea had an obligation to pay its share earlier—perhaps years earlier—and Sylvan failed to assert its rights, the trial court might reasonably conclude that Sylvan should be charged with laches if the delay prejudiced Chelsea's rights. For example, had Sylvan earlier asserted its rights under MCL 117.14, Chelsea might have been able to intervene in a way that prevented Sylvan from jeopardizing the special assessments or might have been able to otherwise take actions to limit its exposure to liability. On this record, we cannot determine when it was practicable for Sylvan to assert its rights or determine whether Chelsea

suffered prejudice warranting the application of laches.

EMINENT DOMAIN - MISSOURI

Tubbs v. Surface Transp. Bd.

United States Court of Appeals, Eighth Circuit - December 28, 2015 - F.3d - 2015 WL 9465907

Property owners filed petition for review of the decision of the Surface Transportation Board (STB) that their state-law claims against railroad, in connection with damage to their property due to flooding, were preempted by the Interstate Commerce Commission Termination Act (ICCTA).

The Court of Appeals held that:

- In determining whether the ICCTA preempted state-law claims, the STB should ask whether those claims would have the effect of unreasonably burdening or interfering with rail transportation, and
- State-law claims were preempted by the ICCTA.

State-law claims for trespass, nuisance, negligence, inverse condemnation, and statutory trespass asserted by property owners against railroad, in connection with property damage due to flooding after elevated railroad embankment on owners' property failed, were preempted by the Interstate Commerce Commission Termination Act (ICCTA). The claims arose from railroad's alleged actions in designing, constructing, and maintaining an active rail line, which would unreasonably burden or interfere with rail transportation.

MUNICIPAL ORDINANCE - NEVADA

Scott v. First Jud. Dist. Ct.

Supreme Court of Nevada - December 31, 2015 - P.3d - 2015 WL 9586796 - 131 Nev. Adv. Op. 101

Defendant appealed his conviction for violating municipal ordinance making it unlawful for any person to hinder, obstruct, resist, delay, molest any member of the sheriff's office in the discharge of his official duties. The District Court affirmed. Defendant petitioned for writ of certiorari.

The Supreme Court of Nevada held that:

- Ordinance was unconstitutionally overbroad, and
- Ordinance was unconstitutionally vague.

Municipal ordinance prohibiting any conduct that may "hinder, obstruct, resist, delay, or molest" a police officer in the discharge of his official duties, regardless of intent, was unconstitutionally overbroad on its face, in violation of First Amendment, where the ordinance encompassed protected speech and was not narrowly tailored to prohibit only disorderly conduct or fighting words.

Municipal ordinance prohibiting any conduct that in any way may "hinder, obstruct, resist, delay, or molest" a police officer in the discharge of his official duties, regardless of intent, was unconstitutionally vague, in violation of due process. Ordinance was worded so broadly that sheriffs deputies were given unfettered discretion to arrest individuals for words or conduct that annoyed or

offended them.

TORT CLAIMS ACT - OREGON

Heng-Nguyen v. Tigard-Tualatin School Dist. 23J

Court of Appeals of Oregon - December 30, 2015 - P.3d - 2015 WL 9587506

Driver injured in automobile collision with public school employee brought action against school. The Circuit Court entered summary judgment in favor of school. Driver appealed.

The Court of Appeals held that telephone call between driver and school's liability insurance representative regarding driver's traffic accident with school employee provided actual notice of personal-injury claim under Oregon Tort Claims Act (OTCA).

Telephone call between driver and public school's liability insurance representative regarding driver's traffic accident with school employee provided actual notice of personal-injury claim under Oregon Tort Claims Act (OTCA), notwithstanding representative's understanding that driver sought recovery for property damages only. Driver sought reimbursement for damage to her car based on accident involving a school employee who was acting in the course of employment, insurance representative referred to driver as "claimant" in the closing report, and back of the check that representative sent to driver stated that, by negotiating the check, driver released school from all claims except a personal-injury claim.

INVERSE CONDEMNATION - TENNESSEE

Bobo v. City of Jackson

Court of Appeals of Tennessee, at Jackson - December 4, 2015 - Slip Copy - 2015 WL 7890526

Landowner brought inverse condemnation action against city after home on landowner's property was demolished. The Circuit Court dismissed action as time-barred. Landowner appealed.

The Court of Appeals held that:

- Landowner, who acquired property during pendency of demolition proceeding, was never made party to such proceeding, and therefore accrual of limitations on inverse condemnation claim could not have been triggered by landowner's purported party status in demolition proceeding, but
- Landowner had constructive knowledge of impending demolition of home at time landowner acquired property, triggering accrual of limitations on inverse condemnation claim.

BONDS - UTAH

USAA Mutual Funds Trust v. Jordanelle Special Service District

United States District Court, D. Utah - December 9, 2015 - Slip Copy - 2015 WL 8489959

In 2005, the Wasatch County Council created the "Jordanelle Special Service District Special Improvement District No. 2005-2" (JSSD) for the purpose of financing water and sewer improvements to benefit certain properties within the Assessment Area. The resolution

contemplated that the bonds financing the improvements would be repaid with revenue from special assessments to be levied against properties to be improved.

In 2009, JSSD adopted an Assessment Ordinance to levy assessments on properties located within the Assessment Area. The Assessment Ordinance imposed a lien against all the assessed properties within the Assessment Area, subjecting the properties to foreclosure by JSSD.

JSSD subsequently issued three series of Special Assessment Bonds (the "Bonds") with an aggregate principal amount of $40,850,000. USAA Mutual Funds Trust (the "Bondholders") purchased the Bonds.

Ultimately, certain property owners in the Assessment Area failed to make assessment payments. Those properties were foreclosed by JSSD and JSSD took title to those properties. JSSD attempted to transfer the foreclosed properties to the Bondholders in full satisfaction of its obligations under the Indenture, giving rise to Bondholders' breach of contract claim against JSSD. In addition, the Bondholders alleged that JSSD had failed to pay all delinquent and current assessments on those properties. Bondholders further alleged that JSSD breached its representations and covenants in the Indenture by misusing the bond proceeds and assessment funds.

Bondholders brought claims against JSSD and Wasatch County for breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, constructive trust, appointment of a receiver, accounting, and for declaratory judgment. JSSD and Wasatch County moved to dismiss.

The District Court held that:

- Wasatch County was immune from suit under Utah state law, as the Bonds were clearly limited obligations of JSSD (also rejecting Bondholders' alter ego claims).
- JSSD's purported attempt to transfer the foreclosed properties absent the direction of Bondholders constituted a breach of the Indenture, as Bondholders had the sole right under the Indenture to elect to direct JSSD to transfer ownership of the foreclosed properties. Absent such direction, JSSD was required to pay all assessments on the properties so long as JSSD retained ownership of the property.
- Bondholders had sufficiently pled their allegations of mismanagement of the bond proceeds to survive JSSD's motion to dismiss Bondholders' breach of contract claim.
- JSSD's failure to repurchase the bonds tendered by Bondholders – as provided for in the Indenture – constituted an Event of Default under the Indenture.
- Bondholders had sufficiently plead their claim for Breach of the Implied Covenant of Good Faith and Fair Dealing, as there existed plausible evidence that JSSD's actions had devalued the properties serving as Bondholders' collateral.
- Bondholders' equitable claims of Unjust Enrichment and Constructive Trust (arising from assessments received by JSSD from properties located outside the Assessment Area) were covered by the Indenture and thus would be dismissed.
- Bondholders cause of action seeking appointment of a receiver would be dismissed, with the understanding that Bondholders could subsequently seek the appointment of a receiver as a remedy.
- Bondholders cause of action seeking an accounting would be dismissed, with the understanding that the Bondholders could subsequently seek an accounting as a remedy.
- Bondholders lacked standing to seek a declaration that the water interest exactions imposed by JSSD on the assessed properties were excessive and, therefore, violated state and federal law.

KITCHEN KNIVES - WASHINGTON

City of Seattle v. Evans

Supreme Court of Washington, En Banc - December 31, 2015 - P.3d - 2015 WL 9587541

Defendant was convicted in the trial court of unlawful use of weapons. Defendant appealed. The Superior Court affirmed. Defendant petitioned for discretionary review, which was granted. The Court of Appeals affirmed. Defendant petitioned for review, which was granted.

The Supreme Court of Washington held that:

- A fixed-blade paring knife was not a protected arm under the State Constitution;
- As a matter of first impression, the right to bear arms protected instruments that were designed as weapons traditionally or commonly used by law abiding citizens for self-defense; and
- Knife was not a protected arm under the Federal Constitution, and thus, city ordinance prohibiting the unlawful use of weapons premised on the possession of such knife was not unconstitutional as applied to defendant.

SCHOOL FINANCE - 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.

State's local school funding formula, requiring that a local government make a contribution to fund its local school district, was not a "state tax" or "license" within meaning of state constitutional prohibition against dedicated taxes. Minutes of the constitutional convention and the historical context of those proceedings suggested that the delegates intended that local communities and the State would share responsibility for their local schools.

State's local school funding formula, requiring that a local government make a contribution to fund its local school district, did not violate the appropriations clause or the governor's veto clause of the Alaska Constitution; plain language of both the appropriations and governor's veto clauses indicated that the clauses restrict the State's power after money enters the state treasury, not before.

Kramer Levin: Sorting Through the Options as Green Bonds Gain Popularity.

Global green bond issuance approached $40 billion in November, the busiest month for the environmentally minded fixed-income products to that point in 2015. This increase in activity pushed green bonds past the total amount from 2014, when issuers produced $36.59 billion worth of green bonds – the proceeds of which are used by public and private entities alike to fund investments with environmental benefits, such as to reduce carbon emissions or the construction of renewable energy infrastructure.

Although final figures for 2015 are not yet available, global rating agency Moody's expects the surge to continue through the end of the year, particularly following the United Nations Framework on Climate Change Conference that was held in Paris in December. Banks, companies and organizations as diverse as The World Bank, HSBC Holdings, GDF Suez and Southern Power have all completed green bond offerings, illustrating the bonds' popularity with a diverse set of issuers.

The bonds have also proved popular with investors, who continue to search out green assets for their portfolios. The New York Common Retirement Fund and Goldman Sachs recently formed a $2 billion fund to invest in low carbon emitters, part of an overall $3.4 trillion divestment from fossil fuels. In addition, Microsoft founder Bill Gates is leading an investor group – including Soros Fund Management chairman George Soros, Facebook CEO Mark Zuckerberg and Virgin Group founder Richard Branson – forming a $2 billion fund focused on clean energy investments. The Forum for Sustainable and Responsible Investment identified $6.6 trillion worth of AUM invested in sustainable projects in the U.S. in 2014, a 76% increase from 2012.

However, as a growing number of funds and other investors seek to add these bonds to their portfolios, a key question remains largely unanswered: What specifically qualifies as a green bond? Significant ambiguity exists as the category remains vaguely defined and without a universally recognized standard. As a result, some issuances may not necessarily be as "green" as others.

One benchmark that has emerged as a recognized measure of a green bond's level of authenticity is the International Capital Market Association's ("ICMA") Green Bond Principles. Created in 2014 and updated in 2015 in response to the rapidly developing market, the set of guidelines was developed in consultation with both investors and issuers. They have since gained the support of 55 of the world's biggest investors, bond issuers and intermediaries, including Bank of America Merrill Lynch, Citibank, Credit Agricole, JPMorgan Chase, Goldman Sachs and HSBC.

The principles include four primary components:

- **Use of Proceeds** – Green project categories should provide clear environmentally sustainable benefits, which, where feasible, will be quantified by the issuer.
- **Process for Project Evaluation and Selection** – The issuer should outline the decision-making process it follows to determine the eligibility of projects using green bond proceeds.
- **Management of Proceeds** – Bond proceeds should be appropriately tracked by the issuer using a formal process.
- **Reporting** – Issuers should provide, at least annually, a list of projects that bond proceeds have been allocated toward, including a description of the projects, the amounts disbursed and the expected environmentally sustainable impact (as confidentiality and/or competitive considerations allow).

Through these guidelines, ICMA is not attempting to act as a regulator or enforcement agent.

Rather, the principles are intended to encourage transparency and disclosure and "promote integrity in the development of the green bond market" and increase environmental benefits "without any single authority or gate keeper."

The not-for-profit Climate Bonds Initiative also manages a certification scheme that assesses, prior to a bond issuance, whether a bond meets certain standards, as determined by an appointed third-party verifier. The group's standards board then confirms the certification once the bond has been issued and the proceeds have been allocated to recognized projects and assets.

Green bond principles align well with the increased origination of property assessed clean energy ("PACE") assessments and PACE bonds in the U.S. All proceeds of PACE assessments are allocated to the construction of renewable energy and energy efficiency improvements to real property. According to the federal Energy Information Administration, residential and commercial buildings accounted for 41% of total U.S. energy consumption in 2014, demonstrating the tremendous potential that exists for such energy efficiency programs to reduce demand. Since 2011, Renovate America's HERO program, in conjunction with several California municipal entities, has financed more than $1 billion worth of environmentally friendly home improvements, resulting in five PACE bond securitizations. The most recent HERO Funding Trust PACE bond securitization indicated that it satisfied the ICMA Green Bond Principles, establishing a significant precedent for energy efficiency projects.

Gaining designation as a green bond is highly valuable for the issuer, as it opens the door for funds and others with assets to invest in environmentally friendly products. It also benefits green-specific fund managers, as it demonstrates to investors that they're fulfilling their objective of investing in sustainable projects. With an estimated gap of $650 billion to $860 billion of investment required to combat climate change every single year between now and 2030, the prominence of green bonds – and the importance of properly identifying them – is likely to continue.

Article by Laurence Pettit

Last Updated: January 5 2016

Kramer Levin Naftalis & Frankel LLP

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.

S&P: Looking Past The Noise To Illinois' Fundamental Creditworthiness.

More than six months into the fiscal year, the inability of lawmakers in Illinois to reach a budget agreement has inflicted considerable damage on the state's finances. The extent of Illinois' weakened fiscal condition will likely weigh on its credit quality for years to come. With no budget controls in place, the state is essentially carrying on spending without regard to its revenue base, driving its balance sheet further into negative territory. Correcting this situation will eventually require even more tax revenue and deeper spending cuts than if lawmakers had acted before the start of the fiscal year. There has also been more immediate fallout from the state leaving its fiscal misalignment unaddressed. In November, there was a cash squeeze that prompted the state comptroller to temporarily defer the state's pension contribution for the month, something the state has done occasionally in the past.

It might seem obvious, therefore, that Illinois' credit rating should be lowered from its current 'A-' level. However, Standard & Poor's Ratings Services has pointed out before that for U.S. states, a budget crisis doesn't necessarily constitute a debt crisis. We balance any concern about the drama unfolding in Springfield—including what it says about the state's actual ability to pay its debt service—against our objective of continuing to work toward a globally comparable portfolio of ratings. (Listen to the related podcast titled, "Beyond The Budget: Standard & Poor's Assesses Illinois' Creditworthiness," dated Jan. 12, 2016.)

Continue reading.

07-Jan-2016

CDFI Fund Opens Application Period for FY 2016 CDFI Bond Guarantee Program.

Up to $750 Million in Bond Guarantee Authority Available

The U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) today opened the fiscal year (FY) 2016 application period for the CDFI Bond Guarantee Program. Application materials are available on the CDFI Fund's website in anticipation of the publication of the Notice of Guarantee Authority (NOGA) in the Federal Register later this week. The NOGA makes up to $750 million in bond guarantee authority available to eligible Community Development Financial Institutions (CDFIs) in FY 2016.

Through the CDFI Bond Guarantee Program, selected certified CDFIs or their designees will issue bonds that are guaranteed by the Federal government and use the bond proceeds to extend capital for community development financing and for long-term community investments. Authorized uses of the loans financed through bond proceeds may include a variety of financial activities, such as supporting commercial facilities that promote revitalization, community stability, and job creation/retention; housing that is principally affordable to low-income people; businesses that provide jobs for low-income people or are owned by low-income people; and community or economic development in low-income and underserved rural areas.

In FY 2016, the Secretary of the Treasury may guarantee bond issues having a minimum size of $100 million each, up to an aggregate total of $750 million. Multiple CDFIs may pool together in a single $100 million bond issuance provided that each eligible CDFI participates at a minimum of $10 million.

Deadlines

Please reference the NOGA and application instructions for detailed information regarding the following application deadlines for consideration for FY 2016 bond guarantee authority.

CDFI Certification Applications must be submitted through AMIS by 11:59 p.m. EDT on February 12, 2016.

Qualified Issuer Applications must be submitted through AMIS by 11:59 p.m. EDT on March 4, 2016.

Guarantee Applications must be submitted through AMIS by 11:59 p.m. EDT on March 18, 2016.

The last day the CDFI Fund will accept questions regarding the FY 2016 application period for the CDFI Bond Guarantee Program is March 9, 2016 at 11:59 p.m. EDT. All questions must be submitted electronically to the program office: bgp@cdfi.treas.gov.

Qualified Issuer Applications and Guarantee Applications received in FY 2015 that were neither withdrawn nor declined in FY 2015 will be considered under the FY 2016 round.

Application Materials

In addition to being available through AMIS, the FY 2016 NOGA and application materials are available via the CDFI Fund's website, www.cdfifund.gov/bond.

Application Workshop

The CDFI Fund will conduct a two-day application workshop for potential applicants regarding the FY 2016 Qualified Issuer and Guarantee Application requirements. Specifically, the workshop will include an in-depth discussion of the financial structure of the program, including:

- Roles of the Qualified Issuer, Program Administrator, and Servicer;
- Certification, capitalization, and structuring requirements of the Alternative Financing Structure;
- Capital Distribution Plan requirements;
- Eligible CDFI and Secondary Loan Requirements;
- Costs of the CDFI Bond Guarantee Program;
- Review processes for the Qualified Issuer and Guarantee Applications;
- Reporting; and
- Compliance-related activities.

Attendees will have the opportunity to ask CDFI Fund staff questions and receive clarification about the topics discussed during each module.

The two-day application workshop will be held in February 2016 in Washington, DC, at the CDFI Fund's office at 1801 L Street NW.

As the workshop is held in a secure federal building, registration is required. There is no registration fee; however, due to limited space, registration will be honored on a first come, first served basis. Up to 100 potential applicants may attend. The CDFI Fund will release information on how to register for the workshop soon.

For interested parties unable to attend the in-person application workshop, the presentation materials will be posted to the CDFI Fund's website, www.cdfifund.gov/bond.

Questions

Inquiries regarding legal documents related to the CDFI Bond Guarantee Program should be directed to the CDFI Fund's Office of Legal Counsel via email at legal@cdfi.treas.gov.

For more information about the CDFI Bond Guarantee Program, please visit www.cdfifund.gov/bond, or email the CDFI Fund's Help Desk at bgp@cdfi.treas.gov.

Tuesday, January 5, 2016

P3s Driving Kentucky's Broadband Expansion.

A Kentucky county is using private expertise to determine how to use public-private partnerships to provide efficient, countywide broadband access and, then link this infrastructure to a statewide fiber optic network under development.

Under a contract issued by Warren County, Connected Nation Exchange (CNX) will develop technical and financial models that will help the county to finance and develop broadband P3s, CNX announced Jan. 6.

CNX began working with the county to improve broadband services several years ago by analyzing the level and quality of existing services and helping local companies to figure out where to position antennas and other equipment to improve connectivity, reported the Bowling Green Daily News.

Warren County plans to connect to the statewide, 3,000-mile fiber-optic network Kentucky is developing through a P3 over three years to improve broadband access throughout all of its 120 counties. The state is partnering with Macquarie Capital to build the up-to-$350 million network, which Macquarie will manage for 30 years. Internet and cell phone providers will lease the lines to provide connections to homes and cell phone networks.

Ron Bunch, president of the Bowling Green Area Chamber of Commerce said the county's ability to connect to the statewide network will attract high-tech and other companies to the county and that improvements already made are helping farmers to manage and sell their crops.

"Kentucky is unlocking the power of broadband statewide by unleashing public-private partnerships at the state and local levels," said CNX CEO Brian Mefford.

By NCPPP

January 8, 2016

What's Keeping Pennsylvania From Passing a Budget?

School districts across Pennsylvania have been complaining for years about the way the state funds its K-12 education system. The poorest local systems have the most reason to complain; they have extra-large burdens, but they don't receive any extra help from Harrisburg. Joe Gorham runs one of those poor districts, the Carbondale Area School District in northeastern Pennsylvania. He thinks the state needs a complete overhaul in the way it funds public schools. A year ago, Gorham thought meaningful change might be on the way: A new governor had just taken office promising to make school funding a top priority.

But for six months (from July through the end of December), no lifeline had come from Harrisburg. Instead, a protracted budget fight between Democrats and Republicans at the state capitol choked off state funds for schools starting in July and nearly forced the Carbondale schools to shut down. As 2015 trudged to a close, Gorham couldn't help wondering whether the same event that gave him hope — the arrival of a new governor — had instead added to his district's troubles. The state didn't start cutting checks for schools until a partial budget passed in late December. Even with the stopgap measure in place, the prospects of a major school funding overhaul are still very much in

doubt. But what is certain is that just having the conversation exacted a heavy toll on schools.

Pennsylvania offers proof that states are not immune from the partisanship that has crippled Congress and the federal government. Just as in Washington, lawmakers in Harrisburg last year strained to keep the government's lights on and the bills paid. And just as in Washington, the forces that led to gridlock are deeply ingrained and unlikely to disappear soon. It's not a comforting prospect for those dependent on the state for crucial assistance, particularly schools, which are at the heart of the recent impasse.

Tom Wolf, the state's new Democratic governor, campaigned in 2014 on the idea of taxing companies drilling for natural gas and using the money to reimburse school systems, which experienced big cuts under the previous administration. But Republican lawmakers, emboldened by new leadership and the biggest legislative majorities for either party in Pennsylvania since Dwight D. Eisenhower was president, balked at the energy production tax. The result was an inability to produce a state budget and a partial shutdown of state government after the July deadline.

With no budget in place, Pennsylvania stopped sending money to support school districts. That put Carbondale in a tight spot. The district didn't have a lot of money to begin with, and it had already depleted its reserves to cope with state budget cuts after the Great Recession. So Carbondale borrowed $1 million to make payroll while the fight in Harrisburg continued. In the second half of the year, the district skipped all payments to its teacher pension fund and withheld contributions to a local charter school. Still, the district's cash balance dipped at one point to just $11,000. Gorham weighed the idea of shutting down Carbondale schools one day a week to save on utility costs. He considered a one-day systemwide protest closure to bring attention to the dire financial straits the district found itself in. But ultimately he decided that those moves would be too disruptive. "These funding stalemates not only affect our students and our teachers here on the campus," Gorham says, but they also "have a greater impact on the community at large, because this is the main employer."

By October, 27 school districts had borrowed a total of $431 million from banks and other sources to keep their schools open during the standoff. Hard-hit districts like Carbondale became the poster children of the budget crisis early on. But dozens of other districts reported that they, too, would have to resort to borrowing if state money didn't start flowing by November. Even with the added pressure on lawmakers and the governor to reach a deal, it wasn't until after Christmas that the first break in the impasse came. Wolf allowed most of a partial budget to become law, even though he called the legislation "garbage." He vetoed many provisions to force lawmakers to return to the negotiating table. The governor said the budget falls short, in part because it does not include enough new money for schools. But the agreement does mean that schools will finally start to get money, as will many other organizations that had borne the brunt of the gridlock.

The budget stalemate has squeezed more than just schools. Counties, which rely on the state for as much as 40 percent of their budgets, have scrambled to deal with the revenue loss. Several stopped paying vendors. Others cut programs, laid off staff, depleted reserves and borrowed money. "As wards of the state, Pennsylvania's counties have been malnourished and mistreated this year," wrote Charlie Ban of the National Association of Counties. What's more, both the state and county have depended on nonprofit safety net providers to continue offering social services. The effect of the impasse hit close to home for legislators, too. The state Senate had to take out a $9 million loan from PNC Bank so it could pay legislative staff during the shutdown.

The prolonged standoff stems, in part, from the fact that Pennsylvania voters are themselves deeply divided. Wolf, a wealthy businessman and former state revenue secretary, won the governorship handily in 2014 over the unpopular incumbent Republican, Tom Corbett. It was a stinging rebuke for the GOP, marking the first time a sitting governor of either party had lost a re-election bid since the

state constitution was changed to allow two-term administrations in 1968. At the same time, however, voters increased Republican majorities in the legislature. The GOP lawmakers elected in 2014 and in the previous 2010 midterm election are to the right of their own party predecessors. In one sign of the philosophical shift, GOP senators chose more conservative leadership following the elections. “You have two sides of an issue,” says Terry Madonna, the director of the Center for Politics and Public Affairs at Franklin and Marshall College. “They both think they’re right, and they both have a mandate to do what they think is right.”

In short, the 2014 election gave both sides little incentive to compromise on the most important issues. Besides education and energy taxes, the two parties clashed over myriad things, such as how to offer property tax relief, whether to privatize some or all of Pennsylvania’s state-owned liquor business and whether to shift state employees from traditional pensions to 401(k)-style retirement plans. But most, if not all, of those questions divided Harrisburg well before Wolf took office. The difference in 2015 was that both sides knew the deal they struck in the governor’s first year would set the tenure for the rest of his term. That emboldened Wolf to refuse to sign a stopgap measure in the summer that would have kept the state running as normal while its leaders negotiated. It would have come as a relief to some of the state’s strapped agencies and programs, but it would have taken pressure off Republicans to strike a permanent deal. Both sides also dismissed overtures from each other that they saw as insignificant. “This budget really matters,” says Stephen Herzenberg, executive director of the left-leaning Keystone Research Center. “It matters partly because of what’s specifically in the budget, but it also matters to the nature of the political process in Pennsylvania for the next three-plus years.”

The deadlock of 2015 was by no means the first long-delayed budget for Pennsylvania. In the 1960s, budgets were chronically late: An epic showdown in 1969 lasted 247 days (although the state operated on stopgap budgets in the meantime). Pennsylvania’s last Democratic governor, Ed Rendell, went into overtime negotiations three times in his eight-year tenure. In fact, Madonna says, many Pennsylvania governors have begun their terms with budget fights that initially damaged their popularity, only to see their standing rise in time for re-election.

But the most recent budget crisis does stand out. Unlike the others, it came on the heels of a deep recession that left localities and social services agencies ill-prepared for another financial hit. As a result, the consequences have been significantly worse.

Gorham, the Carbondale superintendent, worried as the stalemate dragged on that the struggle to reach a budget deal would suck the oxygen out of Harrisburg for solving longstanding problems, including one that forced the standoff. “My fear is that we’ll pass a budget, and everybody will forget about the main issue,” he says. “The main issue is that schools are not fully and fairly funded across the commonwealth. That should not continue.”

GOVERNING.COM

BY DANIEL C. VOCK | JANUARY 2016

[Gambling Tax Upheld by Illinois Supreme Court.]

A recent decision by the Illinois Supreme Court will allow Cook County to collect about $3 million in unpaid taxes from Des Plaines’ Rivers Casino.

The decision also will allow the county to continue to collect another $1 million in yearly tax revenue

from Midwest Gaming, the casino's owner and operator. A separate recent state appellate court decision also upheld the county's legal right to tax gambling machines.

The Supreme Court decision effectively ends a three-year legal battle over a gambling tax approved by the Cook County Board of Commissioners in late 2012. The high court denied Midwest Gaming's petition to appeal an earlier ruling by an appellate court.

The county lost in circuit court and won in appellate court. The appellate court's decision was upheld when the state's high court declined to hear the case.

As a result of the decision, the county's Department of Revenue anticipates receiving an about $3 million one-time payment for outstanding taxes from 2013, 2014 and 2015.

"We are pleased with the Supreme Court's decision confirming our long-held belief that the county's tax on video gaming machines is legitimate and lawful," said Cook County Board President Toni Preckwinkle in a news release. "The revenue generated from the gambling tax will help provide important funding for critical public safety services to county residents."

Rivers Casino spokesman Dennis Culloton offered a different opinion.

"We respectfully disagree with the court's ruling, and we are considering our options," he said in an emailed statement.

When asked about the issue, Des Plaines City Manager Michael Bartholomew said the city was aware of the lawsuit but that it had little bearing on the municipality. He said the tax revenue the city receives from Rivers Casino is remitted by the state, not the county.

State Rep. Marty Moylan, D-Des Plaines, said in an emailed statement that he opposed the 1 percent sales tax increase passed by the Cook County board last year and would "continue to oppose any tax increase that hurts our local economy and middle-class families," but did not specifically mention the county's gambling machine tax.

After approval of the tax, Midwest Gaming filed suit against Cook County in circuit court. An agreement reached during the hearing process stipulated that the county would not enforce the tax or issue non-compliance citations while the case was still being fought. Midwest Gaming also agreed to pay any unsettled taxes after a final decision by the court.

Tax decals for gambling machines found in casinos in Cook County cost $1,000, while those for video poker machines in bars and restaurants cost $200 per the county ordinance. Based on the number of gambling machines at Rivers Casino, the county expects to receive $1 million in annual tax revenue.

BY TRIBUNE NEWS SERVICE | JANUARY 5, 2016

By Lee V. Gaines

(c)2016 the Chicago Tribune

How States' Dependence on Corporate Taxes Has Declined.

For most states, corporate income taxes represent a slow growing source of revenue. A story in the January issue of Governing explores how Michigan and other states have experienced sharp drops in

these tax collections.

The Census Bureau collects tax data from states as part of its Annual Survey of State Government Finances. To see how these sources of revenue have changed over time, we've compiled financial data for each state dating back to 1950.

Corporate income taxes account for a small slice of a state's total budget, ranging from just over 5 percent of total revenues in Illinois and New Hampshire to nothing in states that don't collect any. On average, states' reliance on such taxes has gradually dwindled over the past few decades:

Continue reading.

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BY MIKE MACIAG | JANUARY 6, 2016

The Tougher U.S. Pension Rules in Puerto Rico's Rescue Plan.

The proposed changes would mark unprecedented federal authority over state and local pensions and make their financial status look a lot worse.

Congress might choose to extend unprecedented federal authority over state and local pensions. An effort to impose new reporting requirements, if approved, would ultimately cast the financial status of state and local pensions in a much more dire light.

The proposed requirements were included as part of a financial assistance bill introduced last month to address Puerto Rico's debt crisis, but they would also apply to states and localities throughout the United States.

The legislation, sponsored by Orrin Hatch, a Utah Republican who chairs the Senate Finance Committee, would make state and local pension plans file annual reports with the U.S. Treasury Department. The new filings would have to include an alternative valuation detailing how well-funded the plan is. In nearly every case, that would mean a lower valuation.

State and local government groups, including the National Conference of State Legislatures and the National Association of State Retirement Administrators (NASRA), quickly voiced their opposition to the idea. They sent a letter to Congress, along with 15 other groups, complaining that the proposed provision targets all pensions, rather than limiting the issue to Puerto Rico, and that extra filing at the federal level would be too time-consuming and costly.

"I just don't understand the nexus between adding state and local pension provisions into a bill that has to do [with] Congress' oversight and assistance to Puerto Rico," said Jeannine Markoe Raymond, NASRA's director of federal relations.

The legislation was prompted by Puerto Rico's dire financial problems. Its government is saddled with $72 billion in debt that it can't pay and wants to cut its bond payments in order to meet other obligations, including pensions. The island territory has already defaulted on a debt payment, and going forward, its political leaders said they'll only make full payments on the debt it's legally obligated to pay.

But for some in Congress, the legislation is an opportunity to fix more than just Puerto Rico's finances.

"This pattern will inevitably repeat itself in several of the states if nothing changes," said a Senate aide who asked not to be identified. "If Congress is going to help the territory, then now is the time to begin addressing the broader problem, and a more accurate disclosure of public pension liabilities is a good place to start."

The biggest potential change centers on each pension plan's discount rate — that is, the rate of return on investments that's used to determine its overall fiscal health. The higher the expected rate of return, the lower the amount of funding a government needs to pay into its pension plan. The opposite, of course, is true when the rate of return is lower. The Senate bill would require plans to use an assumed rate of return pegged to a Treasury rate (these days, around 3 to 4 percent), instead of the 7 to 8 percent rate most plans now use. That change would have a drastic effect on how financially healthy a plan looks.

New Jersey has already experienced this.

The state's plans recently had to change the way they value their pension assets and liabilities due to new state and local pension accounting rules from the Governmental Accounting Standards Board last year. As a result, New Jersey's state employees fund went from being 46 percent funded in 2013 to only 28 percent funded in 2014. Its state teachers plan dropped even further — from 57 percent funded to 34 percent. All told, the accounting change more than doubled the state's unfunded liability for those two plans to $75 billion.

This isn't the first time Congress has sought to interfere with state and local pension regulations.

In 2011 and again in 2013, California Republican Rep. Devin Nunes proposed a so-called pension transparency bill nicknamed PEPTA. It failed both times to gain any traction, but his legislation similarly called for state and local pensions to file additional reports with the Treasury that showed the plan's funding status using a market rate of return.

Nunes didn't seek to make use of a market rate mandatory, but his approach included a big stick, threatening to remove a vital infrastructure financing perk: Governments that didn't participate could not issue tax-free municipal bonds.

Given disagreement in Congress over a Puerto Rico bailout, Hatch's bill faces a tough road ahead. Democrats favor a proposal by President Obama that, among other things, would let Puerto Rico restructure its debt in bankruptcy. The addition of the reporting requirements for all state and local pensions could very well be an additional point of contention.

Raymond said her group plans to use the debate over the latest proposed legislation as an opportunity to educate members of Congress about the overall fiscal health of state and local governments. Included along with last month's opposition letter was an overview of state and local governments' financial data.

"Every state, since the Great Recession, has made changes to one or more of its pension plans," said Raymond. "I'm not sure everyone understands that. This isn't an area that has been ignored by state and local governments."

GOVERNING.COM

BY LIZ FARMER | JANUARY 7, 2016

The Trials and Tribulations of Auditing Government.

The people who probe governments' finances and effectiveness often have little power and are at risk of losing more, says Philadelphia Controller Alan Butkovitz.

Controllers (otherwise known as comptrollers) produce a remarkable amount of important information that could improve government transparency. Though their function and title differs from place to place, they generally oversee and audit government finances, examine program effectiveness and monitor compliance with laws.

But all too often their work ends up buried in old computer files and gathering dust in file cabinets. This is sometimes because their conclusions are politically unpopular or because they simply don't take the steps necessary to draw attention to their work.

This is a significant concern for Philadelphia Controller Alan Butkovitz, who has been in office since 2006. He's worried about what he calls a "trend of taking power away from controllers." He spoke with us about this issue and the importance of the position in the following interview, which has been edited for clarity and length.

We know you're concerned about controllers having sufficient influence. Could you comment about that?

There's a trend of taking power away from controllers. The budget power is all in the hands of the mayor and city council — or for the counties, in the county commissioners. They've been very restrictive in the kinds of money that they're willing for the controllers to have. There's an ongoing legislative assault to take away more power from controllers.

The controller's offices in many smaller counties are completely overwhelmed with routine day-t--day operations. They do a professional job and then get unfunded and outvoted. Then they shrug their shoulders and say they stood for the right thing.

Any advice for other controllers?

You have to avoid becoming isolated, and you have to show that you're able to win a fight.

Do you have any success stories for controllers in these situations?

Thirteen years ago, school districts were underwater financially. There were calamitous deficits and a lot of misrepresentation back in 2006. When we attacked this issue, there was a lot of skepticism. It took a long time and a lot of examples to shift opinions, but now we don't have to do the outreach. There are all sorts of stakeholders who come to us for a judgment of what could be done with the schools. You have to develop a personal credibility with the public that is based on concrete issues.

How do you develop that kind of credibility?

You need to be persistent on specific issues — instead of hitting an issue and then being done with it. There is no automatic deference to controller findings. In this era, you have to accumulate allies, evidence and a scorecard for being right. It takes many years.

We try to become the expert in Philadelphia on the subject we're involved with. It's hard to argue with us. That's even the case with issues of corruption. We did the first forensic audit regarding the

Philadelphia sheriff’s office. There was $11 million of inappropriate spending and that had an impact on over 7,000 people.

How does that kind of persistence and development of expertise evolve?

We identified high priority issues like slow response times on ambulances or failure of the license and inspection department to do their safety enforcement mission competently. We would revisit those issues on very short timetables. It took a lot of time to build the case on each issue.

Are there any particular tools you’ve used that have helped get attention to your findings?

We developed video audits. We have found they have devastating impact. For example, we did our third review of the condition of school buildings. The video that showed the bathrooms clogged with human waste that isn’t cleaned up — that had the school district surrender. Traditionally it has been able to deny the situation.

Is there any lesson you’ve learned that you wish you had known when you were newer to the office?

We developed a relationship with the media and became a resource for them. It would have been tremendously valuable to have those strong relationships in place in the first year. A lot of the work we do is technical and difficult to understand. I would have liked to create the relationships more quickly.

Are there any ways you wish the controller’s office was treated differently within the government structure?

I wish that the controller was consulted at earlier points in the process on policy matters. We have the role of giving an opinion to the Pennsylvania Intergovernmental Cooperation Authority, but that doesn’t come until after the city council approves the budget. We’re the only people who delve into the accuracy of the projections about the city’s finances for the next five years. It’s a little backwards. Our opinion should be required before the council approves the budget.

That would also be a good idea in a number of other policy areas. For example, we have found a lot of systemic problems in a lot of agencies like L&I [Licenses and Inspections]. When we find a pattern of systemic abuse, there ought to be the requirement that our well-thought-out solutions get considered.

What about your relationship with Mayor Nutter, who has just left office? We’ve heard it hasn’t been the best.

I wish we would have had a better relationship with Mayor Nutter, but I don’t know how we could have done that. He used to call me at 11 at night to yell at me. The option would have been to do what he wanted, which would have been sacrificing our independence. Part of that is the nature of the relationship. You’re criticizing people and giving demerits in their career advancement.

GOVERNING.COM

BY KATHERINE BARRETT & RICHARD GREENE | JANUARY 7, 2016

CDFA BNY Mellon Webcast Series: Engaging Private Capital to Drive Clean Energy Finance.

Engaging Private Capital to Drive Clean Energy Finance

January 19, 2016
@ 1:00 pm Eastern

In partnership with the U.S. Department of Energy, CDFA is excited to be part of a national trend promoting innovative clean energy financing mechanisms that use public programs to leverage private capital. Adopted by states to spur investments in clean energy, and outlined in the recent Energy Investment Partnership, this trend illustrates how states and local agencies are driving clean energy deployment. During this installment of the CDFA // BNY Mellon Development Finance Webcast, explore how emerging public-private partnerships are raising capital through a variety of means by aligning clean energy finance initiatives and traditional development finance tools to maximize the impact of public funds.

Moderator:

Rena Nakashima
Senior Product Manager
The Bank of New York Mellon

Speakers:

Andrew McAllister
Commissioner
California Energy Commission

Doug Sims
Director of Strategy and Finance
Natural Resources Defense Council's Center for Market Innovation

Karen Wayland
Deputy Director for State and Local Cooperation
U.S. Department of Energy

Click on the Register button below to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

Register.

CDFA Webinar: State Financing Programs for Economic Development in Texas.

Topic: State Financing Programs for Economic Development in Texas

January 20, 2016
@ 2:00 pm CST
(3:00 pm EST)

While most development finance programs are available throughout the nation, there are several unique financing programs available only in Texas. During this session, officials from several state organizations will discuss the past, present, and future of economic and community development in Texas. Don't miss this opportunity to hear the latest information on new programs and financing initiatives for supporting growth in communities throughout the state.

The State of Texas has worked hard to develop and sustain a business-friendly operating environment. It has always been committed to providing and facilitating funding for companies and communities with expansion and relocation projects in mind. The Lone Star State provides tax incentives, financing assistance and an array of services to help companies establish and expand in Texas. Other financing programs include asset-based loans for companies, leveraged loans for communities and tax-exempt bond financing as ways of obtaining the capital necessary for successful projects.

Speakers:

Rick Rhodes
Administrator
Office of Rural Affairs
Texas Department of Agriculture

Robert Wood
Associate Deputy Comptroller
Texas Comptroller of Public Accounts

Joe Morin
Manager
Economic Development Bank
Office of the Governor

Nicole Sidoff
Strategic Business Development Manager
Texas Enterprise Fund
Office of the Governor

Join this special webcast from the CDFA Texas Financing Roundtable, in partnership with the Texas Economic Development Council, as experts from the state showcase the financing programs available for growing and promoting economic development.

Registration is $79 per person or $295 for a group of 5 or more.

To confirm your participation in the webcast, click the Register button below to sign-up on the TEDC website.

Register.

Don't Blame ETFs For Poor Muni Liquidity.

Most municipal market investors and their advisors would agree that liquidity in the municipal bond market has declined in the last several years.

Even as liquidity has declined, however, the municipal bond market has continued to grow and attract investors. According to data from the Federal Reserve, in the first three quarters of 2015, total market size increased by $57 billion (to $3.7 trillion) and direct household ownership of municipal bonds increased by $8.8 billion. Indirect ownership through mutual funds increased by $29.8 billion. According to FactSet Research Systems, over the same time period, total assets in muni bond ETFs grew by $3.6 billion, to an estimated $22.0 billion.

Some participants in the traditional over-the-counter municipal bond market have been wondering if the growing popularity of municipal bond ETFs has been draining liquidity from the market for individual bonds.

An analysis of municipal bond ETF flows suggests that rather than draining liquidity from the municipal bond market, muni ETFs (the first of which came to market in 2007), have in fact attracted new liquidity to the marketplace.

Historical Demand

Because of the lower interests rates earned when compared with comparably rated taxable bonds, municipal bonds have historically been most appealing to individual investors in the upper Federal income tax brackets. (The higher the tax rate, the greater the benefit of the tax exemption on the income earned.) Because of this, ownership of municipal bonds has been dominated by households.

Direct ownership (via portfolios of individual bonds) accounts for more than 40% of the market. When combined with indirect ownership through mutual funds, closed-end funds and ETFs (presumed to be primarily from individual investors), household ownership represents almost two-thirds of the market.

Trading Activity

At $3.7 trillion, the market is large, but it is also very complex. With more than 60,000 issuers and well over 1 million CUSIPs, it is the complexity of the municipal bond market that has made it difficult to attract significant participation by hedgers, traders and active (tactical) asset allocators.

Additionally, even though the municipal market includes several electronic trading platforms, the overall market is not centralized on an exchange, so trading liquidity is supported by the more than 1,500 registered dealers located around the country. (The number of dealers has declined 22% since 2009.)

Municipal bond trading activity has long been dominated by customer-related transactions. Through October of last year, 45% of municipal bond market trading activity was customer buying (which includes household purchases as well as investing by institutions such as insurance companies and funds); customer selling was an additional 23% of total volume. (The balance consisted of trading between dealers.)

In contrast, the consolidation of all ETF trading onto a centralized exchange brings together all interested participants. The centralized trading and the popularization of the ETF “wrapper” has attracted broader participation to this part of the municipal bond market.

The fact that net investor buying in muni bond ETFs represented less than 20% of total trading volume suggests that—unlike the underlying municipal bond market—a much greater percentage of market liquidity is being provided by other participants such as traders, hedgers and asset allocators. (See the table below for select details on the market’s trading flows.)

The Decline In Muni Market Liquidity

Using the amount of financial assets reported by broker-dealers as a proxy for their market-making activities, and therefore the depth of markets, reveals why liquidity in some markets has declined. Since the end of 2006, the estimated amount of broker-dealer assets devoted to supporting the municipal bond market has declined by almost 70%.

Over that time span, corporate and foreign bond market support declined 73%, while overall market support was down only 26%.

The disproportionate reduction of broker-dealer support of the municipal bond market is not surprising, as the trend reinforces the anecdotal observations about the changing nature of secondary market liquidity. (This chart is not intended to imply complete precision in the amount of capital deployed by the broker-dealer community to the markets, but rather to be indicative of the trend of their level of activity in the markets.)

The changing nature of municipal bond market liquidity is more the result of industry forces than the growth of the muni bond ETF product class. However, it is worth keeping in mind that the ETF sponsor firms and other fixed-income asset managers have vested interests in fostering a healthy and viable municipal bond market.

It seems unlikely that municipal bond market liquidity could return to historical norms. Even with an expected increase in interest rates, the ability of the existing network of dealers to finance an increased commitment to the market would require greater profitability from a widening of the bid/ask spread—also unlikely, due to improved transparency and competitive pressures from the much tighter bid/ask spread available with muni bond ETFs.

Further consolidation of the number of municipal bond dealers would have an unknown effect on liquidity, but could be positive if it means that the remaining market-makers are that much more able to be fully committed to the market.

Conclusions

As with investment portfolios, securities markets are most resilient when they are well-diversified. The strongest and deepest markets benefit from the active involvement of participants with a wide range of needs and objectives.

Municipal bond market buying and trading has long been dominated by a single category of participant: the long-term investor. The recent reduction of support of the market by broker-dealers has created a tangible reduction in the ability of investors to easily sell or buy on a consistent basis.

While this does not mean that investors should reduce or avoid municipal bond investments solely for this reason, it does raise the importance of considering potential secondary market liquidity prior to making any investment decisions. Self-directed investors must be comfortable with the implications for their own portfolios, or consider if they would prefer delegating portfolio decisions to a professional manager.

While the size of the muni ETF market is still only a small percentage of the overall municipal bond market, investors may wish to consider if the muni bond ETF merits consideration as a potentially more liquid means of accessing the investment class—particularly for tactical (short-term) portfolio needs, but also for long-term holdings as a replacement or addition to individual bonds.

ETF.com

By Patrick Luby

January 07, 2016

Patrick Luby is the author of Income Investor Perspectives. This article is provided for informational purposes and is not to be construed as offering investment advice. Additional information is available upon request.

MacKay Municipal Managers Announces Top Five Municipal Market Insights for 2016.

"Liquidity Wars" Require Active Management and May Create Investment Opportunities in 2016

PRINCETON, N.J.–(BUSINESS WIRE)–MacKay Municipal Managers™, the municipal bond team of fixed income investment advisory firm MacKay Shields LLC, today delivered its top five municipal market insights for 2016. Key highlights include:

1. **Market Disruptions Likely – Both Probability and Severity will be Elevated.**
   Active management of municipal assets will be essential, as we expect market volatility to rise. We believe uncertainty tied to the timing and degree of The Federal Reserve Board's policy adjustments will cause disruptions along the yield curve. Global economic conditions will likely blur the outlook in the United States and further contribute to market dislocations. In our view, selected credit events in the municipal market, while anticipated, will generate incremental volatility.
2. **Market Technicals to Drive Returns – Technical Conditions to Play a Greater Role.**
   We believe supply, demand, and bond structure will impact returns to a much greater degree than in the recent past. We expect the municipal market to feel the effects of technical conditions in other markets, as investors react to changing conditions across their entire portfolios.
3. **Revenue Bonds Outperform – Defined Revenue Streams Preferred Over Pension Uncertainty.**
   We believe investors will gravitate to the well-defined cash flow streams securing revenue bonds and away from general obligation debt. Pension issues will likely continue to cause uncertainty over the fiscal health of general obligation issuers. New Governmental Accounting Standards Board reporting standards may reveal that state and local governments, even those that have previously addressed their pension issues, still face risks or remain under funded.
4. **Transportation Sector Outperforms – Spending and Usage to Increase.**
   The 2015 Federal Transportation Bill provides five years of funding for much-needed infrastructure programs. Election-year positioning should motivate Congressional support for legislation that promotes job-heavy projects. In addition, we believe continued economic growth and low energy prices will lead to higher usage of toll roads, airports, and other port facilities.
5. **High-Yield Municipals to SPRING Ahead, But Then Investors Should FALL Back to Investment Grade.**
   We believe high yield municipal bonds should outperform during the first half of the year, as investor demand for yield continues. However, in the latter part of the year, we believe investment grade should outperform, as the flattening yield curve causes refundings to accelerate. Active management will be essential to capturing the performance in the relative-value shift.

“The key to managing municipal portfolios in 2016 is being cognizant of the movements that influence municipal liquidity. We must take into account factors such as more aggressive cash flow demands on municipal mutual funds and the credit implications of lesser liquidity that will impact trading behavior. Given these market dynamics, we believe our approach to managing liquidity in 2016 will create investment opportunities,” explained MacKay Municipal Managers™ co-heads John Loffredo and Robert DiMella.

MacKay Municipal Managers™ manages $14.5 billion as of November 30, 2015. MacKay Municipal Managers™ is subadvisor to the MainStay High Yield Municipal Bond Fund (MMHAX, MMHIX), which was recently recognized by Money Magazine as a best-in-class fund for 2015 in the “Tax Exempt Bond Category”.

The team also subadvises the MainStay Tax Free Bond Fund (MTBAX, MTBIX), MainStay Tax Advantaged Short Term Bond Fund (MSTAX, MSTIX), MainStay California Tax Free Opportunities Fund (MSCAX, MCOIX) and the MainStay New York Tax Free Opportunities Fund (MNOAX, MNOIX). The team is co-headed by John Loffredo and Robert DiMella, who have worked together for over 20 years managing municipal bonds, including investment grade, high-yield and state-specific strategies.

January 07, 2016 10:02 AM Eastern Standard Time

Muni Issuance to Hit $8.77 bln Next Week Includes Both Chicago, Illinois.

Issuance in the U.S. municipal bond market will hit $8.77 billion next week with both fiscally troubled Chicago and Illinois seeking to tap investors.

It will be the first time the state of Illinois has issued bonds for 20 months.

Governor Bruce Rauner’s administration is downplaying Illinois’ ongoing budget battle ahead of a $480 million bond sale. An impasse between the Republican governor and Democratic lawmakers has left the fifth-largest U.S. state without a budget for the fiscal year that began July 1.

The disclosure document for the general obligation bonds indicates the absence of a budget is expected to increase significantly Illinois’ chronic backlog of unpaid bills, a gauge of the state’s structural budget deficit. It also points to last year’s rollback of temporarily increased income tax rates, which is expected to reduce revenue by as much as $5 billion annually.

Illinois’ 10-year general obligation bonds trade in the secondary market muni bond market with a 1.72 percentage point spread over top-rated municipal bonds, up from 1.40 percentage points a year ago.

Overall issuance will include $6.4 billion of negotiated deals and $2.18 billion of competitive deal.

Chicago will head to the municipal bond market next week with a $500 million bond issue amid uncertain pension funding requirements and political turmoil.

The general obligation refunding bonds are scheduled to be priced through Citigroup on Tuesday, according to bond sale documents. The sale comes as state legislative fixes to address Chicago’s $20 billion unfunded pension liability are uncertain.

Standard & Poor's warned last week that Chicago's BBB-plus bond rating could fall "multiple notches" if the city fails "to successfully implement contingency plans in a timely manner to fully meet its pension obligations with an identifiable and reliable revenue source." Moody's Investors Service already rates the city's bonds at the "junk" level.

Reuters

Fri Jan 8, 2016

(Reporting by Edward Krudy; Editing by Leslie Adler)

Beware Of Pension Obligation Bonds.

These three little letters—POB—can be a pox on your portfolio if you own them or were pressured into buying them. Pension Obligation Bonds do not belong in your portfolio. The reasons are simple. These taxable municipal bonds are issued by state or local governments for payment of obligation to their employee pension fund. Issuing such bonds allow the state or local government that cannot make its payments to the pension fund to borrow the money, then invest it in the stock, bond, private equity or real estate markets. A gamble if there ever was one.

What happens when, like in 2015, stocks and U.S. Treasurys have flat returns? Or, also as happened last year, when investment grade and high yield corporate bonds returned little or (gasp) suffered losses? It's a disaster. Sometimes returns from the POB issuance are below the interest rate the issuer paid to borrow the money. Then, the pension shortfall is actually increased. POBs are a gambler's substitute for not making the required pension contribution with current tax revenues. Sure, the returns can be smoothed out over time. But the biggest offenders have the largest unfunded liabilities.

Some of the most chronically underfunded state pensions are: Illinois, Connecticut, Kentucky, Kansas, Alaska, New Hampshire, Mississippi, Louisiana, Hawaii and Massachusetts.

Then there are city offenders like Chicago, whose pension liabilities are stacking up rapidly causing the city's tax-free municipal bond rating to fall into the junk pile. Any way you look at unfunded pensions and their Pension Obligation Bonds, it's a toxic situation.

If you are seeking taxable income and want to stay away from corporate bonds, here are two taxable munis with good credit metrics, no unfunded pension problems and decent liquidity.

Dignity Health is a health care provider in California. Its services include urgent care, surgery, home health, lab and wound healing care. Dignity Health is a well run not-for-profit corporation whose revenues have exceeded expenses in this most challenging ObamaCare environment. The 3.125% coupon bonds maturing November 1, 2022 at par yield 3.125% to maturity. Bonds are non-callable and rated A3 by Moody's. Its CUSIP is 254010AA9 and bonds should be carefully shopped for.

Another taxable municipal that won't cause pension angst is Virginia Housing Development Authority Rental Housing Bonds. The title is a mouthful but in short: The VHDA's mission is to finance affordable housing for Virginia residents. Rated AA+ by Standard & Poor's, this experienced management team has overseen $8 billion in assets, increased net income in 2014 by 48% from 2013 according to S&P, increased their return on assets and continues to be profitable.

As with all taxable municipal bonds, investors are not exposed to dollar gyrations, China's on again, off again economy, or geopolitical events.

Buy Virginia State Housing Development Authority Taxable Rental Housing Series C, 3% coupon maturing August 1, 2024 at roughly 99.75 for 3.03% yield to worst call and maturity. The CUSIP is 92812Q229. Do not pay much of a premium due to prepayments and the Authority's special redemption rights.

With corporate downgrades and defaults expected to increase in 2016, taxable municipal bonds are a good substitute as long as they are not Pension Obligation bonds.

Forbes

Marilyn Cohen, Contributor

Jan 5, 2016

Marilyn Cohen is president of Envision Capital Management, Inc., a Los Angeles fixed-income money manager.

MSRB Proposes Rule Changes on Interdealer Transaction Failures.

WASHINGTON – The Municipal Securities Rulemaking Board is seeking comment on a proposal it says would lessen the effect of interdealer transaction failures on the municipal market while providing needed changes to an outdated rule.

The proposed changes are to a portion of MSRB Rule G-12 on uniform practice that governs close-out procedures after a dealer fails to deliver securities to another dealer by the agreed upon settlement date. Under the new proposal, interdealer failures would have to be closed out within 30 calendar days of the settlement date, instead of the currently recommended 90 days.

Comments on the proposal are to be submitted by March 6.

This section of G-12 has not been updated since 1983 and the proposal is part of a larger MSRB effort to revise, reorganize and retire rules that may have become outdated or less effective as market practices and participants have evolved.

The proposal would eliminate the dated references to phone notification and take into account the current trading environment, which now includes things like alternative trading systems and the Depository Trust & Clearing Corp.'s automated comparison system and book entry settlement.

"Evolutions in the municipal securities market have modernized the manner in which interdealer transactions are cleared and settled," said MSRB executive director Lynnette Kelly. "More timely resolution of open transactions would give investors greater certainty in their purchases and would benefit dealers by reducing the risk and costs associated with failed interdealer trades."

Rule G-12 currently offers optional procedures to close out interdealer failures and allows the purchasing dealer to give the selling dealer notice of close-out on any business day from five to 90 business days after the settlement date. However, the rule's 90-day close-out deadline is not a requirement and dealers that want to resolve interdealer failures sometimes cannot do so because

they do not have a willing or cooperative counterparty, the MSRB said.

The proposed rule changes would allow the purchasing dealer to issue a close-out notice the day after the settlement date and would then 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, a change from the current 10-business day window. Additionally, the proposal would change the earliest day for execution to four days after electronic notification instead of the rule's current 11 days after telephonic notice.

If the proposal is implemented, the MSRB will give dealers a 90-calendar day grace period to resolve all outstanding interdealer failures.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a "buy-in" and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

One area of concern the MSRB specifically mentioned is when the purchasing dealer agrees to sell securities to a customer but never receives them from the selling dealer. While the proposal would not specifically govern the relationship between the purchasing dealer and its customers, the MSRB said it would benefit customers by providing greater certainty that the securities they paid for are in their account. Additionally, the rule changes may give customers greater confidence in the market.

Customers and their dealers will still have to consider which of the three interdealer close-out options works best for the situation, as a customer may not want different securities that have the same properties or would likely have to pay taxes on the interest they receive if the dealer chooses the third option of recouping its payment and any accrued interest.

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said BDA is pleased that the MSRB is trying to provide clearer information for investors. She added however that there could be unknown costs to BDA members and that the organization plans to provide more feedback closer to the comment deadline.

Leslie Norwood, associate general counsel and co-head of the municipal securities division for the Securities Industry and Financial Markets Association, said SIFMA "wholeheartedly" supports rulemaking like this that reduces risk and costs to dealers while giving investors greater certainty. SIFMA will continue to look for any unanticipated or negative consequences that could come from the proposal and file a comment letter, she added.

THE BOND BUYER

BY JACK CASEY

JAN 6, 2016 3:04pm ET

MSRB Reminds Underwriters of February 29, 2016 Deadline for Submissions

of 529 College Savings Plan Data.

The Municipal Securities Rulemaking Board (MSRB) reminds underwriters that the semiannual submissions of data on municipal fund securities, including 529 college savings plans, are due to the MSRB no later than February 29, 2016. MSRB Rule G-45 requires a dealer, when acting in the capacity of an underwriter for a 529 college savings plan, to provide the MSRB with information. The required information includes plan descriptive information, assets, contributions, withdrawals, fees and cost structure, benchmarks and performance.

Additional Resources

EMMA Dataport Manual and Specifications for 529 College Savings Plan Data (Form G-45) Submissions

Submitting 529 College Savings Plan Data

NABL: ABA Section of Taxation Submits Issue Price Comments.

On January 4, 2016, the American Bar Association (ABA) Section of Taxation submitted its comments on the proposed issue price regulations.

In the comments, the committee requested four primary points of clarification or revision to the proposed regulations, including:

> **1)** revision of the definition of underwriter to limit the risk of misapplication of the definition in enforcement proceedings and provide greater certainty to market participants;
> **2)** clarification of diligence and documentation issues, such as the issuer diligence requirement under the alternative method;
> **3)** revisions to achieve workable solutions to potential yield restriction issues that may arise under the alternative method in connection with advance refunding transactions; and
> **4)** an adjustment to the proposed rules to allow for more definite price determinations at more certain dates and times.

To read the ABA comments, please click here.

MSRB Publishes 2015 Annual Report and Audited Financial Statements.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published its 2015 Annual Report, which highlights the organization’s progress on investor protection initiatives to enhance market structure, its ongoing efforts to improve issuer disclosure practices and the implementation of new regulatory standards for municipal advisors.

The report also includes financial highlights for the organization for the fiscal year that ended September 30, 2015 with a link to access full audited financial statements on the MSRB’s website.

Among the MSRB 2015 initiatives included in the report:

- Enhancements to the availability of more robust pricing information for municipal securities investors
- Advocating for better disclosure of bank loans and alternative financings by municipal securities issuers
- Creation of the first professional qualifying examination for municipal advisors
- Addition to the online MSRB Education Center of objective, non-commercial resources about municipal market topics

Read the report.

Date: January 11, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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TAX - CALIFORNIA

Gillette Co. v. Franchise Tax Bd.

Supreme Court of California - December 31, 2015 - P.3d - 2015 WL 9589602 - 14 Cal. Daily Op. Serv. 21

This case evaluated California's calculation of income taxes on multistate businesses.

In 1974, California joined the Multistate Tax Compact, which contained an apportionment formula and permitted a taxpayer election between the Compact's formula and any other formula provided by state law. The Legislature later amended the Revenue and Taxation Code to specify a different apportionment formula that "shall" apply "[n]otwithstanding" the Compact's provisions. (Rev. & Tax.Code,1 § 25128, subd. (a) (section 25128(a)).)

Taxpayers here contended that they remained entitled to elect between the new statutory formula and that contained in the Compact.

The Supreme Court of California concluded that the Legislature may properly preclude a taxpayer from relying on the Compact's election provision, holding that:

- Multistate Tax Compact is not binding under constitutional contract clauses;
- Amendment of Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula did not violate constitutional reenactment rule; and
- Amendment of UDITPA amended the Multistate Tax Compact.

The Multistate Tax Compact is not a binding contract among its member states to preserve the Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula, and thus the UDITPA formula does not take precedence over other state law under the contract clauses of the federal and state Constitutions, since states may unilaterally join and withdraw from the Compact, and the Multistate Tax Commission has no binding regulatory authority upon member states.

Amendment of Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula providing that "all business income shall be apportioned to this state" under a new formula did not violate the constitutional reenactment rule, even though there was no reenactment of the Multistate Tax Compact to eliminate its provision authorizing election of a different apportionment formula,

where the UDITPA amendment referenced the Compact provision.

Amendment of Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula providing that “all business income shall be apportioned to this state” under a new formula amended the Multistate Tax Compact to require the use of the new formula.

S&P’s Public Finance Podcast (Our Updated Criteria For Rating Not-Fo--Profit Public And Private Colleges And Universities).

This week’s segment of Extra Credit features Director Carolyn McLean, who explains the key revisions to our methodology for rating not-for-profit public and private colleges and universities. In addition, we highlight last week’s rating actions and discuss the key factors behind our rating on Illinois.

Listen to the podcast.

Jan. 8, 2016

S&P Live Webcast and Q&A: Not-for-Profit Public and Private Colleges and Universities Criteria Release.

Please join Standard & Poor’s Ratings Services on Thursday, January 14, 2016, at 2:00 p.m. Eastern Time for a live Webcast and Q&A discussion regarding our updated methodology for assigning stand-alone credit profiles (SACPs), issuer credit ratings (ICRs), and issue credit ratings to not-fo--profit public and private colleges and universities globally.

Register for the Complimentary Webcast.

S&P Methodology Update: Not-for-Profit Public and Private Colleges and Universities.

1. Standard & Poor’s Ratings Services is updating its methodology for assigning stand-alone credit profiles (SACPs), issuer credit ratings (ICRs), and issue credit ratings to not-for-profit public and private colleges and universities globally.

2. The update provides additional transparency to help market participants better understand our approach in assigning ratings to not-for-profit public and private colleges and universities globally, to enhance the forward-looking nature of these ratings, and to enable better comparison between these ratings and ratings in other sectors and asset classes.

3. These criteria supersede “Approaches To Rating U.K. Universities Amid Growing Credit Diversity”, published March 28, 2003. These criteria also partially supersede the “Higher Education” criteria, published June 19, 2007. Specifically, the sections “Private College and University Credit Ratings”, “Management and Governance”, “Debt”, and “Rating Public Colleges and Universities” are

superseded by these criteria. This methodology is related to our criteria article: “Principles Of Credit Ratings”, published on Feb. 16, 2011.

4. All terms followed by an asterisk (*) are defined in the glossary in Appendix.

Continue reading.

Moody’s Launches New Issuer Comment Report For Local Government Issuers.

Moody’s has launched a new research publication, the Issuer Comment Report. The Issuer Comment Report provides an assessment of the most recent credit information for most US local government issuers with outstanding Moody’s general obligation and related ratings. The reports present a summary of key economic, demographic, financial and operating information within the context of Moody’s ratings methodology and do not announce rating actions.

The Issuer Comment Reports will provide the bond market with updated credit information for US cities (including other municipalities such as towns and villages), counties and school districts, including for many issuers with no current or recently-published Moody’s research. Many of these are small and infrequent debt issuers, but have ratings that Moody’s reviews annually.

The new reports will also benefit issuers because they provide them with a single reference source for their Moody’s general obligation (and related) ratings, annually updated research on their credit, and updated economic and demographic data used in Moody’s local government general obligation methodology.

If you have any questions regarding this new research report, please contact either Chandra Ghosal at 212.553.1095 and chandra.ghosal@moodys.com or Brien Wigand at 212.553.0299 and brien.wigand@moodys.com.

All But Two States and Puerto Rico Can Issue More PABs in 2016.

WASHINGTON – All but two U.S. states and the Commonwealth of Puerto Rico will be able to issue more private-activity bonds in 2016, based on government data.

The states — Illinois and Connecticut — and Puerto Rico had population losses and lower PAB volume caps for this year, based on recent data published by the U.S. Census Bureau the Internal Revenue Service’s formula for PABs. California is, by far, the state with the largest PAB volume cap for 2016, followed by Texas and Florida.

But Colorado had the highest percentage increase in its cap for the year. The Rocky Mountain State, Texas and Florida were among nine states with PAB caps that rose more than 1%.

Private-activity bonds generally are issued by state and local governments or authorities to provide low-cost financing for the projects of nonprofit organizations or companies that serve a public purpose.

Most PABs must be issued under state volume caps, which are based on a formula established annually by the IRS. These include exempt facility qualified PABs bonds such as those issued to finance mass commuting facilities, water and sewer projects, and single-family and multifamily housing projects. They also include qualified small issue industrial development, student loan, and redevelopment bonds. States can carry over any unused cap for up to three years.

Some PABs are not subject to volume caps. These include qualified PABs for docks and wharves, environmental enhancements of hydro-electric generating facilities, and governmentally-owned solid waste facilities. Also included in this category are qualified 501(c)(3) bonds and veterans' mortgage revenue bonds.

The formula for the PAB cap for 2016, published by the IRS in October, is $100 per capita or $302.88 million, whichever is higher. While the per capita amount did not change this year from last, the minimum increased to $302.88 million from $301.52 million for states with lower population figures.

The total PAB volume cap for the 50 states, the District of Columbia and Puerto Rico this year is nearly $32.49 billion, $245.07 million or 0.76% higher than the cap for last year.

The increase is due to population gains, as well as a higher minimum amount of cap allowed by the Internal Revenue Service.

But Illinois, Connecticut and Puerto Rico lost population in 2015, according to the latest figures published by the Census Bureau late last month. The population estimates have a reference date of July 1.

Puerto Rico had the biggest population and PAB cap drop. Its population fell by 60,706 to 3.47 million in 2015 from 3.53 million the year before. Its PAB cap fell 1.72% to $347.42 million for 2016 from $353.49 million for last year. Illinois' population slipped 22,194 to 12.86 million in 2015 from 12.88 million the previous year. As a result, its cap fell 0.17% to $1.286 billion this year from $1.288 billion in 2015.

Connecticut's population edged down by 3,876 to 3.591 million from 3.595 million. Its PAB cap fell 0.11% to $359.09 million this year from $359.48 million.

California has the largest PAB volume cap, at $3.91 billion, after a 0.91% increase in its $3.88 billion cap for 2015.

Colorado had the highest gain in its cap — a 1.89% increase to $545.66 million for this year from $535.56 for 2015. The increase was due to a population gain of 100,986 to 5.46 million.

The eight other states with increases in PAB volume caps above 1% are: Florida, up 1.84% to $2.03 billion; Texas, up 1.82% to $2.75 billion; Washington State, up 1.52% to $717.04 million; Arizona, up 1.48% to $682.81 million; Oregon, up 1.45% to $402.90 million; South Carolina, up 1.39% to $489.61 million; Georgia, up 1.17% to $1.02 billion; and North Carolina, up 1.03% to $1.00 billion.

Twenty-one states have the minimum cap of $302.88 million for 2016.

The PAB volume cap figures do not include American Samoa, Guam, the Northern Mariana Islands and the U.S. Virgin Islands because they were not included in the recently released population estimates from the Census Bureau.

THE BOND BUYER

by Lynn Hume

JAN 5, 2016 10:22am ET

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Fitch Webcast Replay: Request for Comment - U.S. Public Finance Waterworks, Sanitary Sewer, and Drainage Utility Systems.

Standard & Poor's Ratings Services held a live Webcast and Q&A on Thursday, January 8, 2015, at 11:00 a.m. Eastern Time on the recently issued Request for Comment regarding proposed criteria for waterworks, sanitary sewer, and drainage utility revenue pledges of local and regional governments (LRG) issue credit ratings, issuer credit ratings (ICR) and stand-alone credit profiles (SACPs) in the U.S.

Listen to the replay.

Jan. 8, 2015

Fitch 2016 US Public Finance Outlooks.

Read the report.

Fitch Ratings | Jan. 8

Ambac, FGIC Covering Puerto Rico Bond Payments After Default.

Insurance companies that guarantee a Puerto Rico agency's bonds are covering some payments that the island's government defaulted on this month.

Ambac Financial Group Inc. paid $10.3 million in interest that was due Monday on Puerto Rico Infrastructure Financing Authority debt, Abbe Goldstein, a spokeswoman for the bond insurer, said in an e-mail Tuesday.

Financial Guaranty Insurance Co. will pay 22 percent of $6.4 million in interest it insures, Edward Turi, a spokesman for FGIC, said in a phone call Tuesday. Standard & Poor's cut Prifa, as the authority is known, to D because of the payment default.

Governor Alejandro Garcia Padilla last week said Prifa would default on $35.9 million of interest. The governor last month ordered that Prifa's rum-tax revenue be redirected to help cover its general-obligation debt, which the commonwealth's constitution says must be repaid before other obligations. The change allowed Puerto Rico to avoid defaulting on its direct debt and potentially setting off lawsuits for repayment as those securities have the strongest legal protections.

First Default

Ambac Financial insures $1.07 billion of Prifa principal and interest payments through 2044 in the event of a default, as of Sept. 30, according to the company's website. That includes $52 million of debt service in 2016. FGIC insures repayment of $768.8 million of Prifa's principal and interest through 2045, as of Sept. 30, according to its website. It insures $10.6 million of debt service in 2016, according to Turi.

U.S. Bancorp, Prifa's bond trustee, hasn't received sufficient funds from the agency to repay debt service due Jan. 4, according to a filing posted Tuesday on the Municipal Securities Rulemaking Board's website, known as EMMA. The trustee held a "small residual amount from prior debt service payments, which it has allocated pro rata across all the bonds entitled to payment of interest," according to the filing.

This is the second Puerto Rico agency to default, after the Public Finance Corp. in August began missing monthly debt-service payments because lawmakers failed to allocate the funds. The PFC also missed a Jan. 1 payment.

In a Dec. 29 letter to the governor and his administration, the bond insurers said the commonwealth should return the rum-tax revenue to Prifa and end the clawback. The insurers calculate as much as $94 million was redirected before Dec. 1. That's when Garcia Padilla signed an executive order to begin the clawback.

The Highways and Transportation Authority and the Convention Center District Authority said last month that they would use reserve cash to repay investors after Puerto Rico redirected their revenue, according to EMMA filings.

Bloomberg Business

by Michelle Kaske

January 5, 2016 — 10:42 AM PST Updated on January 5, 2016 — 2:36 PM PST

Illinois Ending Exile From Bond Market Amid Record Budget Fight.

As Illinois prepares its first bond sale in almost two years, investors say the worst-rated state in America will pay for leaving its fiscal house in a shambles.

Since it last sold general-obligation bonds in April 2014, the Illinois Supreme Court threw out the state's effort to cut workers' benefits to help close a $111 billion pension-fund deficit. Its credit rating has been cut. And temporary tax increases have expired, leaving Republican Governor Bruce Rauner and Democratic lawmakers locked in a record-long impasse that's left the state without a budget for more than six months.

The $480 million of federally tax-exempt bonds scheduled for sale on Jan. 14 will illustrate the cost of Illinois's long-building strains, which have caused investors to demand higher premiums to buy its bonds. The state's 30-year securities yield 4.67 percent, about 1.8 percentage points more than top-rated debt. That gap has risen by almost 0.7 percentage point since April 2014 and is the highest among the 20 states tracked by Bloomberg.

"They're definitely going to have to pay a higher yield," said Dan Solender, head of municipals at Lord Abbett & Co. in Jersey City, New Jersey, which manages $17 billion of the debt, including

Illinois bonds. “They’re going to be penalized compared to other bonds of similar ratings.”

In Illinois’s last sale, bonds maturing in 2039 were issued at a yield of 4.5 percent, about 2.2 percentage points more than benchmark securities, according to data compiled by Bloomberg. When they traded on Dec. 28, the difference had widened to about 3 percentage points.

Budget Battleground

The state’s budget was put under strain after tax increases expired last year. Since then, Rauner, the first Republican to lead the state since 2003, and the Democrat-controlled legislature have been unable to agree on a spending plan for the year that started in July. Without action, the patchwork of measures that are keeping the government running will cause spending to exceed revenue by as much as $5 billion this fiscal year, according to bond documents.

The proceeds of the bond offering will go toward transportation projects. The securities are backed by the state’s “full faith and credit” and can be paid even without a budget in place, the documents show.
“Infrastructure is critical,” Rauner told reporters on Monday. “It’s very appropriate that despite everything, that we continue to invest in our infrastructure, and bonding is part of that.”

Rating Downgrades

While rating companies affirmed the state’s grade in the run up to the sale, Moody’s Investors Service cut Illinois in October to Baa1, three steps above junk. Fitch Ratings also dropped Illinois that month to an equivalent BBB+ because of the budget logjam.

Standard & Poor’s, whose A- rating on Illinois is one step higher than Moody’s and Fitch, on Dec. 23 removed the state from negative watch. S&P still has a negative outlook on Illinois, indicating it could still be downgraded.

“Road construction and transit improvements are key factors in growing the Illinois economy, which is why Illinois is planning a bond sale,” Catherine Kelly, a spokeswoman for Rauner, said in an e-mailed statement. “There was no change in our general-obligation bond ratings from the three major ratings agencies, but they did highlight the need for long-term structural reforms to improve our fiscal outlook.”

The impasse is delaying progress on Illinois’s biggest challenge: its unfunded pensions. The state’s four plans have less than half of what’s needed to cover promised benefits. In May, the Illinois Supreme Court ruled the state’s attempt to cut pension benefits was unconstitutional. Since then, partisan gridlock has kept officials from finding an alternative fix.

Illinois is going to have to price the deal “pretty attractively” in order to get a good reception from investors, said Dan Heckman, a senior fixed-income strategist in Kansas City at U.S. Bank Wealth Management, which oversees $130 billion.

“I think 2016, in our opinion, is kind of a waterfall year for the state,” said Heckman. “I think credit-rating agencies are running out of patience. It will be very important and critical for the state to get its financial house in order as much as possible.”

Rauner and lawmakers have been unable to agree on how to do so. In return for approving any new revenue, the Republican governor wants Democrats to back some of his proposals, such as political term limits or curbs on local property taxes. Democrats want to focus on the budget.

'Tough Votes'

Rauner said on Tuesday that negotiations are happening every week, and there's no reason a budget deal can't be concluded after the legislature returns on Jan. 13. Still, he said Democratic leaders may wait until after the primary election in March — or even the November general election — to take "tough votes."

The impasse may be affecting the state's economy, according to the Institute of Government and Public Affairs at the University of Illinois. The institute's index that tracks the growth of corporate earnings, consumer spending and personal income fell last month to the lowest since March 2013, according to J. Fred Giertz, who compiles it. The decline can't be definitely attributed to the budget standoff, but it "is likely that it is beginning to have an impact," he said in a statement.

"I don't know that we've hit the bottom," said Richard Ciccarone, Chicago-based chief executive officer of Merritt Research Services. "There's a lot of things yet to happen."

Bloomberg Business

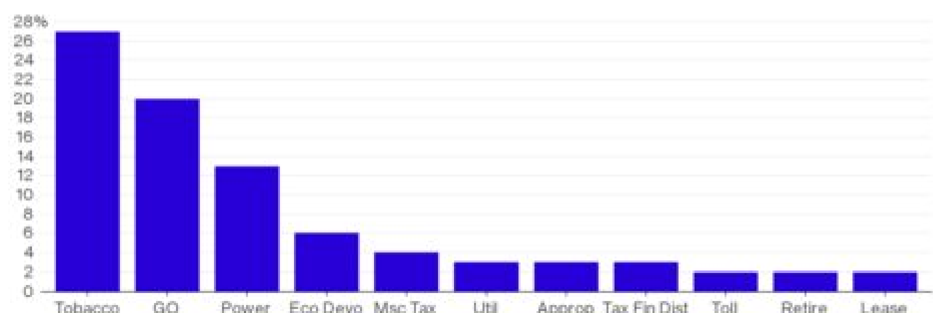
by Elizabeth Campbell

January 5, 2016 — 9:01 PM PST Updated on January 6, 2016 — 6:22 AM PST

Where to Find the $64 Billion of Distress in Muni-Market's Calm.

General-obligation bonds, long seen as one of the safest niches of the U.S. municipal market, are starting to look like one of the riskiest and it's all because of Puerto Rico.

There was $64.2 billion of distressed state and local debt outstanding as of Jan. 4, or about 1.7 percent of the total, according to data compiled by Bloomberg. General-obligations, which are backed by a promise to repay instead of earmarked revenue or taxes, accounted for $12.9 billion, or 20 percent, the second-largest category after securities backed by legal-settlement money from tobacco companies. The financially drowning island was almost exclusively to blame: All but $400 million of it was issued by Puerto Rico.

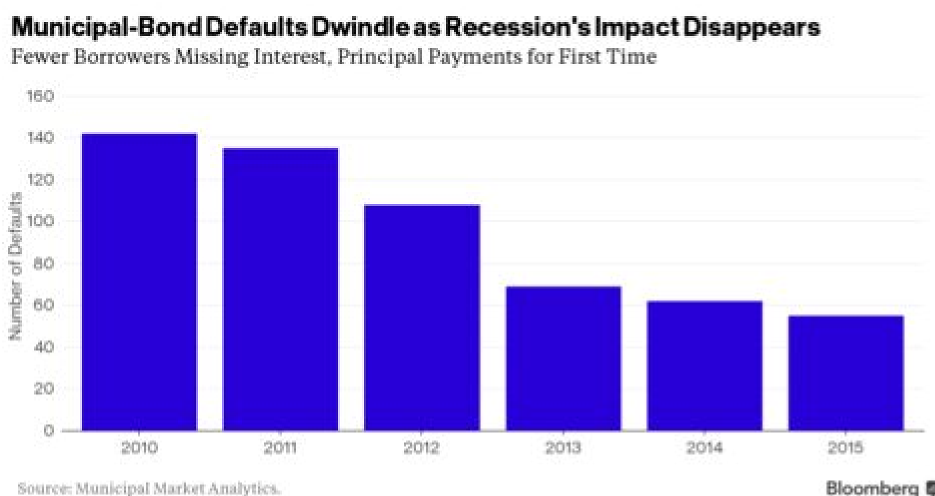


The U.S. territory of 3.5 million hasn't skipped any payments on its general-obligation bonds, which

have the highest priority under its constitution. It opted to default on other debt this month instead. The securities are classified as distressed because in August the government decided to stop putting money into the account that's used make interest and principal payments, a step it took to conserve cash.

Bloomberg's tally is a broader category than outright defaults because it includes cases where borrowers draw down reserves below specified levels or violate other terms of the loan agreements.

The figures mask an otherwise positive turn in the municipal market, where borrowers' finances have been given a lift by rising real estate prices and the economy's more than six-year expansion. Last year, just 55 issuers missed bond payments for the first time, the fewest since at least 2010 and down from 62 in 2014, according to Municipal Market Analytics Inc. The amount of debt involved totaled $3.85 billion, down from $9.4 billion a year earlier.



A cumulative picture emerges from the the Bloomberg data, which include bonds that have been distressed for years. Among them are $200 million of still outstanding debt from Detroit and $100 million from Jefferson County, Alabama, both of which filed for bankruptcy after the recession. While such filings remain a rarity, the decisions rattled some investors' confidence in struggling municipalities general-obligation bonds, which have traditionally been seen as secure because governments can raise taxes to pay them.

"Some of the actions taken in the high profile bankruptcy cases, to hit bonds hard and challenge all legal structures, are evidence of increased risk for GO bonds and all bonds when distress hits," said Peter Bianchini, managing director with Mesirow Financial Inc. in San Francisco.

Smoking's Risk

The single most-distressed category, accounting for $17.6 billion of the debt, is tobacco bonds, which state and local governments sold to get an advance on the money they're due to receive from the 1998 legal settlement with cigarette companies. Those payments are tied to cigarette shipments, which have declined more than anticipated since the securities were first sold. As a result, many may not be repaid on schedule.

Ohio's Buckeye Tobacco Settlement Financing Authority disclosed last month, for example, that it had to draw in $35.85 million of reserves to pay part of the interest due Dec. 15.

Further down the distressed list are public power systems ($8.1 billion), economic and industrial

development projects ($3.9 billion) and securities backed by specific taxes ($2.8 billion), according to data compiled by Bloomberg.

The scale of the figures in some cases represent the length of time it takes to resolve a default.

“The numbers have been creeping up,” said Matt Fabian, an analyst with Municipal Market Analytics. “Situations are lingering and lingering. Builds up to a large pile of problems after a few years.”

Bloomberg Business

by Darrell Preston

January 6, 2016 — 9:01 PM PST Updated on January 7, 2016 — 4:55 AM PST

Once Bankrupt Orange County Borrows to Pay Bill Others Shirk.

California’s Orange County, which went bankrupt in 1994 after losing derivative bets, is resorting to a less aggressive financial tactic to save money. And it’s for something many governments neglect: The annual bill to the employees’ pension fund.

The county Thursday sold $334 million in taxable pension-obligation bonds that mature in June 2017. Unlike typical pension debt, which reinvests borrowed money for decades in hope of turning a profit, the short-term securities will allow it to receive a discount by making its full retirement contribution up front.

The county’s decision to make good on its pension promises stands in contrast to governments such as Chicago or New Jersey, which are dealing with soaring debts after years of shortchanging their funds. It’s also part of the county’s effort to repair an image once sullied by its then-record bankruptcy. Last month, Standard & Poor’s raised its rating one step to AA+, the second-highest level and the best for the county since 2000.

“We put that behind us,” said Suzanne Luster, the county’s public finance director, about the bankruptcy, which ended in 1997. “The board since that time and the financial management have been very conservative. We’ve made tremendous strides in our continued recovery.”

Orange County, home to Disneyland and 3 million residents, is benefiting from a strong economy, driven by the tourism, life-science and high-tech industries, S&P said. Officials have built up reserves, put together five-year plans and monitor its investments, the New York-based ratings company said.

In the offering, the securities maturing in June 2017 were priced for a top yield of 1.2 percent, about 0.45 percentage point more than benchmark debt, according to data compiled by Bloomberg. The debt is graded AA by S&P, one step lower than the county’s overall rating.

The county has made its required pension payments in full since 2006, bond documents show, and has relied on short-term borrowings to do so early every year since 2011. By making the retirement contribution in full this month, instead of every two weeks for a year, the county would save about $17 million, Luster said.

Eleven of 15 employers in the pension fund opted to pay their contributions early for the last fiscal year, according to the Orange County Employees Retirement System.

Orange County differs from other municipalities that have issued bonds to pay retirement obligations because of that incentive, said Mark Wuensch, senior fixed-income analyst in New York at Principal Global Investors, which manages $6 billion in munis.

“In general, I’m not a huge proponent of borrowing to pay your debts. In this case it’s warranted,” he said. “They have an actual cost savings by doing this.”

The county also has taken steps to shift some of the pension costs to its workers, he said. “They’re going in the right direction,” said Wuensch.

Bloomberg Business

by Romy Varghese

January 7, 2016 — 2:00 AM PST Updated on January 7, 2016 — 2:48 PM PST

Morning Meeting: Morgan Stanley's 2016 Muni Outlook.

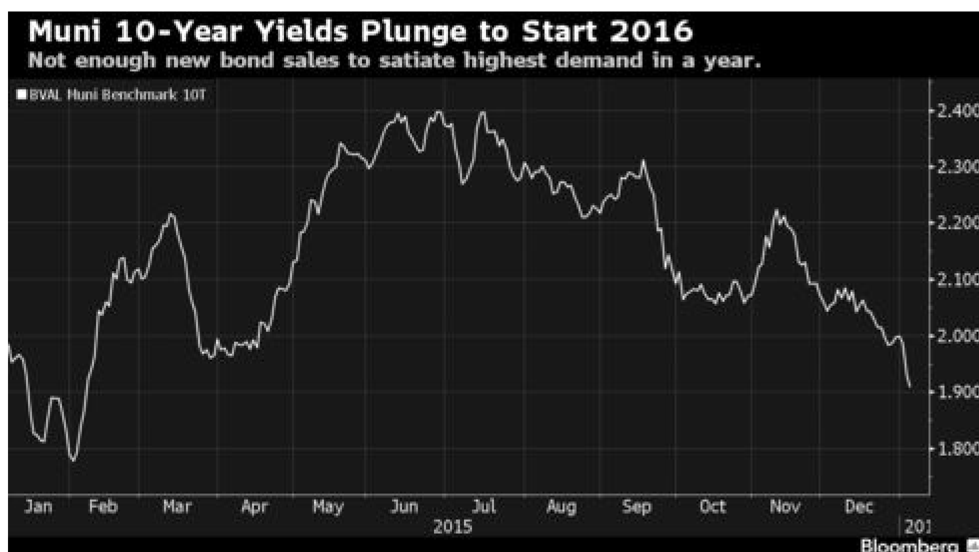
Michael Zezas, head of municipal strategy and research at Morgan Stanley, joins Bloomberg’s Matt Miller to discuss the 2016 municipal bond market. He speaks on “Bloomberg GO.”

Watch the video.

January 5, 2016

Muni Yields Plunge to 11-Month Low as Wave of Cash Dwarfs Supply.

Municipal-bond yields plunged to the lowest level since February after investors plowed the most money into tax-exempt mutual funds in almost a year and stock prices slid.



The yield on an index of 10-year AAA municipal bonds has declined 0.09 percentage point this week to 1.91 percent, the lowest since Feb. 5, according to data compiled by Bloomberg. Yields on benchmark munis due in 30 years have dropped 0.07 percentage point since the end of 2015 to 2.83 percent, the lowest since Feb. 11.

The drop has been fueled by a flood of money into the $3.7 trillion market. Individuals added $1.3 billion to muni funds in the week through Dec. 30, the most in almost a year, Lipper US Fund Flows data show. It marked the 13th consecutive week that they've gained money, the longest streak since the end of 2014.

Meanwhile states and cities are issuing $2.9 billion of debt this week, slowly ramping up from the $3 billion offered in the final two weeks of 2015.

"We're performing well because of a lack of supply in our market, which is typical for early January," said David Manges, muni trading manager at BNY Mellon Capital Markets LLC in Pittsburgh. "We're also seeing a lot of customer cash being put to work and a lot of reinvestment money being put to work."

Munis have already returned 0.37 percent in 2016, compared with 0.13 percent for U.S. Treasuries and 0.17 percent for investment-grade corporate bonds, Bank of America Merrill Lynch data show. It would be the fifth-straight year of gains in January. In each of the past two years, the first month proved to be the best for returns.

A decline in stock prices worldwide has also led investors to shift money into the safest assets. Yields on benchmark 10-year U.S. Treasury notes have dropped 0.08 percentage point to 2.19 percent since the end of last year.

Bloomberg Business

by Brian Chappatta

January 6, 2016 — 8:58 AM PST

Muni Yields Tumble Most Since 2012 Amid China Meltdown: Chart

Benchmark 10-year municipal-bond yields extended their steepest decline in almost four years as funds are flush with cash at a time of global market turmoil, boosting the appeal of the U.S. tax-exempt debt's relative safety.

The yield on an index of 10-year AAA rated munis plunged 0.07 percentage point to 1.83 percent on Thursday, data compiled by Bloomberg show. That brings the overall decline in the first four trading days of 2016 to 0.17 percentage point, the steepest drop of any four-day stretch since March 2012.

Individuals added $2.2 billion to tax-exempt mutual funds in the week through Dec. 30, the most since January 2013, according to Investment Company Institute data. The appeal of munis and other fixed-income assets may grow after concerns that China's slowdown will hamper global growth have wiped $2.5 trillion off the value of global equities this year.

Munis have earned 0.72 percent already in 2016, outpacing the 0.57 percent return on U.S. Treasuries and 0.58 percent gain on investment-grade corporate debt, Bank of America Merrill Lynch data show. State and local debt outperformed the other assets in 2015.

Bloomberg Business

by Brian Chappatta

January 7, 2016 — 12:06 PM PST

January Effect Lives On As Municipal Bond Funds Flush With Cash.

Mutual funds in the $3.7 trillion municipal-bond market are flush with cash heading into 2016.

Individuals added $1.3 billion to funds focused on state and local-government debt in the week through Dec. 30, the most in almost a year, Lipper US Fund Flows data show. It marked the 13th consecutive week that they've gained money, the longest streak since the end of 2014.

The surging demand for tax-exempt debt means the market may be headed for its fifth-straight January gain, said Peter Hayes, head of munis at BlackRock Inc., the world's largest money manager. In each of the past two years, the first month proved to be the best for returns: Munis rallied 1.8 percent in January 2015 and 2.3 percent in 2014, Bank of America Merrill Lynch data show.

"January is usually a positive performance month and we think this January will be positive," said Hayes, who oversees $111 billion of the debt. "Demand should remain strong."

Shaken Off

The muni market has posted six straight monthly gains, shaking off concerns about Puerto Rico's escalating fiscal crisis as defaults decline and the finances of most governments continue to improve along with the economy. State and local debt was less volatile than stocks, commodities and other bonds in 2015, providing higher returns both on an absolute basis and when adjusting for price swings.

January tends to deliver a predictable performance. The market has rallied in all but six years since 1989, Bank of America data show. The last time it dropped was at the start of 2011, after analyst Meredith Whitney rattled investors with a prediction for widespread defaults that later proved off base.

Individual investors hold the majority of munis through private accounts or mutual funds. They sometimes chase performance by pouring money into the market when it's rallying and withdrawing it during routs.

That phenomenon was on display after munis began a three-month losing streak in April 2015, when signs of economic gains increased speculation that the Federal Reserve would soon raise interest rates. Beginning that May, individuals yanked money from mutual funds for 11 straight weeks, the longest stretch of outflows in 18 months. The withdrawals subsided when the market rebounded and the Fed delayed its move.

'Sweet Spot'

Most muni analysts expect moderate gains for 2016 as the Fed pushes forward with plans to tighten monetary policy further this year, after increasing rates last month for the first time since 2006. Yet

with U.S. manufacturing contracting in December at the fastest pace in more than six years and the S&P 500 Index touching its lowest price since October, any positive return may make it stand out in the U.S. financial markets.

“It’s really the sweet spot for muni investors: The U.S. growing fast enough to improve credit quality, but not too fast to generate a lot of inflation,” said David Hammer, who runs a $583 million high-yield fund at Pacific Investment Management Co. in New York. “That means investors are going to focus on the income portion of their portfolio to drive total returns. Munis fit perfectly into that.”

Bloomberg Business

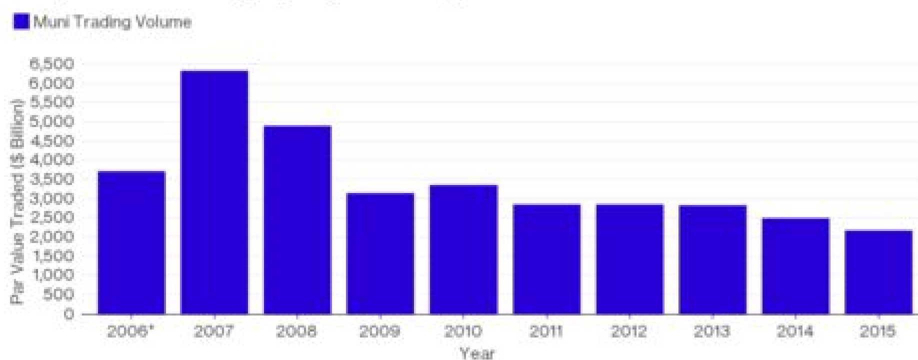
by Brian Chappatta

January 4, 2016 — 9:01 PM PST Updated on January 5, 2016 — 5:56 AM PST

Muni Investors Who Got 2015 Right Seek Gains in Market's Swings.

MacKay Shields’s John Loffredo and Robert DiMella made five predictions for the municipal-bond market in 2015, and they all came true. This year, the co-heads of munis at the $90 billion investment firm expect a liquidity tug-of-war to create profit-making opportunities.

With trading growing thinner and securities dealers pulling cash from the market, muni prices are at risk of being whipsawed if investors rush for the exits, the money managers said in an interview. Such a run could be brought on by rising interest rates, Puerto Rico’s escalating fiscal crisis, or credit-rating cuts to perpetually struggling states such a New Jersey, Illinois and Pennsylvania. A scare, they said, would provide a chance to pick up bonds on the cheap.



The weaker liquidity means “volatility is going to be higher, movements in the market are going to be greater than they historically otherwise would’ve been,” said DiMella, whose company had two of the 10 best-performing open-end muni funds in the past year. MacKay, a unit of New York Life Insurance Co., oversees $14.5 billion of the securities.

“For us, it’s not run for the hills,” DiMella said. “Take advantage of it, especially in a marketplace that investors on average don’t look to take advantage of any type of dislocations.”

Trading volume in the $3.7 trillion market shrank in 2015 to the lowest level in at least a decade,

according to data from the Municipal Securities Rulemaking Board, with about $2.2 trillion of bonds changing hands. That's one-third of the peak in 2007, before the financial crisis caused dealers to cut their holdings of tax-exempt securities by 76 percent.

The muni market is divided among tens of thousands of borrowers and the majority of debt is held by buy-and-hold investors, who are looking for steady, tax-free returns. That's long made it less liquid than the Treasury and corporate markets.

Sometimes that works in the bonds' favor, like when they outpaced most other assets in a tumultuous 2015. At other times, it doesn't: The market was pummeled in late 2010 following speculation that the recession's impact would trigger rising defaults, and again in mid-2013 because of concern that the Federal Reserve was poised to begin tightening monetary policy.

Wilder Ride

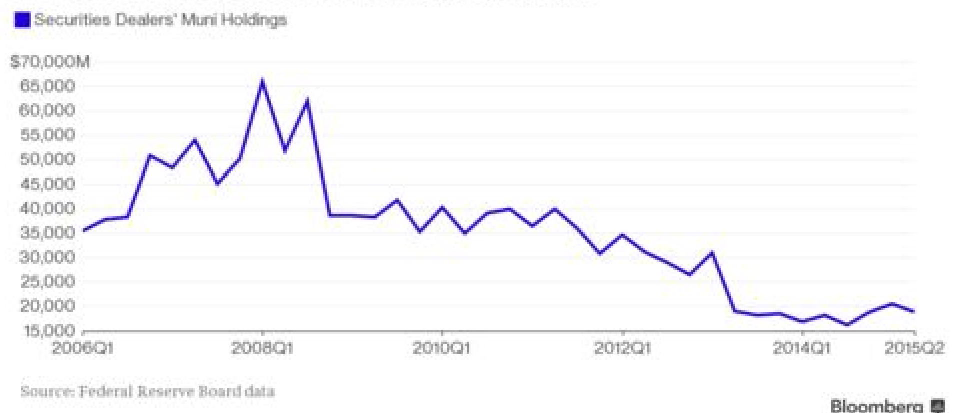
MacKay's Loffredo and DiMella said price swings are more likely to occur in 2016 and will be more severe when they do.

During the first week of the year, munis rallied as the ripple effects of slowing growth in China led investors to seek safe havens. Benchmark 10-year muni yields had their steepest decline in almost four years, dropping 0.16 percentage point to 1.84 percent, an 11-month low.

If the pendulum shifts, the lack of trading could increase stress on the market. The average daily volume for municipal bonds is less than 2 percent of what it is for Treasuries and less than half that of corporate debt, according to the Securities Industry and Financial Markets Association.

Trading has declined every year since 2010, according to the MSRB's statistics. At the same time, dealers cut their muni holdings to about $16 billion at the end of September from as much as $66 billion in early 2008, according to Fed data, as regulations and narrower profits due to low interest rates led banks to devote less capital to the market.

"What we started seeing somewhat over the last five years is exacerbating in 2016," Loffredo said.



MacKay's MainStay California Tax Free Opportunities Fund returned 5.5 percent in 2015, beating 98 percent of its peers, while its MainStay High Yield Municipal Bond Fund exceeded 85 percent of its competitors with a 5.6 percent gain. The two were among the 10 best over the past year, according to data compiled by Bloomberg.

Among the firm's other forecasts: Revenue bonds will outperform general obligations, and transportation debt, such as those sold by airports and toll roads, will be one of the top-performing segments. The demand for new securities will be more closely tied to the amount of money flowing into the market than in the past. And high-yield, which posted the top returns in 2015, will extend gains in the first half of the year, only to trail investment-grade debt for the next six months.

Good Calls

Loffredo and DiMella's calls last year proved prescient.

They predicted high demand for tax-exempt debt, which held true as individuals poured $13 billion into muni mutual funds throughout 2015, Lipper US Fund Flows data show.

They called for top-rated short-term debt to lag the market. That debt earned 0.7 percent last year, compared with 3.6 percent for the broad market, Bank of America Merrill Lynch data show.

They thought issuance would exceed expectations. It did, ending at the highest level since 2010.

They bet that tobacco bonds, one of the riskiest corners of the market, would be one of the top performers. The debt surged 13.5 percent, almost four times the returns of munis broadly, S&P Dow Jones Indices data show.

With a track record like that, muni investors may do well to prepare for what MacKay calls "liquidity wars" in 2016.

Bloomberg Business

by Brian Chappatta

January 7, 2016 — 9:01 PM PST Updated on January 8, 2016 — 5:47 AM PST

Bloomberg Brief Weekly Video - 01/07

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

Watch the video.

8:43 AM PST
January 7, 2016

Munis Least Alluring to Treasuries Since 2011 After Rally: Chart

Municipal bonds look expensive on their own, with benchmark yields at an 11-month low. They look even pricier relative to U.S. Treasuries: the ratio of yields between the two assets tumbled Friday to 85 percent, to the smallest since May 2011.

Top rated 10-year muni bonds yield 1.84 percent, compared with 2.15 percent on similar-maturity Treasuries, data compiled by Bloomberg show. The ratio is a measure of relative value between the two, calculated by dividing the first number by the second. It signals that tax-free bonds are pricey relative to their federal counterparts.

Bloomberg Business

by Brian Chappatta

January 8, 2016 — 7:16 AM PST Updated on January 8, 2016 — 8:08 AM PST

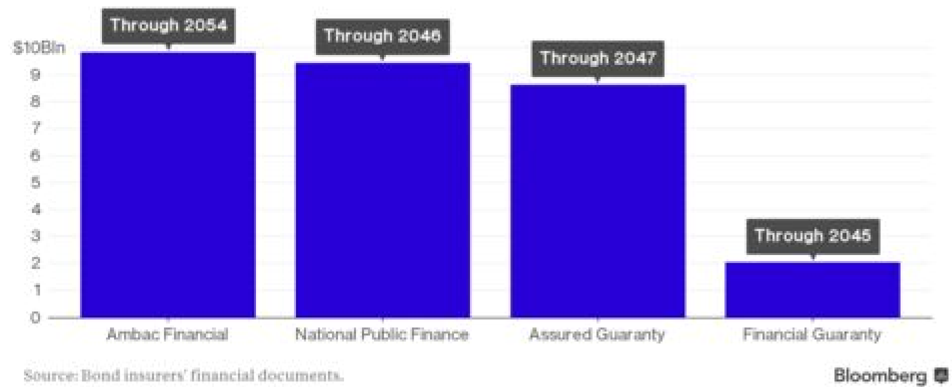
Bond Insurers Sue Puerto Rico to Stop Revenue Diversion.

Insurance companies that guarantee Puerto Rico municipal debt filed a lawsuit challenging the commonwealth's decision to divert revenue designated for some bonds to pay other creditors.

Ambac Financial Group Inc. and Assured Guaranty Ltd. said the clawback of revenue pledged to bond issues violates the U.S. Constitution by interfering with debt-holders' contractual rights. The suit filed in U.S. District Court in Puerto Rico seeks to have the clawback declared unlawful and asks the court to issue an injunction against implementation, according to a statement.

"This may well just be the beginning," Mark Palmer, a managing director at BTIG LLC who analyzes Puerto Rico and municipal bond insurers, said Friday. Bond insurers and investors "are going to use every means at their disposal to hold Puerto Rico to the letter of the law."

Puerto Rico Governor Alejandro Garcia Padilla announced in December that the commonwealth would divert the revenue in order to fund its general-obligation debt payments, which have the highest priority under the island's constitution. Puerto Rico defaulted on about $37 million in agency bond payments at the start of the year, saying it would focus on providing essential services as the commonwealth's financial situation worsened.



"The commonwealth has committed itself to a 'scorched earth' strategy of blaming its fiscal and structural problems on lenders, Congress and others, in an effort to deflect responsibility and obtain retroactive application of bankruptcy laws," Nader Tavakoli, chief executive officer of Ambac, said in the statement late Thursday.

Lobbying Congress

The insurers are the first to sue over the diversion. They claim a clawback can only be implemented if the commonwealth's funds are insufficient to cover general-obligation debt service. Puerto Rico estimates approximately $9 billion of available resources in the fiscal year ending June 30, 2016, which vastly exceeds debt service on the public debt of approximately $1.85 billion, according to Ambac. Judge Jose Antonio Fuste will preside over the case, court documents show.

To help address its debt crisis, Puerto Rico officials have urged Congress to allow some commonwealth public corporations access to bankruptcy, the same as mainland localities and agencies. That would give the island a legal guideline for how to restructure much of its $70 billion of debt. The commonwealth, as well as states, is prohibited from using bankruptcy to reorganize its finances.

"This latest development will force a race to the courthouse," Garcia Padilla said in a statement Friday.

"And with no legal framework to handle this impending litigation crisis, both the commonwealth and its creditors will soon face the opposite of due process and rule of law. This reality causes great uncertainty for all parties involved."

Rum Tax

The targeted clawback revenue comes from the Puerto Rico Highways and Transportation Authority, the Puerto Rico Convention Center District Authority and the Puerto Rico Infrastructure Financing Authority, known as Prifa. Ambac paid $10.3 million in interest that was due Jan. 1 for the Prifa bonds.

The Prifa default was the second by a Puerto Rico agency. The Public Finance Corp. in August began missing monthly debt-service payments because lawmakers failed to allocate the funds. The PFC also missed a Jan. 1 payment.

Shares of Ambac dropped 9 cents Friday to $12.74, the lowest level since the insurer emerged from bankruptcy in May 2013. Assured Guaranty declined 36 cents to $25.15 as of 2:44 p.m. in New York.

Financial Guaranty Insurance Co. will pay 22 percent of $6.4 million in Prifa interest it insures. Edward Turi, general counsel for FGIC, didn't immediately respond to an e-mail and phone message seeking comment on the Ambac and Assured Guaranty suit.

Prepa Deal

Less than two weeks before Prifa's payment default, Assured Guaranty, along with MBIA's National Public Finance Guarantee Corp., agreed to restructure $8.2 billion of Puerto Rico Electric Power Authority debt. While the utility's funds aren't subject to clawback, Garcia Padilla's revenue diversion goes against the restructuring pact, Dominic Frederico, Assured Guaranty's president and chief executive officer, said in a statement Thursday.

"These actions stand in contrast to the consensual agreement that we and other creditors recently reached with Puerto Rico's electric utility, Prepa," Frederico said.

In a Dec. 29 letter to the governor and his administration, bond insurers said the commonwealth should return rum-tax revenue to Prifa. The insurers calculate as much as $94 million was redirected before Dec. 1. That's when Garcia Padilla signed an executive order to begin the clawback.

The Highways and Transportation Authority and the Convention Center District Authority said last month that they would use reserve cash to repay investors after Puerto Rico redirected their revenue, according to regulatory filings.

Bloomberg Business

by Michelle Kaske

January 8, 2016 — 5:38 AM PST Updated on January 8, 2016 — 11:51 AM PST

San Bernardino Bankruptcy Leaves Little for Police-Brutality Payouts.

Officers were praised after mass shooting, but California city's fiscal woes mean plaintiffs in excessive-force lawsuits could get just 1% of promised settlements

Terry Wayne Jackson died March 1, 2009, after several San Bernardino, Calif., police officers, responding to complaints that the 21-year-old mentally ill man wasn't wearing pants in a park, wrestled him to the ground and tasered him.

His mother, Sheryl Nash, sued and won. City leaders promised to pay $686,000 by July 15, 2012. Two weeks after that deadline, San Bernardino filed for bankruptcy.

City officials now say they can't afford to pay Mr. Jackson's mother or the more than 100 others who have sued San Bernardino for injuries and deaths allegedly caused by its police officers and employees.

Under the city's recent proposal to exit bankruptcy protection that still needs a judge's approval, she might get only 1% of what the city settled for: $6,860.

Lawyers for Mr. Jackson's mother and other families with settlements are fighting the proposed cost-cutting plan—a battle that shines a light on the police department's troubles amid an outpouring of praise for how its officers handled the Dec. 2 mass shooting that killed 14 people. Politicians and law-enforcement experts lauded the city's officers for a quick response that prevented the attack from escalating.

San Bernardino's police department has been hit hard by the city's financial problems, losing 30% of its officers in recent years despite the city's high violent-crime rate. Under the bankruptcy plan, the city would spend $56.5 million in the next five years to hire more officers and buy new vehicles.

The plan, however, would inflict some of the deepest cuts on people who have sued over incidents of alleged police brutality or excessive force. San Bernardino faced 109 lawsuits seeking a total of $19 million in "personal injury and bodily injury" claims against the city and its employees as of Nov. 25.

Lazaro Fernandez, a lawyer for Mr. Jackson's mother and other families with settlements, said they are "entitled to collect the full amounts" owed by the city.

"[These are] individuals whose lives have been forever changed by the actions of employees of the [city]," Mr. Fernandez said in court papers.

Gary Saenz, a lawyer for San Bernardino, didn't respond to emailed requests for comment.

U.S. Bankruptcy Judge Meredith Jury is scheduled to review objections to the city's bankruptcy-exit summary at a March 9 hearing. If she approves the plan, it would go to creditors for a vote.

Paul Glassman, a lawyer for San Bernardino, defended the proposed cuts at a recent court hearing, calling San Bernardino "a deeply service-insolvent city."

Cities that declare bankruptcy have the power to cut payments they have promised to Wall Street, retired workers and other creditors. But bankruptcy law doesn't say how much people behind police lawsuits should be paid when a city files for protection.

San Bernardino's plan proposes a 1% payment rate, though city officials promised to negotiate each lawsuit separately. Some might get insurance money, the city said, though it hasn't provided details.

A federal judge cleared Detroit to pay less than 15% of what it owed in lawsuit settlements and judgments despite protests from those affected that the amount was too low. A California judge who handled an excessive-force lawsuit in Vallejo, which emerged from bankruptcy in 2011, called it "alarming" that bankruptcy law can let a city "erase its own liability" when its police officers violated a person's civil rights.

"Civil-rights advocates may need to go to Congress and get clarification so there are better protections for victims of police brutality," said Melissa Jacoby, a law professor at the University of North Carolina-Chapel Hill.

San Bernardino filed for bankruptcy Aug. 1, 2012, saying it would otherwise run out of money to pay city employees. Housing prices in the city, about 60 miles east of Los Angeles, plummeted during the economic slowdown, leading the city to take in less revenue from property taxes.

City lawyers who drew up a bankruptcy-exit strategy freed up money for the city's roads, information-technology systems and city hall, which needs $20 million to prepare it for earthquakes. The plan proposes steep cuts to health-care benefits for retired city workers and to payments to a European bank that lent the city $51 million to cover pensions. Like Mr. Jackson's mother,

bondholders can expect to be repaid 1% and have objected to the plan.

In Detroit's bankruptcy, the largest municipal case in U.S. history, city leaders offered a higher recovery rate of 13% to people who had sued the city and to other groups with similar debts, though city officials are expected to negotiate each claim individually.

Among those suing Detroit when it filed for bankruptcy was Walter Swift, who was wrongfully convicted of criminal sexual conduct in 1982 and spent 26 years in prison. His lawyer complained in court papers that the city's bankruptcy further delayed the civil-rights lawsuit filed in 2010. The case was settled after Detroit's bankruptcy ended in late 2014 and Mr. Swift received $2.5 million, said Bill Goodman, his lawyer.

"We settled for less than we otherwise would have because of the reality of the bankruptcy," Mr. Goodman said.

Those who were offered the 13% recovery had the chance to vote to reject the offer, and many of them did. But a bankruptcy judge ruled Detroit's survival outweighed the rights of people with judgments against the city.

"Detroit's inability to provide adequate municipal services runs deep and has for years," Judge Steven Rhodes said at the time. "It is inhumane and intolerable, and it must be fixed."

THE WALL STREET JOURNAL

By KATY STECH

Jan. 7, 2016 5:28 p.m. ET

Write to Katy Stech at katherine.stech@wsj.com

Bond Insurers Sue Puerto Rico for Redirecting Debt-Payment Funds.

Units of bond insurers Ambac Financial Group Inc. and Assured Guaranty Ltd. on Thursday challenged Puerto Rico's move to pay some investors at the expense of others, escalating the U.S. commonwealth's struggle with creditors.

The insurers, which back almost $8 billion of debt from the island between them, asked the U.S. District Court for the District of Puerto Rico to block the move, arguing it violates the U.S. Constitution. Puerto Rico this week missed about $37 million in bond payments, after redirecting money collected to pay some debt toward bonds with stronger legal protections.

The commonwealth "is disregarding the priorities of its own Constitution and the rule of the law," Dominic Frederico, Assured's chief executive officer, said in a statement. "This confiscation of revenues pledged to bondholders is illegal."

Puerto Rico Gov. Alejandro Garcia Padilla said in a statement that such lawsuits have "been widely predicted and forewarned" because the U.S. Congress hasn't granted the island access to the municipal bankruptcy protections currently denied the commonwealth and its agencies.

"This latest development will force a race to the courthouse, and with no legal framework to handle this impending litigation crisis, both the commonwealth and its creditors will soon face the opposite

of due process and rule of law," Mr. Garcia Padilla said.

Puerto Rico owes investors about $70 billion and has struggled with a nearly decadelong recession and a steep population decline that last year led Mr. Garcia Padilla to declare its debts unpayable. The commonwealth began defaulting on debt with its weakest legal pledge in August and in December said it would begin diverting money toward bonds guaranteed by the island's constitution.

That move violates the U.S. Constitution's takings and contracts clauses, and the commonwealth isn't allowed to divert the money "where other available resources exist from which the public debt could be paid," the insurers said in the court filing.

Mr. Garcia Padilla said last week that the redirection would avert a wave of lawsuits that would have followed a default on debt backed by the commonwealth's full faith and credit.

The insurers' suit may renew pressure for action from the U.S. Congress, where Democrats and the Obama administration have sought legislation that would allow Puerto Rico to restructure its debt and proposed bills to temporarily stay lawsuits against the commonwealth. House Speaker Paul Ryan has called for lawmakers to find a "responsible solution" to the island's financial crisis by the end of March. Some investors oppose such a move, saying it is unneeded and won't solve Puerto Rico's problems.

Bond insurers, which make principal and interest payments when a state or local government that sold debt fails to pay, are central to any restructuring effort in Puerto Rico because they back a wide variety of bonds from the commonwealth's nearly 20 debt-issuing entities, complicating the island's ability to prioritize payments. The situation also threatens to derail a modest comeback for the insurers, who suffered losses in the 2008 financial crisis after guaranteeing risky mortgage-backed securities.

Nader Tavakoli, chief executive for Ambac, said Puerto Rico is attempting to blame its fiscal and structural problems on creditors, "in an effort to deflect responsibility and obtain retroactive application of bankruptcy laws."

The commonwealth's actions "stand in contrast" to last month's negotiated agreement with some bondholders and insurers to restructure the Puerto Rico Electric Power Authority, or Prepa, Assured's Mr. Frederico said.

While the deal over Prepa's $9 billion of debt still requires legislation from Puerto Rico lawmakers, among other hurdles, it raised some hopes that talks can resolve some disputes over the commonwealth's debt in the absence of lawsuits or bankruptcy filings.

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated Jan. 8, 2016 4:25 p.m. ET

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A Growing Conflict in Wall St. Buyouts.

It goes by a rather innocuous-sounding name, the sort of phrase you might breeze past in a loan document: “designated lender counsel.”

But pay attention, because it’s the latest conflict-ridden practice on Wall Street.

Over the last several years, a new, insidious relationship has quietly developed between the nation’s largest private equity firms, the banks that lend them billions to fund their buyouts and the law firms that advise on these deals.

Historically, when a bank, like JPMorgan Chase, made a loan to a private equity firm planning a big acquisition, like the Blackstone Group, the bank would hire an outside law firm to scrutinize the loan and the transaction.

That made a lot of sense: Loans made to finance private equity deals are some of the riskiest because they typically involve a lot of debt. They are called “leveraged buyouts” for a reason. Having a team of lawyers review an often complex loan document could keep a bank from making a deal that might later come back to haunt it. The Federal Reserve, so worried about these kinds of loans, has since the financial crisis sought to make it tougher for big banks to make highly leveraged loans by issuing rules that determine the amount of money they can lend.

But neither the Federal Reserve nor any other regulator has addressed this latest private equity maneuver.

Instead of allowing a bank to hire its own lawyers to vet a potential loan, many large private equity firms — Blackstone, Apollo Global Management, Kohlberg Kravis Roberts and Carlyle Group among them — now regularly require the banks to use a specific law firm that they designate, hence the term “designated lender counsel.” The private equity firms pay for the law firm’s services, too.

Think about it this way: It is, in effect, the equivalent of your employer giving you an employment agreement and telling you that the only lawyer who can look it over is the one the company has retained.

Bankers and their in-house lawyers privately complain that the private equity firms are assigning them law firms that have little allegiance to them and might not necessarily have their best interests at heart. But given the pressure to secure these big loan deals — which can be worth hundreds of millions of dollars in fees — few are willing to publicly criticize the practice.

Indeed, when I called private equity firms — representatives from which all refused to speak on the record about this practice — they all said that if the banks were really that upset about it, the firms would have already heard complaints.

But that ignores the influence that private equity firms have over the banks, and the banks’ lack of incentive to speak up.

“The borrower has a lot of muscle, a lot of leverage,” Robert Profusek, a partner at the law firm Jones Day and one of the few lawyers who would speak on the record about this issue, said of the private equity firms. “When you’re competing for business, you’re not going to turn it down because you can’t use law firm A rather than law firm B.” (Mr. Profusek’s firm does some work as designated lender counsel.)

Not all private equity firms are pushing the banks to hire their recommended law firms. Notably, Clayton, Dubilier & Rice, one of the pioneers of the leveraged buyout industry, does not engage in the practice. A representative for the firm declined to comment.

When I was reporting this column, many private equity executives and lawyers suggested that the practice had taken place for many years. “There’s nothing new here,” one dealmaker said. Another called it “irrelevant.” They said that the law firms assigned to work for the banks had a fiduciary duty to give them proper advice and that there would be too much reputational risk in rolling over for a private equity firm.

That might be true, but it doesn’t change the fact that the law firms doing this work have two “clients”: the private equity firms that refer them all the business and the banks, to whom they owe the fiduciary duty.

In the past, each bank lending money on a deal would hire its own law firm, which resulted in multiple law firms scrutinizing every transaction. Even then, assuming the deal was completed, the private equity firm paid the legal fees.

Private equity firms defend the practice, saying it saves clients from having to pay double or triple the amount in legal fees. The firms also say that this practice takes place on big corporate loan deals. For many decades, large American companies that regularly issue debt, like I.B.M. and General Electric, have designated a law firm to represent the banks underwriting loans. The companies justify this because the deals are boilerplate.

But in the private equity arena, it’s very different. There is no great efficiency to having one law firm handle all of it, because each transaction is specific to a different company. It might be a real estate deal one day, and a technology or pharmaceutical deal the next.

“Most of the due diligence isn’t about the firm, it’s about the portfolio company. So it isn’t like you build up this knowledge base,” Mr. Profusek said.

Some law firms, like Paul Hastings, have made a lucrative business serving as a designated lender counsel, aggressively marketing their services to the real client: the private equity firms. According to the Thomson Reuters Deals Intelligence, in 2010 Paul Hastings had virtually no relationship with banks making leveraged loans; today, it is the No. 2 ranked law firm in this business. A spokeswoman for Paul Hastings declined to comment.

The banking industry’s association, the Securities Industry and Financial Markets Association, issued a report in 2013 that raised red flags about using designated lender counsel in the context of municipal bond offerings. The association said that the practice should be disclosed by the municipalities in their bond offering documents. “Any undue influence by an issuer, however, that calls into question the qualifications or independence of underwriter’s counsel may create risk to the issuer,” it wrote.

Of course, the choice of which law firm will represent a bank on a big private deal will not lead to the next financial crisis. But if regulators care about reducing risk and eliminating conflicts in the markets, this practice might be a good one to examine.

The New York Times

By Andrew Ross Sorkin

Jan. 4, 2016

AT&T Steps Up 'Smart Cities' Push, to Offer More Services.

NEW YORK — AT&T Inc will expand its smart city services to help municipal authorities remotely monitor conditions of roads and bridges in real time and give citizens mobile apps to stay informed about things like traffic and safety problems, the company said on Tuesday.

The company's smart cities efforts are aimed at tapping into a market that some expect to grow beyond $1 trillion by 2020. AT&T has not yet broken out revenue or profit for such "Internet of Things" services. These include things like connected cars and wired homes with automated thermostats and security systems.

AT&T has been demonstrating its smart cities technology at an event for developers on the sidelines of this week's Consumer Electronics Show in Las Vegas.

So far, AT&T's existing smart-city services comprise Web-connected utility meters, street lights and water systems. The No. 2 U.S. wireless company said it is also building a digital dashboard to help city authorities monitor city conditions and developments from power outages to traffic jams.

In recent years, authorities of some cities from Barcelona, Spain to San Jose, California, have slowly been working on "smart cities" with telecom and technology companies. The technology being developed aims to improve the quality and cost-efficiency of services such as energy and transportation, and to help manage resources better.

Some cities including Chicago, Dallas and Atlanta "have agreed to partner and work with us to deploy some of these solutions together." Chris Penrose, senior vice president of AT&T's Internet of Things division, said in an interview.

"We can actually monitor and measure the real feedback from both citizens and … savings and improved operational costs for the cities that we can then take that and use with other cities going forward."

With the U.S. wireless market reaching saturation, AT&T is looking for new revenue sources by developing Web-connected services including smart cities, connected cars and automated homes.

The global market for "smart cities" is expected to grow to about $1.6 trillion in 2020, according to consulting firm Frost & Sullivan.

Technology companies have also embarked on smart city efforts such as Alphabet Inc's Sidewalk Labs that is developing technologies aimed at improving urban life and city services.

AT&T has forged partnerships with companies including Cisco Systems Inc, General Electric Co, Intel Corp and Qualcomm Inc to develop services for smart cities. In September, it set up a new division to focus on smart cities.

By REUTERS

JAN. 5, 2016, 1:48 P.M. E.S.T.

(Reporting by Malathi Nayak; Editing by David Gregorio)

Chicago Sets $500 Million Bond Sale Amid Pension Uncertainty.

CHICAGO — Chicago will head to the municipal bond market next week with a $500 million bond issue amid uncertain pension funding requirements and political turmoil.

The general obligation refunding bonds are scheduled to be priced through Citigroup on Jan. 12, according to bond sale documents released late on Tuesday. The sale comes as state legislative fixes to address Chicago's $20 billion unfunded pension liability remain up in the air and Mayor Rahm Emanuel struggles with political fallout from controversial police shootings, including calls for his resignation.

Chicago's current budget relies on a bill passed by the Illinois House and Senate that would reduce city payments to its pension funds covering police and fire fighters. The bill has not been sent to Governor Bruce Rauner, who has been critical of the measure.

A record $543 million phased-in property tax increase approved by the city council in October exclusively for public safety worker pensions would still leave Chicago with a funding gap of about $200 million if that bill is not enacted.

Standard & Poor's warned last week that Chicago's BBB-plus bond rating could fall "multiple notches" if the city fails "to successfully implement contingency plans in a timely manner to fully meet its pension obligations with an identifiable and reliable revenue source." The city's bond rating with Moody's Investors Service is already in the "junk" level.

In a presale presentation, Chicago finance officials said the city has about $510 million remaining from a new $750 million credit line with three banks "to meet unforeseen financial obligations."

Meanwhile, a 2014 Illinois law mandating higher city contributions and lower benefits for its municipal and laborers' retirement funds is before the Illinois Supreme Court, which is expected to rule soon on the law's constitutionality.

The bond sale will continue the practice, which the city is phasing out, of restructuring debt service payments on outstanding bonds to free up revenue. The sale will be followed by a $480 million GO bond offering on Jan. 14 by Illinois, which is also mired in a financial crisis. Chicago pays a heftier penalty in the bond market than the state. The city's so-called credit spread over Municipal Market Data's benchmark triple-A scale hovered around 250 basis points for 20-year bonds, while the spread for Illinois bonds was 171 basis points.

By REUTERS

JAN. 6, 2016, 2:54 P.M. E.S.T.

(Reporting by Karen Pierog; Editing by Matthew Lewis)

In Puerto Rico's Debt Crisis, an Absence of Enforcers.

The municipal bond market in the United States is desperately lacking enforcers. Puerto Rico's debt crisis is the latest example to expose the shortcoming. Foolish financial crowds had better wise up to other danger zones.

Since the investment strategist Ed Yardeni coined the term “bond vigilantes” in the 1980s, it has become somewhat accepted wisdom that if public officials are unwilling to rein in spending, markets will do it for them by making it more expensive to borrow. That failed to happen in Puerto Rico.

The public debt of the United States commonwealth in the Caribbean has soared to around $70 billion from under $40 billion in 2006, when expiring manufacturing tax breaks pushed its economy into a recession from which it has yet to recover. The burden is crippling for the island of 3.6 million people, where the poverty rate exceeds 40 percent. High unemployment and rising departures of residents mean last week’s decision to skip $37 million of scheduled interest and principal payments is probably only the beginning.

As recently as 2012, yields on Puerto Rico’s general obligation debt were just 2 percentage points higher than an index of similar bonds rated AAA, according to the Thomson Reuters Municipal Market Monitor. That’s about as much as other government borrowers on the low end of the investment-grade scale were paying at the time, despite debt levels already topping $60 billion. It was only in 2013, after years of deficit spending and economic stagnation, that borrowing costs belatedly started to surge.

Several factors came into play. First, failure to pay is rare. For 2015, the default rate on municipal debt through November was less than 0.2 percent, according to Bank of America Merrill Lynch. Puerto Rico bonds are also exempt from federal, state and local income tax, making them hugely appealing to retail investors and mutual funds. Throw in near-zero United States Treasury rates, and it’s no wonder discipline weakened.

Other cash-poor local governments, including those of New Jersey, Illinois and the City of Chicago, also might have been spared some of the trouble they now face by more discerning debt investors. Without bond vigilantes, fiscal profligacy is all but inevitable. Puerto Rico at least represents a chance to relearn the lesson.

THE NEW YORK TIMES

By KEVIN ALLISON

JAN. 7, 2016

Puerto Rico Pleads for Congressional Help as Lawsuits Are Filed.

Puerto Rico’s governor on Friday renewed his plea for Congress to provide bankruptcy protection for the debt-ridden island, after two bond insurers filed lawsuits over his decision to default on millions of dollars in bond payments last week.

“Swift action from our congressional leaders is necessary and what the people of Puerto Rico deserve,” said Gov. Alejandro García Padilla in a statement.

Two insurers of Puerto Rican bonds that are now in default sued the governor and other senior officials on Thursday, saying they had illegally diverted money from some creditors so they could pay other creditors in full.

The Assured Guaranty Corporation and the Ambac Assurance Corporation said in their complaint that Puerto Rico had diverted at least $163 million that had been pledged to pay debts they had

insured. Those debts were in the form of municipal bonds issued by three governmental authorities on the island.

Mr. García Padilla said the lawsuit was a sign that a dreaded "race to the courthouse" had begun, leading to "litigation pandemonium" as different creditors sought to enforce their claims on the island's resources. He called on Congress to enact legislation that would give Puerto Rico the ability to take shelter in bankruptcy, where such creditor litigation would be automatically stayed.

Democratic members of Congress have favored a bankruptcy law for Puerto Rico, but the Republicans who hold the majority in both houses have generally said they need more financial information first.

"With no legal framework to handle this impending litigation crisis, both the Commonwealth and its creditors will soon face the opposite of due process and rule of law," Mr. García Padilla warned.

Last week, Mr. García Padilla confirmed that he had used at least $163 million — slightly less than the earlier reported $174 million — to help make a large payment due Jan. 1 to investors who hold Puerto Rico's general obligation bonds. That type of bond is given the highest payment priority by the Puerto Rican constitution. Mr. García Padilla diverted the money by issuing an executive order on Nov. 30, starting what is called a "clawback" of funds from lower-priority bondholders.

Assured Guaranty and Ambac said in their complaint that the clawback was unconstitutional, because it "substantially and unjustifiably" impaired their contract rights under the United States Constitution. They also said they had constitutionally protected property interests in the money, because they held liens on the pledged funds.

They acknowledged that their liens were subject to being paid after the general obligation bonds, but said the use of the clawback was still unlawful under the circumstances, "namely, where other available resources exist from which the public debt could be paid."

For months, Puerto Rico has been operating on a triage basis, diverting cash away from certain programs and services and using it to pay the bills deemed most urgent. The government came under criticism in December, for example, for using $120 million of public money to pay Christmas bonuses to public workers and retirees. The governor said he was required by law to pay the bonuses.

The two insurers asked the court to declare the clawback unconstitutional and bar the Puerto Rican government from diverting any more pledged money. Their suit was filed in United States District Court in San Juan.

The three public authorities whose bonds have been affected by the clawback are the Highways and Transportation Authority, the Convention Center District Authority and the Infrastructure Financing Authority. Although the holders of those bonds received some of the principal and interest payments due Jan. 1, those payments were made from prepaid reserves, which is considered a technical default.

The Infrastructure Financing Authority did not have the prepaid reserves in place to make the payment, and Ambac stepped in and provided $10.3 million.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

JAN. 8, 2016

MSRB Requests Comment on Modernizing Close-Out Procedures.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a proposal to update its requirements for procedures for municipal securities dealers related to the close-out of open inter-dealer transactions. Proposed amendments to MSRB Rule G-12 would require that open transactions be closed out no later than 30 calendar days after settlement date, and make other changes designed to accelerate the close-out process.

“Evolutions in the municipal securities market have modernized the manner in which inter-dealer transactions are cleared and settled,” said MSRB Executive Director Lynnette Kelly. “More timely resolution of open transactions would give investors greater certainty in their purchases, and would benefit dealers by reducing the risk and costs associated with failed inter-dealer trades.”

The proposed rule change is the result of an ongoing effort to promote regulatory efficiency by revising, reorganizing or retiring MSRB rules based on an assessment of current market practices and input from regulated entities, other market stakeholders and fellow regulators. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Comments should be submitted no later than March 6, 2016.

Date: January 6, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
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- GFOA Financial Policies Examples.
- Where Have All the Muni-Bond Dealers Gone?
- S&P General Obligation Medians for Counties: Update as of Oct. 9, 2015.
- S&P General Obligation Medians for Municipalities: Update as of Oct. 9, 2015.
- Why Florida May Be the Next Big Source of PACE Bonds.
- Outlook: What’s Ahead for Tax Regulation, Enforcement in 2016.
- McGuire Woods: President Signs Extender Package for PTC and ITC – Renewable Energy Tax Credits.
- *Kaplan v. Saint Peter’s Healthcare System* – Court of Appeals holds that ERISA provision granting exemptions for churches and qualifying church agencies was unambiguous in requiring that a church, rather than a qualifying church agency, establish a church exempt plan.
- *In re City of Stockton, California* – In challenge brought by unsecured creditor, United States Bankruptcy Appellate Panel of the Ninth Circuit issues comprehensive ruling affirming the City of Stockton’s Chapter 9 Confirmation Order.
- And finally, as a matter of first impression, the Supreme Court of Florida held this week that the act of tattooing is artistic expression protected by the First Amendment. Although not widely

known, James Madison did indeed have “Fed Life” tattooed across his torso.

BANKRUPTCY - CALIFORNIA

In re City of Stockton, California

United States Bankruptcy Appellate Panel of the Ninth Circuit - December 11, 2015 - B.R. - 2015 WL 8793569

Capital market creditor objected to city’s failure to provide for modification of its pensions in its proposed Chapter 9 plan, and the California Public Employees’ Retirement System (CalPERS), the administrator of pensions, responded by asserting that pension benefits were not subject to being modified. Creditor also objected to plan’s good faith and to classification of its unsecured claim.

The United States Bankruptcy Court for the Eastern District of California confirmed the plan. Creditor appealed. City filed motion to dismiss the appeal as equitably moot.

The Bankruptcy Appellate Panel held that:

- City did not waive argument that creditor’s appeal from confirmation order was equitably moot by raising it through motion to dismiss the appeal rather than in its answering brief;
- Creditor’s appeal of bankruptcy court’s order confirming city’s Chapter 9 plan generally was equitably moot;
- To the extent creditor sought through its appeal only a greater payment on its unsecured claim, an effective remedy was theoretically possible, and thus, that claim was not equitably moot;
- Bankruptcy court did not clearly err in finding that city’s Chapter 9 plan was proposed in good faith;
- Bankruptcy court did not clearly err in finding that separate classification of capital markets/bond creditor claims was appropriate;
- Bankruptcy court did not clearly err in finding that city’s Chapter 9 plan properly included capital market creditor’s unsecured claim and other unsecured claims in same class;
- Bankruptcy court did not clearly err in finding that city’s Chapter 9 plan satisfied the “best interests of creditors” test; and
- Bankruptcy court did not err in not discounting retiree health benefit claims in class of general unsecured claims to present value.

Debtor city did not waive argument that creditor’s appeal from confirmation order in Chapter 9 case was equitably moot by raising it through motion to dismiss the appeal rather than in its answering brief. Creditor was not prejudiced or harmed by city’s raising the equitable mootness issue in the motion to dismiss.

Capital market creditor’s appeal of bankruptcy court’s order confirming city’s Chapter 9 plan generally was equitably moot. Creditor attempted to obtain a stay of the confirmation order pending appeal, but the stay motion was denied and the plan had been substantially consummated, and to reverse the confirmation order at this point would have a potentially devastating impact on creditor constituencies whose settlements with the city were incorporated in the plan and who were not appearing before the reviewing court, and reversing the confirmation order would knock “the props out from under the” plan and would leave the bankruptcy court with an unmanageable situation on remand.

To the extent capital market creditor sought through its appeal of bankruptcy court’s order confirming city’s Chapter 9 plan only a greater payment on its unsecured claim, an effective remedy

was theoretically possible, and thus, that claim was not equitably moot.

Bankruptcy court did not clearly err in finding that city's Chapter 9 plan was proposed in good faith. The plan was the product of extended negotiations over a period of years pre- and post-petition resulting in multiple collective bargaining agreements and settlements with creditor constituencies, and while capital market creditor asserted that city gerrymandered class of general unsecured class to minimize creditor's vote against confirmation of the plan, treatment of its claim was the same as the treatment of the claims of all other creditors in class.

Bankruptcy court did not clearly err in finding that separate classification of capital markets/bond creditor claims was appropriate in city's Chapter 9 case. Through a combination of different disposition arrangements for their collateral and different payment terms for the secured and unsecured portions of the city's debts to each bond creditor, including different percentage recoveries, separate classification of the bond creditor claims made legitimate business and economic sense.

Bankruptcy court did not clearly err in finding that city's Chapter 9 plan properly included capital market creditor's unsecured claim and other unsecured claims, including retiree health benefit claimants, in same class. Within the class, all creditors received the same percentage payout on their allowed unsecured claims.

Bankruptcy court did not clearly err in finding that city's Chapter 9 plan satisfied the "best interests of creditors" test. Although capital market creditor asserted it received an approximate 1% distribution on its unsecured claim and other creditors received higher percentages on their claims, creditor's argument ignored the 100% payout it received on its allowed secured claim on the effective date of the plan and the approximately $2 million distribution it was entitled to receive from the reserve fund held by its bond indenture trustee, and creditor received the same payment treatment on its unsecured claim afforded to all of the other general unsecured claimants in the class.

Bankruptcy court did not err in not discounting retiree health benefit claims in class of general unsecured claims to present value in city's Chapter 9 case. Bankruptcy Code provision governing allowance of claims did not require the court to discount the claims to present value.

ATTORNEYS' FEES - CALIFORNIA

Kerkeles v. City of San Jose

Court of Appeal, Sixth District, California - December 18, 2015 - Cal.Rptr.3d - 2015 WL 9253865

After dismissal of criminal charges, former suspect brought action against city and police officer for violation of his civil rights under § 1983 and the Civil Code, abuse of process, malicious prosecution, false imprisonment, intentional and negligent infliction of emotional distress, negligence, and, against the city, negligent hiring, retention, training, supervision, and discipline.

The parties settled but reserved the issue of attorney fees. The Superior Court awarded suspect 20 percent of the attorney fees he requested under § 1988. Suspect appealed.

The Court of Appeal held that trial court's cursory explanation was insufficient to support 50 percent reduction in number of hours in suspect's attorney fee request.

Absent some clear ground for an exception, and regardless of whether the case was taken on a contingency basis, fees in a § 1983 case should be determined under the “lodestar” method, which requires the court to (1) determine the number of hours reasonably expended in obtaining the result, (2) determine a reasonable hourly rate, (3) multiply the first figure by the second figure, and (4) adjust the result to reflect other pertinent factors.

In making the attorney fee award under § 1988, the district court must strike a balance between granting sufficient fees to attract qualified counsel to civil rights cases and avoiding a windfall to counsel, and the way to do so is to compensate counsel at the prevailing rate in the community for similar work; no more, no less.

There is a strong presumption that the lodestar figure is reasonable for an attorney fee award under § 1988, and the presumption may be overcome only in certain rare and exceptional cases, supported by both specific evidence on the record and detailed findings by the lower courts.

In making an adjustment to the lodestar figure for an attorney fee award under section 1988, the court must employ a methodology that permits meaningful appellate review rather than fashioning the award on an impressionistic basis.

A downward adjustment to the lodestar figure for an attorney fee award under § 1988 may reflect inadequate documentation of the hours worked, hours that were not reasonably expended, or an amount expended for unsuccessful claims.

When a voluminous fee application is made under § 1988, the court may make across-the-board percentage cuts either in the number of hours claimed or in the final lodestar figure, but such percentage cuts to large fee requests are subject to heightened scrutiny and the use of percentages, in any case, neither discharges the district court from its responsibility to set forth a “concise but clear” explanation of its reasons for choosing a given percentage reduction nor from its duty to independently review the applicant’s fee request.

Where the difference between the number of hours requested in a lawyer’s § 1988 lodestar attorney fee application and the court’s award is greater than 10 percent, the court must explain why it chose to cut the number of hours or the lodestar by the specific percentage it did.

After city settled former suspect’s civil rights lawsuit arising from police officer’s use of fabricated evidence in preliminary hearing, trial court’s cursory explanation that the number of hours billed on a contingent basis in suspect’s § 1988 lodestar attorney fee request was “far more time than a reasonable attorney could ever bill a paying client for” was insufficient to support the trial court’s 50 percent reduction in the number of hours allowed, which was part of an overall reduction of the fee request by more than 80 percent, absent any explanation of how the trial court believed the hours were padded, of how the attorneys would have done the same work in less time for a paying client, or of how a paying client would not have accepted the same degree of effort on the case.

BALLOT INITIATIVE - FLORIDA

In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Debilitating Medical Conditions

Supreme Court of Florida - December 17, 2015 - So.3d - 2015 WL 9258263

Attorney General petitioned for an opinion as to the validity of initiative petition allowing medical

use of marijuana for individuals with debilitating medical conditions.

The Supreme Court of Florida held that:

- Petition met the single-subject requirement;
- Ballot title and summary met the statutory clarity requirements; and
- Financial impact statement complied with the word limit and met the other statutory requirements.

Initiative petition allowing medical use of marijuana for individuals with debilitating medical conditions met the single-subject requirement. Initiative's logical and natural purpose was to include a provision in the state constitution permitting the medical use of marijuana, provisions regarding Department of Health's role and removing state-imposed penalties and liability from those involved in the authorized use of medical marijuana were directly connected with the amendment's purpose, and proposed amendment did not substantially alter or perform the functions of multiple branches of government.

Ballot title and summary for initiative petition allowing medical use of marijuana for individuals with debilitating medical conditions met the statutory clarity requirements and accurately represented the proposed amendment on the ballot, where the title and summary complied with the statutory word limitations and fairly informed voters of the purpose of the amendment, and language was clear and did not mislead voters regarding the actual content of the proposed amendment.

Financial impact statement for initiative petition allowing medical use of marijuana for individuals with debilitating medical conditions complied with the word limit and met the other statutory requirements. It clearly and unambiguously stated that there would likely be increased costs associated with the additional regulatory and enforcement activities that the proposal would require, but that the amount could not be determined, and fees could offset a portion of the increased costs.

MUNICIPAL ORDINANCE - FLORIDA

Buehrle v. City of Key West

United States Court of Appeals, Eleventh Circuit - December 29, 2015 - F.3d - 2015 WL 9487716

Applicant for license to open tattoo establishment brought action in state court against city, alleging its prohibition of tattoo establishments in historic district violated First Amendment. City removed action to federal court. The United States District Court for the Southern District of Florida granted city's motion for summary judgment. Applicant appealed.

The Court of Appeals held that:

- As a matter of first impression, act of tattooing is artistic expression protected by First Amendment, and
- City failed to meet its burden of demonstrating that ban served its alleged significant governmental interest of protecting historic district from deterioration.

City failed to meet its burden of demonstrating that its ban on tattoo establishments in historic district served its alleged significant governmental interest of protecting historic district from deterioration, and thus ordinance was not narrowly tailored to serve a significant governmental interest, as required to survive scrutiny under First Amendment, where statements by city's director of planning that tattoo establishments would impact the character and fabric of historic district and

impact tourism were made after enactment of ordinance, director's statements were unsubstantiated by records regarding tattoo establishments prior to blanket ban in historic district, city did not rely on any studies regarding tattoo establishments in enacting ban, and city conceded absence of any ill effect from two tattoo establishments that were currently permitted in historic district.

PUBLIC EASEMENTS - MAINE

Edwards v. Blackman

Supreme Judicial Court of Maine - December 31, 2015 - A.3d - 2015 WL 9589588 - 2015 ME 165

Servient tenement owners brought declaratory judgment action against dominant tenement owners and town, challenging validity of dedication of public easement over way and cul-de-sac, or that an easement had been created over the servient estate benefiting the dominant estate, and the dominant tenement owners counterclaimed, asserting rights to the way and beach located on the servient estate by virtue of prescriptive and deeded easements and common law rights to the intertidal zone.

Following a bench trial, the Superior Court entered judgment in favor of town and dominant tenement owners, and servient tenement owners appealed.

The Supreme Judicial Court of Maine held that:

- The 30 day period for servient tenement owners to challenge town's acceptance of a dedication of a public easement over way and cul-de-sac began to run on the date town residents accepted by vote the public easement;
- Competent evidence existed to support a finding that way and cul-de-sac located on servient tenement owners' property were to be included in dedication that created a public easement;
- Deed that explicitly granted beach rights created an express easement appurtenant to the lots conveyed by the grantor to the grantee;
- Grantee's beach easement passed through subsequent transfers of grantee's estate as an appurtenance thereof, survived the division of the grantee's estate, and continued to benefit the current owners of the dominant estate; and
- Evidence was sufficient to support a finding that beach located on servient estate was to be included in express easement that benefited dominant estate owners.

ANNEXATION - MICHIGAN

Teridee LLC v. Charter Tp. of Haring

Court of Appeals of Michigan - December 8, 2015 - Not Reported in N.W.2d - 2015 WL 8286094

This case involves 1984 PA 425, MCL 124.21 et seq. (Act 425), which enables two local units of government – in this case Charter Township of Haring and Township of Clam Lake – to conditionally transfer property by written agreement for the purpose of economic development projects.

Plaintiff LLCs owns approximately 140 acres of vacant land in Clam Lake Township, which they intend to develop into a mixed-use development. In June 2011, plaintiffs sought to annex their property to the city of Cadillac to gain access to the city's water and sewer services, which are

located within one-quarter mile from the property. According to plaintiffs, the Townships did not have the infrastructure or was unable to provide the property with public water and sewer services in a timely manner. The Townships opposed the annexation.

The Townships entered into an Act 425 agreement on June 5, 2013 to conditionally transfer property – including all of plaintiffs' property – from Clam Lake to Haring. This was of significance to plaintiffs because while an Act 425 agreement is in effect, annexation cannot occur.

Plaintiffs alleged that although the Act 425 agreement proposed a mixed-use development, the development restrictions and regulations in the agreement to be implemented by Haring were so strict that they effectively restricted any reasonable commercial development. Plaintiffs also alleged that the agreement was simply an attempt to prevent plaintiffs' property from being annexed to Cadillac.

The trial court determined that the agreement divested Haring of its legislative zoning authority, which made the contract void. It also determined that the unlawful provisions were central to the agreement and could not be severed. Townships appealed and the Court of Appeals affirmed.

SPECIAL ASSESSMENTS - MINNESOTA

Pavek v. City of Prior Lake

Court of Appeals of Minnesota - December 14, 2015 - Not Reported in N.W.2d - 2015 WL 8548972

In May 2013, Prior Lake adopted special assessments against property owners to help fund the Welcome Avenue project to improve Welcome Avenue by widening and paving the road, providing municipal water and sewer services to properties in the area, and alleviating flooding in Markley Lake by building a pond to collect run-off from surrounding properties.

Property owner Archie J. Pavek received assessments for street improvements and the stormwater pond that totaled $76,479. Pavek appealed Prior Lake's assessment. During a bench trial, the district court heard testimony from two appraisers, Cal Haasken and Paul Gleason.

Haasken completed an appraisal for Pavek and concluded that "general industrial" is the highest and best use of Pavek's property. Haasken also stated that it is not economically viable to subdivide Pavek's property. Haasken utilized an income approach, a market-data approach, and a replacement-cost approach to determine the market value of Pavek's property. Haasken considered both the land and the improvements on Pavek's property. Haasken concluded that the Welcome Avenue project did not increase the value of Pavek's property.

Gleason completed an appraisal for Prior Lake and concluded that "light industrial" is the highest and best use of Pavek's property. Gleason concluded that the Welcome Avenue project did not affect the value of the improvements on Pavek's property. He stated that only Pavek's land benefited from the Welcome Avenue project. Gleason used a direct-sales-comparison approach to estimate the value of Pavek's land before and after the Welcome Avenue project. Gleason concluded that the Welcome Avenue project increased the market value of Pavek's property by $103,000.

At the conclusion of the bench trial, the district court ordered the assessment against Pavek's property to be set aside. The district court found Haasken's appraisal persuasive because he determined the market value of the land and buildings, not the land only. The district court, however, determined that 1.5 acres on the eastern border of Pavek's property could benefit from the

Welcome Avenue project if developed. The district court ordered Prior Lake to reassess Pavek's property in an amount not to exceed $24,829. Prior Lake appealed.

The Court of Appeal affirmed. "Haasken's opinion conflicted with Gleason's opinion, and the district court found Haasken's appraisal more persuasive. The weight and credibility given to each appraiser's opinion, however, was an issue for the district court to determine. Further, whether the market value of Pavek's property increased is a question of fact that will not be set aside unless it is clearly erroneous. Thus, the district court did not err by finding Haasken's appraisal more persuasive."

ZONING - TEXAS

City of Anahuac v. Morris

Court of Appeals of Texas, Houston (14th Dist.) - December 17, 2015 - S.W.3d - 2015 WL 9249830

Owner of manufactured home brought declaratory judgment action against city, alleging city ordinance that regulated placement of manufactured homes was preempted. The District Court rendered a declaratory judgment in favor of owner, and city appealed.

The Court of Appeals held that:

- Owner of manufactured home had standing to bring declaratory judgment action against city;
- District Court had subject matter jurisdiction to render a non-advisory judgment that was binding on city and owner of manufactured home;
- City ordinance that prohibited the installation of all manufactured homes that failed to meet certain construction standards was preempted as to plaintiff owner's manufactured home; and
- Declaratory judgment, in which the District Court declared that the language "zone 3 or better specifications" in city ordinance was invalid, illegal, and unconstitutional, was overbroad.

Owner of manufactured home had standing to bring declaratory judgment action against city, challenging city ordinance, after city denied owner's permit application; city's refusal to issue permit resulted in a particular injury to owner, who could not complete the installation of his manufactured home.

Trial court had subject matter jurisdiction to render a non-advisory judgment that was binding on city and owner of manufactured home, after city refused to issue owner permit to allow him to complete installation of home. City's enforcement of ordinance created a justiciable controversy, and owner's suit sought to resolve that controversy by asking whether or not the ordinance in question was enforceable.

Ordinance that prohibited the installation of all manufactured homes that failed to meet certain construction standards was preempted as to plaintiff owner's manufactured home by statute that provided that manufactured homes of a certain age could be installed in county without regard to city's construction standard. Even if city's ordinance was adopted to protect the aesthetics and property values of the community, city's use of its police power could not supplant or take supremacy over a contrary act of the state legislature.

Declaratory judgment, in which the court declared that the language "zone 3 or better specifications" in city ordinance was invalid, illegal, and unconstitutional, was overbroad, because it did not distinguish between homes covered by the grandfather clause in statute governing wind zone

regulations, and those that were not; manufactured home owner brought his declaratory judgment action challenging city ordinance on the basis he owned an older model home, and did not argue that his home was built according to wind zone II standards, which would have implicated a different provision of the statute.

PENSIONS - FEDERAL

Kaplan v. Saint Peter's Healthcare System

United States Court of Appeals, Third Circuit - December 29, 2015 - F.3d - 2015 WL 9487719

Participant in Employee Retirement Income Security Act (ERISA) plan brought putative class claim against employer, a religiously affiliated hospital, alleging that, as a mere qualifying agency of a church, hospital was precluded from establishing a church plan entitled to certain exemptions under ERISA.

The District Court denied employer's motion to dismiss. Employer appealed.

The Court of Appeals held that:

- Relevant ERISA provision was unambiguous in requiring a church to establish a church exempt plan;
- Legislative history indicated that agencies were precluded from establishing church exempt plans; and
- Provision did not violate Free Exercise Clause.

ERISA provision granting exemptions for churches and qualifying church agencies was unambiguous in requiring that a church, rather than a qualifying church agency, establish such a church exempt plan. Statute was clear in defining a church exempt plan as one "established and maintained" by a church for its employees, ignoring "established" language would render it superfluous by removing a careful limitation, language permitting a qualifying agency to establish a plan was expressly omitted, and court would construe exemption narrowly in favor of plan participants.

Even assuming ERISA provision permitting churches to create benefit plans exempt from certain requirements was ambiguous as to whether qualifying church agencies could also establish such plans, legislative history demonstrated that qualifying agencies were not permitted to create such exempt plans. History did not demonstrate that Congress was concerned about the ability of agencies to establish exempt plans, rather it demonstrated that Congress did not intend to open up the exemption broadly.

Informal determination of Internal Revenue Service (IRS) in general counsel memorandum that qualifying church agencies could establish and maintain church exempt plans under ERISA was contrary to plain language of ERISA provision that only permitted churches to establish such plans, and thus was not entitled to deference.

Congress did not ratify Internal Revenue Service (IRS) interpretation of ERISA provision permitting qualifying church agencies to establish church exempt plans. IRS interpretation was contrary to plain language of statute, and there was no indication that Congress had detailed knowledge of provision and its interpretation.

ERISA provision permitting only churches to establish church exempt plans did not violate Free

Exercise Clause of First Amendment. Requirement that such plans be established by churches rather than their qualifying agencies did not prohibit church agencies from having their employees covered by a church exempt plan.

Muni Market Still 'Constructive' Despite A More Hawkish Fed: MMA

Short-term Treasuries hit a new five-year high earlier today, but Municipal Market Analytics' Matt Fabian and Lisa Washburn turn their attention to municipal bonds Monday, writing that despite the Federal Reserve's rate hike, the muni market still looks constructive.

They write that it's "hard to expect much dynamism in the next few days" in this short holiday trading week. Aside from lower volumes they write that bond levels and valuations are "rich across the curve" with tight spreads that are not likely to entice buyers to jump in at the moment, nor is the steady influx of fresh capital to municipal mutual funds helping.

In this environment, Fabian and Washburn write that it's no surprise that both fixed and floating tax-exempt yields have outperformed their peers, a situation they expect to continue near-term, especially as the U.S. Treasury curve flattening may be losing steam. "This is more a signal for unchanged taxable term spreads than a shift to bear steepening.

However, they note that at some point in the future, this outperformance for munis will being to limit additional relative value gains, as well as tie their prices even more directly to Treasuries.

Their advice:

> Municipal bond valuations are indicating that bonds are somewhat to largely over- bought at the 5yr mark and longer. Buyers who need to spend cash before year end should strongly consider the front of the curve where ambivalence over future rate hikes should work to their advantage. Sellers can be less choosy as current spreads reward taking gains.

Barron's

By Teresa Rivas

December 28, 2015, 2:58 P.M. ET

Not-for-Profit Hospital Borrowing Rebounds in 2015.

Hospitals borrowed 50% more from long-term investors this year than in 2014, as potential savings from refinancing drew not-for-profit hospitals into the market, new data show.

Hospitals sold investors $18 billion in fixed-rate municipal bonds this year, according to healthcare financial advisers HFA Partners. That's compared with 2014, when hospitals borrowed $12 billion.

Rates were also low in 2014, but hospitals had additional incentives to capitalize on cheap debt this year—including the much-anticipated action by the Federal Reserve to raise interest rates. The nation's central bank announced earlier this month it would finally raise rates from zero after years of halting economic recovery from the Great Recession. In fact, more rate hikes are expected.

Interest rates were also further depressed this year by the small number of hospitals looking to borrow in 2014. Hospital debt entering the market dropped to a 10-year low in 2014. Investors had fewer hospital bonds to buy, which held down the interest rates that hospitals had to pay.

Rates were so low entering 2015 that some hospitals sought to refinance bonds, despite terms that prohibit them from doing so for a few more years.

Hospitals often agree not to refinance, or call, bonds for a few years after borrowing money. Borrowers can get around that agreement with "advance refunding," but that can be costly.

Still, some hospitals found they could save money regardless of advance refunding costs this year. "If rates are low enough, it works," said Pierre Bogacz, managing director at HFA Partners.

Not all hospitals benefit equally from low rates. Borrowers with higher interest rates on existing debt stand to gain the most, Bogacz said. Advanced refunding is often most attractive to hospitals that are close to the date—one or two years—when their bonds can be refinanced.

Reid Health in Richmond, Ind., will save $1 million a year on interest after refinancing $92 million in February, said Christopher Knight, vice president and chief financial officer for the central Indiana hospital.

In 2005, Reid Health went to municipal bond markets to finance construction of a replacement hospital, which opened three years later. The financial crisis that erupted that year forced Reid Health and other not-for-profits into costly refinancing deals. Reid ended up with an average coupon rate of 6.5% and agreed not to refinance the bonds again until 2019.

Now, newly issued 30-year bonds will save the hospital money even after the $25 million cost of an advanced refunding. "I think everybody was surprised," by the amount, Knight said. Reid rushed to enter the market in February to refinance before the Federal Reserve boosted borrowing costs. "That's why we got in as early as possible," Knight said.

Hospital leaders have also sought to capitalize on the large supply of investors and the small number of borrowers in the industry. Hospitals have borrowed less in recent years, despite low rates, as they scale back on construction and invest in more information technology. Demand for Reid Health's bonds was so high that not all investors could buy bonds.

Refinancing surged in the first months of the year when Reid Health entered the market, accounting for three-quarters of the $5.8 billion in first-quarter bonds issued by hospitals, an HFA Partners analysis shows. That's compared with 20% of the $1.4 billion hospitals borrowed in 2014.

Interest rates are more favorable now than in 2009, when "the market was anything but normal," Bogacz said. Hospitals also save from an advance refunding with debt that must be paid back more quickly, or when hospitals' credit rating has improved, both of which typically lower interest rates, he said.

Modern Healthcare

By Melanie Evans | December 28, 2015

Melanie Evans writes about healthcare finance, hospital management and governance issues. She has been part of the Modern Healthcare staff since 2004. Earlier in her career she covered healthcare and not-for-profits as a reporter at the Duluth (Minn.) News Tribune. She received a bachelor's degree in international relations from Boston University and a bachelor's in journalism

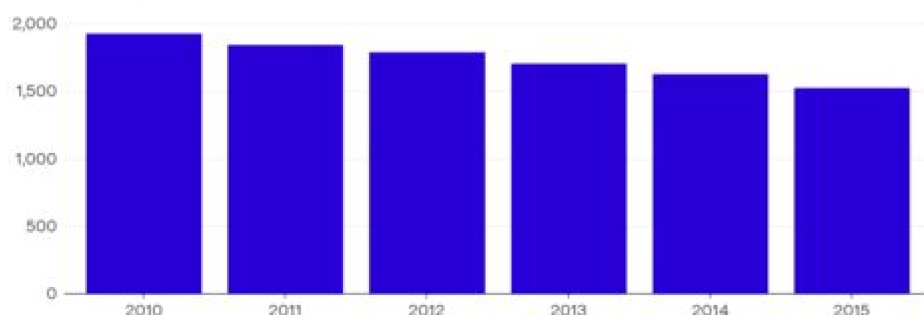
from the University of Minnesota.

Where Have All the Muni-Bond Dealers Gone?

The number of municipal-bond dealers declined in 2015 as shrinking underwriting fees, record-low trading and growing regulatory costs led firms to abandon the $3.7 trillion market or merge with larger competitors.
Guggenheim Securities closed its local-government bond business last month after profits shrank. In October, Bank of Montreal sold its division to Piper Jaffray Cos. And in June, Birmingham, Alabama-based Sterne Agee Group Inc. was purchased by Stifel Financial Corp., which acquired local rival Merchant Capital about five months earlier.

“All businesses are becoming more scaled because of regulatory and compliance” costs, Ronald Kruszewski, the chief executive officer of St. Louis-based Stifel, said in a telephone interview. “It’s difficult to be a niche player in any business in financial services today.”

The pressures have steadily thinned the ranks of firms that sell municipal bonds, with more than one out of every five merging or closing over the last five years. Underwriting fees slipped in 2015 to the lowest level in seven years, spurred by competition that’s likely to keep driving the industry’s consolidation.

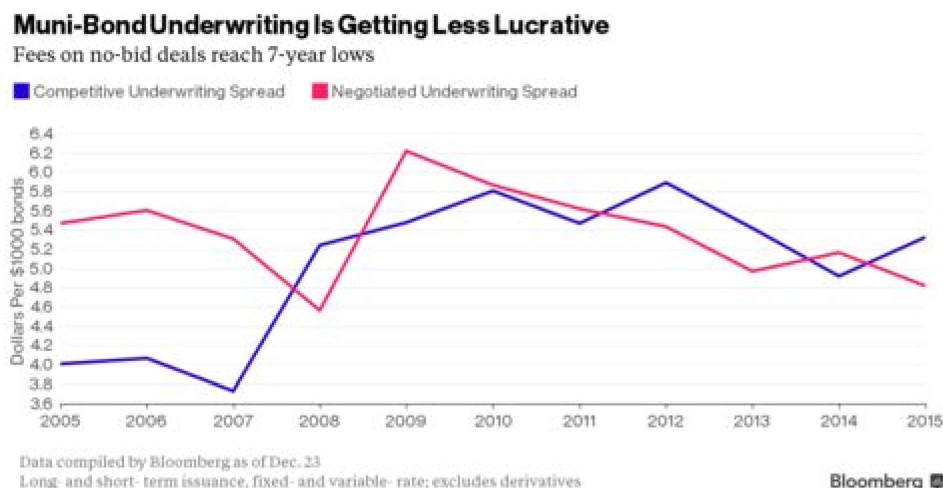


The contraction mirrors the cost-cutting that’s happening more broadly in the financial industry, where banks including Barclays Plc, Nomura Holdings Inc. and Bank of America Corp. have been cutting jobs as trading become less profitable. Morgan Stanley is eliminating about 25 percent of its fixed-income staff.

About 1,520 state and local bond dealers were registered with the Municipal Securities Rulemaking Board last month, down 6 percent from October 2014. Regional firms are buying competitors to expand their reach and snatch more business away from Wall Street’s biggest banks.

“It’s harder and harder for smaller and middle-market firms to be profitable,” said Mike Nicholas, CEO of the Bond Dealers of America, a Washington-based trade group. “You’re going to continue to see mainly small regional firms looking for partners either in a merger or pure acquisition.”

While sales of municipal debt rose 16 percent to $420 billion this year, the fees banks earned for underwriting declined. Fees on negotiated deals, which comprise three-quarters of the market, fell to $4.80 per $1,000 of bonds, the lowest since 2008. In a negotiated sale, a municipality selects a bank in advance rather than offering bonds to the lowest bidder in an auction.



Low interest rates are one reason for the heightened competition. With yields holding near a five-decade low, trading has dried up because the buy-and-hold investors who dominate the tax-exempt market have been unwilling to part with securities that provide higher income. Trading volume fell during the third quarter to the lowest level since records began in 2005, according to the MSRB, the market's self-regulator.

As a result, firms that want to offer the bonds to customers have been competing for underwriting business to get them, said Matt Fabian, a managing director at Concord, Massachusetts-based Municipal Market Analytics.

"With so little trading, in order to be able to deliver bonds to your investors you need to underwrite them," Fabian said. "That only has increased competition."

Crisis Legacy

The legacy of the 2008 credit crisis is also having an impact. Since then, states and cities have eschewed the once-lucrative financings that paired floating-rate bonds and interest-rate swaps, which hit governments with unexpected costs after markets seized up. In part because of that crisis, firms have been dealing with new regulations that have increased expenses or threaten to make the businesses less profitable.

Rules placed on financial advisers have limited the ability of underwriters to pitch transactions to state and local governments. The U.S. Securities and Exchange Commission has been cracking down on banks that fail to police whether their government clients are making adequate financial disclosures after bonds are sold. And pending or newly adopted rules will require dealers to disclose trading markups and take steps to ensure that clients receive the most favorable available prices for their securities.

"There's something new being pumped out every week by the SEC or the MSRB," said Nicholas. He said one of his member firms reported that its legal and accounting costs have more than doubled since 2008.

Bigger Seen Better

That's given an advantage to larger dealers that have more ability to bear the expense, helping to hasten consolidation by companies such as Stifel. In addition to buying Sterne Agee and Merchant, Stifel expanded in California last year by acquiring De La Rosa & Co., the biggest independent California-based investment bank that focused on municipal debt. In 2011, it purchased the San Francisco-based underwriter Stone & Youngberg.

The acquisitions vaulted Stifel to eighth-biggest municipal underwriter in 2015, according to data compiled by Bloomberg. Five years ago, it ranked 14th.

Minneapolis-based Piper bought Bank of Montreal's municipal division to boost its sales, trading and Illinois business. That follows its purchase two years ago of Seattle-Northwest Securities Corp. Piper ranked 10th in U.S. municipal bond underwriting this year, up from 11th in 2014, according to data compiled by Bloomberg.

"We're in a strong position because our public-finance business is so well diversified, by geography, industry sector and client type," said Piper CEO Andrew Duff in a telephone interview.

Bloomberg Business

by Martin Z Braun

December 29, 2015 — 9:01 PM PST Updated on December 30, 2015 — 4:39 AM PST

Ambac Shares Fall as Puerto Rico Moves to Default on Some Bonds.

Shares of bond insurer Ambac Financial Group Inc. fall as much as 4.2 percent after Puerto Rico Governor Alejandro Garcia Padilla said the commonwealth would default on some bonds insured by a company subsidiary.

Puerto Rico won't make a $35.9 million payment due Jan. 1 on debt issued by the Puerto Rico Infrastructure Financing Authority and backed by federal excise taxes on rum produced on the island and sold in the U.S.

The island also won't make a $1.4 million payment on Public Finance Corp. bonds. A $357 million payment of interest due on Puerto Rico's general-obligation debt will be paid.

Garcia Padilla has warned for weeks that if forced to choose between paying creditors and paying for essential services, he would choose to keep residents safe and healthy. The commonwealth's constitution states that general-obligation bonds must be repaid before other expenses.

Ambac and Financial Guaranty Insurance Co. wrote to Padilla on Tuesday demanding that as much as $94 million of rum-tax revenue already diverted from rum-tax bond be returned and plans for future claw-backs abandoned.

They said that the plan to divert rum-tax revenue pledged to $1.9 billion of bonds issued by PRIFA violated the commonwealth's constitution as well as the takings, contracts and due process clauses of the U.S. Constitution.

The "pattern of activity is unacceptable," Nader Tavakoli, executive chairman of Ambac Assurance,

and Derek Donnelly, a senior managing director at FGIC, said in the letter released Tuesday. The companies haven't filed a legal action.

Ambac didn't immediately respond to an e-mailed request for comment. FGIC spokesman Timothy Tattam declined to comment on Padilla's decision to default on the PRIFA bonds.

Shares of Ambac have declined 41 percent. This year. The stock fell 49 cents to $14.48 at 1:35 p.m. in New York.

Bloomberg Business

by Martin Z Braun

December 30, 2015 — 11:12 AM PST

Puerto Rico to Default on $37 Million of Payments Due Jan. 1.

Puerto Rico will default on about $37 million in bond payments due Jan. 1 and divert revenue to make others, escalating a conflict with investors as Governor Alejandro Garcia Padilla seeks to restructure a $70 billion debt burden.

The amount is a fraction of the almost $1 billion in interest due at the start of the year. The island will miss payments on $35.9 million of non-commonwealth guaranteed Puerto Rico Infrastructure Financing Authority debt and $1.4 million of Public Finance Corp. bonds. The money is being used to help pay investors who are owned $328.7 million of interest on general-obligation debt.

Garcia Padilla has warned for weeks that if forced to choose between paying creditors and paying for essential services, he would favor his people. A skipped general-obligation payment would have marked a turning point in Puerto Rico's debt crisis because the securities are considered to have the strongest legal protections among the island's different issuers. The commonwealth's constitution states that general-obligation bonds must be repaid before other expenses.

"My government has the responsibility to protect, as much as possible, Puerto Ricans from grave consequences," Garcia Padilla said in a press conference in San Juan. "In recent months we have put up a tough fight in Congress, looking for the tools we need. We all know that the creditors have spent a fortune lobbying against Puerto Ricans in Congress."

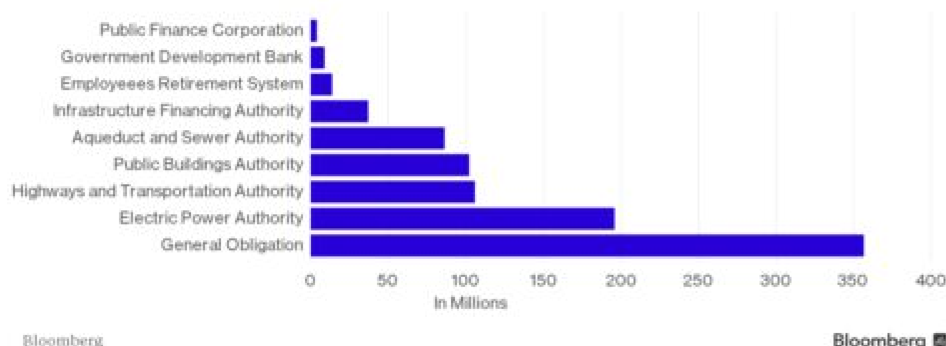
Revenue Clawback

Puerto Rico general-obligation bonds with an 8 percent coupon and maturing 2035 gained after the governor said the payments will be made. The debt traded at an average price of 73 cents on the dollar, up from 71.5 cents Tuesday, data compiled by Bloomberg show. The average yield was 11.5 percent.

"In reality, this is a remarkably mild default, given the commonwealth's repeated claims about its inability to pay debt," said Daniel Hanson, an analyst at Height Securities, a Washington-based broker dealer. "When a debtor repeatedly claims they have no cash but then pay more than $900 million in debt service, the credibility of the debtor must be called into question."

Garcia Padilla this month started redirecting revenue used to repay certain agency debt to the

central government's coffers. About half of funds to make the general-obligation bond payment — $164 million — is coming from the clawback. By keeping the commonwealth's pledge to those investors, he hopes to continue negotiating with bondholders as Congress works on a plan for the island, he said.



Agencies such as the Highways & Transportation Authority and the Convention Center District Authority had said they'll use reserves to help pay their investors on Jan. 1. Holders of bonds issued by the Government Development Bank, the Public Buildings Authority, the Employees Retirement System, the Industrial Development Company and the University of Puerto Rico will also receive payments due in January.

The Infrastructure Financing Authority, while defaulting on some debt, will make payments that are guaranteed by the commonwealth. Holders of sales-tax revenue debt will also receive their payments– and for the future. Puerto Rico doesn't have plans to clawback sales-tax collections because the government doesn't have control over that revenue, Melba Acosta, president of the GDB, said Wednesday during a call with reporters.

Holders of sales-tax bonds, known as Cofinas, will receive the February payments totaling $200 million, Acosta said. May will be the next time payments will be due on debt that is subject to the clawback — $400 million on GDB securities, she said.

Initial Default

Only one Puerto Rico entity has already skipped debt payments. The Public Finance Corp., which borrowed to help cover the government's budget deficits, in August failed to pay principal and interest because lawmakers didn't appropriate the funds. Its bonds due in 2031 trade for about six cents on the dollar.

Because they're backed by a weaker legal pledge than other securities, there have been few repercussions.

Garcia Padilla in late June said the commonwealth was unable to repay all of its obligations on time and in full. Puerto Rico's economy shrank 15 percent in the past decade after federal tax breaks for U.S. manufacturers ended in 2006, taking away incentives for pharmaceutical companies and other businesses to remain on the island. Residents also left to find work on the U.S. mainland, resulting in a 9.2 percent population drop since 2004, according to U.S. Census data.

Congressional Action

The default follows Garcia Padilla's failed attempt to persuade Congress in December to include a provision in a $1.1 trillion spending bill to allow commonwealth agencies to file for bankruptcy protection. House Speaker Paul Ryan directed committee heads to come up with a plan for Puerto Rico by the end of March.

Congressional Democrats on Dec. 21 filed bills that would shield Puerto Rico from any lawsuits until then.

The $3.7 trillion municipal-bond market has been anticipating a default on commonwealth debt because Puerto Rico securities have been trading at distressed levels for two years. Commonwealth debt has lost 8.1 percent this year through Dec. 29, compared with a 3.3 percent gain in the broader muni market, according to S&P Dow Jones Indices.

Bloomberg Business

by Michelle Kaske and Romy Varghese

December 30, 2015 — 10:00 AM PST Updated on December 30, 2015 — 1:14 PM PST

GFOA Secures Wins in End-of-Year Federal Legislation.

On December 18 Congress approved a $1.1 trillion fiscal 2016 omnibus spending package that includes several GFOA priority items – a two-year extension of the Cadillac Tax and a one-year extension of the Internet Tax Freedom Act.

The Cadillac Tax: The omnibus spending bill contains a two-year delay of the implementation of the Cadillac Tax. Thanks in part to an informational campaign conducted by GFOA with a broad coalition of public and private employers, retirement systems, and many other interested groups, repealing the Cadillac tax levied on high-cost employer-sponsored health coverage gained bipartisan and bicameral support throughout the last few months of 2015.

The Cadillac tax, designed originally to begin in 2018, has well over half of the members in both chambers opposing the tax as cosigners on legislation that would fully repeal the tax. On December 3rd, for example, an amendment to repeal the tax easily passed the Senate in a 90-10 vote earlier this month. This vote was merely symbolic, though, as the measure was tacked to the reconciliation bill which the White House vetoed.

While the White House does not support a two-year delay, the President has indicated he will not veto the omnibus legislation based on the postponement.

The Internet Tax Freedom Act: The fiscal 2016 omnibus spending bill extends the Internet Tax Freedom Act for just one year. This one-year extension is welcome in contrast to the alternative – a permanent extension of the ITFA, which GFOA strongly opposes.

Congressional champions of a permanent ITFA extension actually snuck the language of their bill (HR 235/S 431) into an unrelated measure (HR 644), which the House approved on December 11. However Senate leadership soon realized that they lacked the votes to pass the a measure with permanent ITFA language included in it, thanks to a swift and direct information campaign from the

GFOA, our state and local government association partners, and a coalition of Senators who support our position on ITFA. Our successful advocacy efforts stalled Senate consideration of HR 644 until February 2016. Ahead of the vote GFOA is asking our members to send letters to their Senators urging them to oppose HR 235/S 431 – the Internet Tax Freedom Forever Act and strip the language of this measure from the conference report on HR 644. A draft letter is available for your use here.

States' Pension Woes Split Democrats and Union Allies.

A $1 trillion U.S. pension gap is dividing two longtime allies: Democrats and unions.

Left-leaning politicians from Rhode Island to California are increasingly supporting more aggressive overhauls of government pension benefits despite opposition from labor officials, traditionally one of the Democratic Party's biggest policy and electoral supporters.

The erosion of Democratic backing for conventional retirement benefits prized by teachers, firefighters and police officers is a sign of how strained government budgets are as obligations for 24 million public workers and retirees continue to mount.

The latest clash is unfolding in Pennsylvania, where Democratic Gov. Tom Wolf has been seeking to end a six-month budget impasse with a Republican-controlled Legislature by agreeing to approve retirement cuts for new state hires and current workers. The Keystone State has $50 billion in unfunded pension obligations, one of the deepest retirement holes in the country.

"I know you're not going to be happy," Mr. Wolf told union leaders in private phone calls during recent weeks, those labor officials said. Union officials said the cuts aimed at current workers violate state laws.

A spokesman for Mr. Wolf said the governor understands that some people would be upset with the pension cuts, but his priority has been boosting education spending. "The governor absolutely wants to make sure state workers have a secure retirement, but this was a compromise budget and he's dealing with an overwhelmingly Republican-led Legislature," the spokesman said.

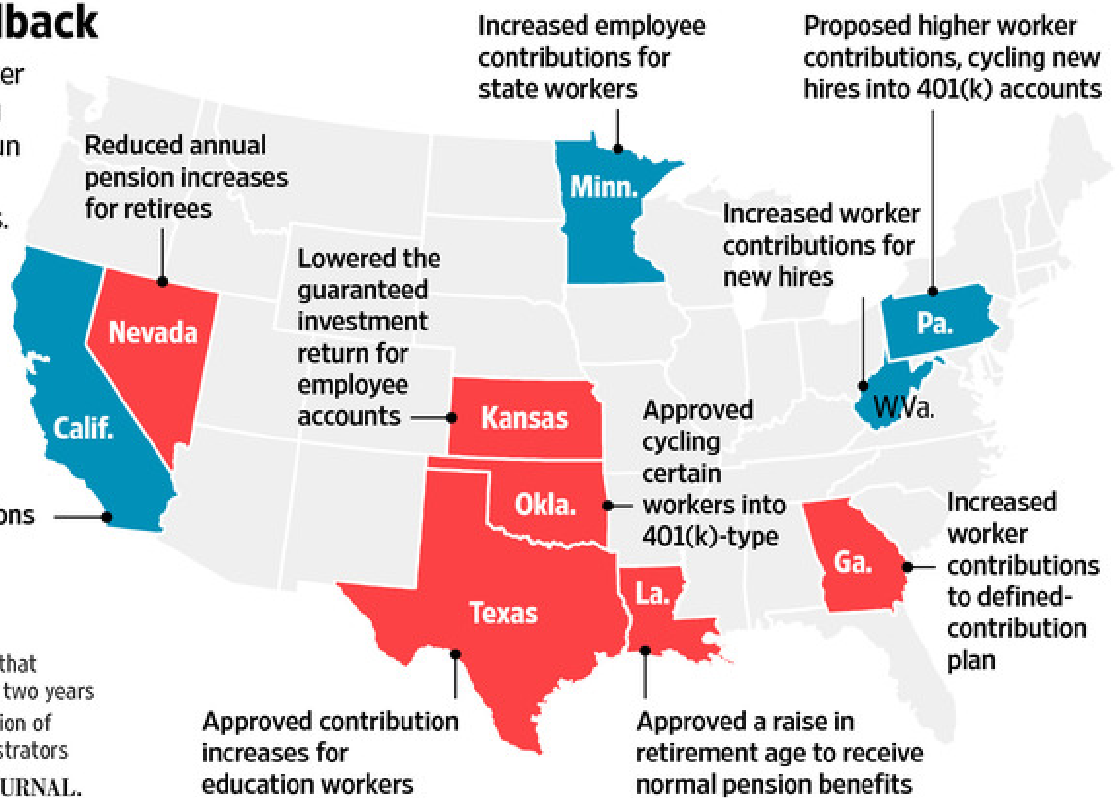
Since 2009, 25 out of 34 states that had Democratic governors in office have rolled back retirement benefits for public workers, a result that is proportionally in line with states run by Republicans, according to a Wall Street Journal analysis of National Association of State Retirement Administrators data. Most of those governors also have survived attempts by union interests to remove them from office. At present, 17 states have Democratic governors.

Pension-cutting Democrats can come off as the lesser of two evils for union officials, because they have curtailed some benefits in an effort to make retirement plans more sustainable. Republicans often pursue more drastic steps such as ditching traditional pensions altogether in favor of the 401(k)-like plans common in the private sector.

The amount states and local governments are paying each year to fund retirement systems has risen to 4% of annual spending, up from 2.3% in 2002, according to U.S. Census data. Meanwhile, large retirement systems now have just three-quarters of the assets they need to fund future obligations, according to consultant Milliman Inc., leaving a gap of $1 trillion.

Democrats rarely tried to roll back pensions before 2008, according to politicians and pension officials. But as deficits surged because of deep investment losses in the wake of the financial crisis

and chronic underfunding of retirement plans, Democrats said they had little choice but to revamp benefits, leading to conflicts with what has usually been a large and loyal bloc of voters.



In West Virginia, Democratic Gov. Earl Ray Tomblin this year backed pension cuts that raise mandatory worker contributions for new hires and block those workers from retiring as young as 55.

In California, Democratic Gov. Jerry Brown traded jabs with the state's largest retirement system when he said a proposal to lower investment targets was irresponsible because it didn't go far enough and would likely reduce the expected rate of return over a longer period, in effect papering over looming deficits. The California Public Employees' Retirement System said its approach was measured and balanced.

Public-sector unions have countered by filing lawsuits to block cuts, saying the pension plans have legal protections, and spending big to support alternate political candidates. Unions have prevailed in reversing pension cuts in several states, including Illinois, Oregon and Arizona.

"If it's a Democrat undermining our members, they'll feel the heat as much as if they were a Republican," said Steven Kreisberg, the national director of research and collective bargaining at the American Federation of State, County and Municipal Employees, or Afscme.

Pension overhauls are one of several issues straining relations between Democrats and unions. Some unions have battled Democrats who opposed the Keystone XL oil-pipeline project and others who back charter school expansion.

Mr. Wolf opposed cutting benefits earlier this year before breaking with his party and agreeing to numerous changes in a swap for more spending on education. Those changes include higher contributions for new hires and putting some of those workers' retirement savings into 401(k)-style accounts. Current workers would also have more limits imposed on how much their pensions can increase in their final years of service, according to the proposed law.

“Do I have members that say Gov. Wolf sold us down the road?” said David Fillman, executive director of Afscme Council 13, the Pennsylvania union representing state and municipal workers. “Sure, there are some.”

Pennsylvania’s pension problems date at least to the early part of the last decade, when unions won a boost in benefits that was followed by stretches of economic weakness and poor investment returns. The plans also suffered from chronic underfunding. State lawmakers increased retirement ages and changed funding formulas in 2010, but the gap widened.

The state is projected to spend $2.4 billion out of its general fund on pensions this year, up 43% from $1.7 billion last year, according to a December report by the state’s independent fiscal office. The cost is forecast to hit $3.5 billion, or more than 10% of the state’s roughly $31 billion budget, by 2020. The state systems cover more than 730,000 public school and state employees and retirees.

The Pennsylvania AFL-CIO and other labor groups who backed the governor’s campaign have lobbied hard against Mr. Wolf’s changes, arguing that workers’ retirement security will be compromised. In recent weeks, union members have sent more than 100,000 emails to state legislators opposing the pension cuts.

“It’s a false choice,” said Rick Bloomingdale, president of the Pennsylvania AFL-CIO. “You don’t have to cut pensions in order to get school funding.”

The Republican-controlled Senate passed a pension bill that includes cuts to current workers’ benefits, and Mr. Wolf said he would sign the legislation. But the Republican-controlled House has failed to pass it. Every Democrat in the chamber voted against the bill, and some Republicans blocked it because it was linked to a full budget that increased taxes.

On Tuesday, with public schools threatening to close, Mr. Wolf said he would approve a stopgap budget that didn’t include pension overhauls or increased education spending. The governor’s spokesman said Mr. Wolf still wants a full-year budget that includes both items.

There are already signs that some Democrats who take a harder line on pensions can survive politically. Pension-cutting Democrats can still come off as more friend than foe to union officials, because Republicans often target deeper benefit cuts.

Former Rhode Island Treasurer Gina Raimondo won election as governor in 2014 after battling with unions on a pension overhaul.

Ms. Raimondo ultimately reached a settlement with workers this year that locked in $4 billion in savings. The cuts included shifting some current workers and new hires onto plans that include a 401(k)-style account, plus reducing the cost-of-living adjustments for retirees.

“There’s still a core group that’s angry, and in many ways I understand why they’re angry,” Ms. Raimondo said. “I tell them, ‘Don’t be mad at me. Be mad at people who made promises that were unaffordable.’ ”

THE WALL STREET JOURNAL

By TIMOTHY W. MARTIN and KRIS MAHER

Dec. 29, 2015 7:12 p.m. ET

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Municipal Market Contracts at Record Pace as Refunding Dominates.

For an unprecedented fifth-straight year, investors saw more bonds leaving the municipal market than being sold by states and localities.

Net issuance is ending the year at about negative $15 billion, according to data compiled by Bloomberg. The figure is calculated monthly by subtracting amounts being redeemed early or maturing from what was issued, based on the date at which interest begins to accrue. Though some analysts predicted a pickup in bond sales for infrastructure projects, nearly two-thirds of the almost $400 billion in debt offered in 2015 refinanced higher-cost debt, suppressing market growth, Bank of America Merrill Lynch data show.

More than six years after the recession ended, state and local governments remain in an age of austerity as they grapple with pension obligations and other expenses. Bond sales fell off the record pace to start the year during the final months of 2015 as the Federal Reserve prepared to increase borrowing costs for the first time in almost a decade. That flipped net issuance into negative territory.

The scarcity of new debt has kept benchmark muni yields near the lowest relative to U.S. Treasuries in more than a year as demand for tax-exempt bonds outstripped the supply. That's been a boon to investors: After flat returns through the first six months of the year, munis ended 2015 up 3.5 percent, compared with 0.6 percent for Treasuries. Investment-grade corporate debt lost 0.8 percent and high-yield company securities plunged 4.7 percent.

"The net negative supply in 2015 has really come to roost as we close out the year," said Peter DeGroot, a strategist at JPMorgan Chase & Co. Next year is "still a highly supportive environment for municipal securities in terms of relative performance to taxable fixed-income counterparts."

Individuals own the majority of the $3.7 trillion municipal market either through specific bonds or mutual funds. They usually invest in the bonds as part of a strategy to cut their tax burden, meaning they're likely to reinvest their debt payments back into the asset class. The negative issuance figure is even larger when assuming individuals put all that cash back into munis, DeGroot said.

As investors flocked to munis in 2015, the debt became expensive to Treasuries on a relative basis. The ratio of 10-year AAA rated muni yields to those on federal debt is about87 percent, compared with an average of 101 percent over the past five years, Bloomberg data show.

Even with relatively low yields, investors are likely to continue putting their money into munis, particularly the tax-free interest payments they get from their current holdings, said Chris Mier at Loop Capital Markets.

"There's a core, base demand for municipal bonds," said Mier, chief strategist at Loop in Chicago. "For higher tax-bracket individuals, they're a core element of any portfolio and that isn't expected to change much in 2016."

Long-term muni sales are poised to decline by about 1 percent in 2016 from this year's level, according to a survey of 10 underwriters released last week by the Securities Industry and Financial Markets Association. Yet refunding will fall to 55 percent of issuance from 62 percent in 2015,

according to the report.

With fewer refinancing deals, the market may grow in 2016. Without accounting for coupon reinvestment, net supply will be $50 billion in 2016, according to DeGroot at JPMorgan. That's in line with the $45 billion estimate of Vikram Rai, head of muni strategy at Citigroup Inc. Michael Zezas at Morgan Stanley says net issuance could swell to $99 billion.

Even with the potential market growth, munis should still post positive returns in 2016, according to the trio of strategists.

"It's a number that sounds large compared to what we just experienced, but in the entire history of the muni market, it's not a number that is indigestible," Zezas said. "There's a substantial amount of deferred capital needs throughout the municipal infrastructure system."

Bloomberg Business

by Brian Chappatta

December 30, 2015 — 9:00 PM PST Updated on December 31, 2015 — 4:48 AM PST

Outlook: What's Ahead for Tax Regulation, Enforcement in 2016.

WASHINGTON – The biggest tax regulatory issue for municipal market participants in 2016 are the issue price rules and what changes the Treasury Department and Internal Revenue Service will make as they finalize them, dealer and issuer group representatives said in interviews about the coming year.

"Our biggest issue is the issue price rules," Michael Decker, a managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said when asked about the tax arena.

"Issue price continues to be a big issue for underwriters and issuers," said John Vahey, director of federal policy for Bond Dealers of America.

"As far as what we can envision going on on the regulatory front in 2016, [issue price] springs to mind," said Dustin McDonald, director of the Government Finance Officer Association's federal liaison center here. "I know it's a big priority of John Cross to get it done."

Cross, the Treasury Department's associate tax legislative counsel, agreed with that assessment.

"Issue price is an important priority and broadly applicable topic," he said in an interview. He said he hopes the agencies can get those final rules out sometime in the spring of next year.

Cross told GFOA's debt committee members at their winter meeting earlier this month that tax regulatory officials "are going to take another good look at whether we can do something more on competitive sales."

"I thought John's remarks were very encouraging and hopefully we'll end up with an issue price rule that's workable," said Decker.

In addition, muni market groups have asked for some clarifications in the proposed rules, which

were published in July after the Treasury and IRS withdrew earlier ones proposed in September 2013 because of complaints they were unworkable.

Issue price is important because it is used to help determine the yield on bonds and whether an issuer is complying with arbitrage rebate or yield restriction requirements, as well as whether federal subsidy payments for direct-pay bonds such as Build America Bonds are appropriate.

Under existing rules, the issue price of each maturity of bonds that are publicly offered is generally the first price at which a substantial amount, defined as 10%, are reasonably expected to be sold to the public.

But tax regulators became concerned that some dealers were "flipping" bonds — selling then to another dealer or institutional investor who then sold them again almost simultaneously, with the prices continually rising before the bonds were eventually sold to retail investors.

Treasury and the IRS tried to tighten the rules in 2013 by proposing new ones that replaced the "reasonable expectations" standard with actual sales and increased the definition of "substantial amount" to 25% instead of 10%. But those rules drew many complaints so Treasury and IRS scrapped them and proposed new rules in June, under which the issue price of a maturity would generally be the price at which the first 10% of the bonds are actually sold to the public.

If 10% of a maturity hasn't been sold by the sale date, the issue price will be the initial offering price of the bonds sold to the public, as long as the lead or sole underwriter certifies to the issuer that no underwriter filled an order from the public after the sale date and before the issue date at a higher price than the initial offering price. An exception can be made if the market moved after the sale date, but the underwriter must document any market movements justifying a higher price.

Dealers and issuers want a safe harbor or special rules for bonds sold in competitive deals, where there is less opportunity for pricing abuses.

Cross' statements on possibly considering special rules for competitive deals are "very helpful," said Stefano Taverna, a partner at McCall, Parkhurst & Horton in Dallas who heads the tax-exempt financing committee of the American Bar Association's taxation section.

"The fact that he's open to it is a good thing," said Vahey.

Muni market groups also want clarification on actions that underwriters or issuers must take if less than a 10% of a maturity is sold to the public. "I don't see him backing away from the actual sales approach," said Vahey. Other market participants said the same thing.

Political Subdivision

But the Treasury and IRS may move even earlier in the year to propose rules that will be open for public comment and prospectively effective on the definition of a political subdivision, according to Cross.

Market participants and lawmakers have been seeking guidance on the definition of a political subdivision ever since the IRS issued a technical advice memorandum in 2013 that concluded the Village Center Community Development District in Florida was not a political subdivision, and therefore could not have issued tax-exempt bonds from 1993 to 2004, because its board was and will always be controlled by the developer rather than publicly elected officials. In June, the IRS said it will not apply the TAM retroactively.

Lawyers have said 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 in 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.

Cross told bond lawyers meeting in Chicago in September that the Treasury and the IRS were considering having the rules include "a possible objective governmental control standard" and other principles beyond the sovereign powers analysis.

Management Contracts

The Treasury and IRS also are working to update and liberalize safe harbors in longer term management contracts so that the contracts do not create a significant amount of private use and payments that would make tax-exempt bonds taxable.

Bond and tax lawyers have complained that the tax agencies' previous guidance on management contracts is not flexible enough to allow tax-exempt bonds to be used in transportation or infrastructure projects financed by public-private partnerships.

The IRS issued guidance in 2013, Rev. Proc. 97-13, that set up safe harbors for longer term management contracts. For a contract up to 10 years, at least 80% of the manager's annual compensation had to be based on a fixed fee. For one of 15 years, at least 95% of the annual compensation had to be based on a fixed fee.

Then in October 2014, the IRS issued Notice 2014-67 covering management contracts that included most types of fixed or variable rate compensation for contracts of five years or less. But it did not permit compensation based on a share of net profits.

Both the NABL and the ABA's tax-exempt financing committee have made recommendations on how this guidance could be modernized.

"I hope they will be able to turn to the management contract rules. I think that the White House still has a push for public-private partnerships" and these rules would help with that, said Linda Schakel, a partner at Ballard Spahr here.

Cross said there is a lot of interest at Treasury on this topic because of the work being done by a task force chaired by Treasury Secretary Jack Lew and Transportation Secretary Anthony Foxx. "This is a fairly early priority in the coming year," he said.

The Treasury and IRS also want to consider new guidance or rules that show what remedial actions could be taken with regard to leases under change of use rules so that bonds could remain tax-exempt if a bond-financed facility was leased to a private party.

"Those would be two very good pieces of guidance that we need," Taverna said, referring to management contracts and leases. "They would be particularly helpful in certain contexts, particularly with regard to transportation, water facilities and other types of long term assets."

The ABA taxation section's tax-exempt financing committee has "focused a lot over the past couple of years on transportation projects, particularly P3s and allocation and accounting and management contract" rules, he said.

The tax regulators also are considering issuing guidance or rules that would provide issuers of

direct-pay bonds with an easier “cure” than a defeasance of the bonds in change of use situations, when too much private use and payments threatens the federal subsidy payments. They are exploring whether it would be possible, instead, to halt or lower subsidy payments instead of forcing the bonds to be defeased.

The Treasury and IRS are working on a big project to consolidate and finalize arbitrage rules that were proposed in 2007 and 2013. The issue price rules had been part of the 2013 arbitrage proposals, but were broken out as a separate regulatory project.

Other ongoing projects involve finalizing the so-called TEFRA rules, which implement provisions of the Tax Equity and Fiscal Responsibility Act of 1982 requiring public approval for private-activity bonds. The Treasury and IRS issued temporary rules in 1983 and then modified them in rules proposed in 2008. Muni groups seemed to like the 2008 proposed rules, but they were never finalized.

NABL submitted recommendations on the final rules to the Treasury and IRS in June.

Another ongoing project is to tweak reissuance notices published in 2008 and put them into reissuance rules for tax-exempt bonds. One incentive to get this project finished fairly soon is that a lot of debt was restructured into bank debt with shorter, five to seven year maturities in 2008 and issuers are going to want to convert that into long-term debt as it matures, Cross said.

“We’re starting to see some reissuance questions,” said Cross.

TEB

Meanwhile, IRS officials said the tax-exempt bond office is finding some ongoing problem areas in audits. These include: impermissible private use of bond-financed jails and prisons; total return swaps that result arbitrage rule violations; users of small issue industrial development bonds exceeding capital expenditure limits, direct-pay qualified zone academy bonds issued under volume cap that should not have been carried forward; arbitrage rebate payments that were not determined and paid on time; and sales of bond-financed property that created compliance issues.

The IRS tax-exempt bond office closed 568 audits and entered into 19 closing agreements during fiscal 2015, which ended on Sept. 30. An IRS spokesman said TEB will be adding market segments to audit in the coming year to those already under audit like governmental bonds, 501()(3) bonds, private-activity bonds and tax credit bonds. He was not specific about what might be added. He said TEB also is still looking at arbitrage issues and whether Form 8038-Ts on arbitrage rebate have been accurately filed.

“We’re seeing a lot of audit notices come out and it takes time for issuers to respond to them,” said Schakel, adding, “Some of the questions surprise us.” TEB entered into 105 settlements under the voluntary closing agreement program, about twice as many as in fiscal 2014.

VCAP settlements involved 501(c)(3) ownership problems, arbitrage problems, tax-credit bond issues and exempt facility bond issues. IRS officials declined to provide the dollar amounts of audit and VCAP settlements and said it would be difficult to project how many settlements might be reached in fiscal 2016.

TEB plans two substantial webcasts in 2016, but declined to specify the topics. The office plans to update publications on its website on governmental, private-activity and 501(c)(3) bonds. It is also working on an arbitrage publication.

Some lawyers noted that the costs of applying to the IRS for private-letter rulings has skyrocketed in recent years. The fee has more than doubled during the last five years, rising to $28,300 in 2015 from $14,000 in 2011. "It's jumped dramatically over the past couple of years and I think it's due to budget cuts, said Schakel. Issuers are supposed to seek PLRs when they fail to spend all of their proceeds for qualified school construction bonds, she said, adding, some of them don't want to spend $28,000 over a few thousand dollars of unspent proceeds.

Finally, an IRS spokesperson said TEB is no longer sending newsletters to state and local officials because "we found that we were usually posting the same material on our website."

The Bond Buyer

by Lynn Hume

DEC 29, 2015 11:10am ET

S&P: Chicago Finishes the Year Without Pension Relief and Without a Definite Plan to Fund its 2016 Pension Payment.

CHICAGO (Standard & Poor's) Dec. 29, 2015 — Time ticks on for Chicago toward the last day it can amend its property tax levy for the 2016 budget– Dec. 29, 2015. When the city adopted its 2016 budget in October, it increased its property taxes as an important first step toward fiscal balance, but as we noted on Oct. 28, 2015, in our article "Chicago's Ratings Unaffected By City Council's Budget Approval," it was perhaps not a complete step in its efforts to address its growing police and fire pension contribution obligations. The deadline to amend property taxes will pass before the city will hear whether the governor will approve Senate Bill (SB) 777. SB 777 passed through both houses of the Illinois General Assembly by May 2015, and calls for a five-year step up of the actuarially required contributions to the police and fire pensions, which will provide the city partial relief from a spike in police and fire pension contributions that it would otherwise be obligated to make in 2016. The bill has not been forwarded to the governor at this time.

We noted on Oct. 28, 2015, that the final 2016 budget assumes the passage of SB777, and the city's accompanying tax increase covers about $328 million of the $550 million increase in police and fire pension plan contributions that the city will owe under the statutes as they are currently written. Should the state ultimately fail to approve SB777, the city will have to address the approximately $200 million expenditure gap in its budget. City officials currently do not plan to amend the property tax levy beyond what is set in the 2016 budget. And while the city will not be able to amend the property tax levy after Dec. 29 in time to affect spring 2016 tax bills, officials indicate the city has contingency plans to fully accommodate the larger pension contribution amount, if needed, in the form of various revenue sources it can
implement during 2016, and it has short-term financing in place that it can use until those revenues become available.

Our future view of the city's ability to meet its obligations will depend on how the city addresses its continued budget gap in the event SB 777 does not pass. Should the governor not approve SB 777, Chicago's failure to successfully implement contingency plans in a timely manner to fully meet its pension obligations with an identifiable and reliable revenue source would likely strain the rating on the city, potentially by multiple notches.

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.

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TAX - NEW JERSEY

Seaboard Landing, LLC v. Borough of Penns Grove

Tax Court of New Jersey - December 3, 2015 - N.J.Tax - 2015 WL 8006052

Taxpayer sought reduction of assessments on real property, pursuant to the Freeze Act.

The Tax Court held that:

- Square corners doctrine did not preclude municipality from opposing taxpayer's application for Freeze Act relief; and
- Application of Freeze Act to preclude relief for tax year in which districtwide reevaluation was implemented as well as for following year did not render Act in violation of uniformity clause, even if assessments for the two tax years at issue exceeded property's true market value; but
- Freeze Act does not preclude availability of relief in a year in which a taxpayer's complaint is dismissed for failure to pay taxes.

Square corners doctrine did not preclude municipality from opposing taxpayer's application for Freeze Act relief, in proceeding in which taxpayer sought reduction in assessments of real property, even though, during discovery, municipality commissioned expert report that opined that property's true market value was more than 50% lower than equalized assessed value for certain tax years, where taxpayer did not file complaints in tax court challenging assessments for those particular tax years, and municipality, aware that the opinion of its expert, if adopted by the court, would require a reduction in the challenged assessments, proceeded to call its expert witness to offer testimony damaging to the municipality's own position.

Application of Freeze Act to preclude relief for tax year in which districtwide reevaluation was implemented as well as for following year did not render Act in violation of uniformity clause, even if assessments for the two tax years at issue exceeded property's true market value. There was no mandate in uniformity clause that all assessments which evidence suggested exceeded true market value must be revised.

Freeze Act does not preclude availability of relief in a year in which a taxpayer's complaint is dismissed for failure to pay taxes.

TAX - NEW YORK

Maimonides Medical Center v. U.S.

United States Court of Appeals, Second Circuit - December 18, 2015 - F.3d - 2015 WL 9261236

Not-for-profit corporation – Maimonides Medical Center (MMC) – brought action against the United States to recover overpayments of employment taxes.

The parties agreed that MMC was entitled to a refund for an overpayment of taxes, but disagreed as to the interest rate to be applied under I.R.C. § 6621(a)(1). MMC argued that the lower interest rates applicable to "corporation[s]" applied only to for-profit corporations, and that because it is a nonprofit corporation, it was entitled to the higher standard rate.

The United States District Court for the Eastern District of New York applied the lower interest rate. Taxpayer appealed.

The Court of Appeals held that the lower corporate interest rates provided by § 6621(a)(1) are also applicable to nonprofit corporations.

Fitch Replay: 2016 US Public Power, Water & Sewer Outlook.

Teleconference discussing the 2016 outlook for the US Public Power and Water and Sewer sectors.

Key insights include:

– Effect of environmental regulation
– Improving cost of renewable energy
– Supply and infrastructure challenges

Listen to the Teleconference.

Fitch Replay: US Transportation Outlook 2016.

Listen to teleconference discussing the 2016 Outlook for US Transportation Infrastructure.

Key insights include clarity on federal transportation plans and US macroeconomic improvements driving growth across transportation sectors.

Fitch Replay: USPF Nonprofit Healthcare 2016 Outlook.

Listen to analysts discuss the 2016 outlooks for the US Healthcare sector.

Key insights include operating variability, reimbursement, and need for size and scale.

Fitch Replay: US States & Locals 2016 Outlook.

Listen to analysts discuss their 2016 outlook for US states and local governments.

Insights include manageable budget challenges and new criteria.

Puerto Rico to Skip Some Payments, Likely Prompting Turmoil.

Puerto Rico is scheduled to pay some investors at the expense of others today, likely opening new clashes with creditors that threaten to exacerbate the commonwealth's financial crisis and adding to calls for action from the U.S. Congress.

Gov. Alejandro Garcia Padilla last week said the commonwealth would make about $330 million in payments on its constitutionally guaranteed general obligation bonds after diverting money from debt with weaker legal protections. The island also plans to miss about $37 million in bond payments, most from the Puerto Rico Infrastructure Financing Authority, or Prifa.

Several analysts said Puerto Rico's ongoing defaults may provoke lawsuits as soon as this week against the commonwealth and its agencies, which lack access to the legal process used for U.S. municipal bankruptcies. The governor said the island will avoid a surge of litigation that would have followed a missed payment on general obligation debt.

Puerto Rico owes investors about $70 billion and has struggled with a 10-year recession and a steep population decline that last year led Mr. Garcia Padilla to declare its debts unpayable. The commonwealth began defaulting in August on debt with its weakest legal pledge, and the governor has said he would prioritize public services over bondholders.

The defaults may also renew pressure for action from the U.S. Congress, where the Obama administration and congressional Democrats have sought legislation that would allow Puerto Rico to restructure its debt, and proposed bills to temporarily stay lawsuits against the commonwealth.

Matt Fabian, partner at the research firm Municipal Market Analytics, said redirecting tax money from one set of bonds to another opens Puerto Rico to lawsuits from the insurers or investors who may have legal remedies when the commonwealth defaults, either by breaching bond contracts or failing to pay.

"People who don't get paid sue," he said.

Bond insurers Ambac Financial Group Inc. and Financial Guaranty Insurance Co. last week demanded a halt to the island's redirection of funds, calling it illegal in a letter to the governor and other top Puerto Rico officials. The companies, which combined insure more than $860 million of Prifa bonds, said redirecting the rum taxes that back the debt violates the U.S. and Puerto Rico

constitutions and the “pattern of activity is unacceptable.” Ambac shares fell about 2.7% last week after the governor’s announcement.

Bond insurers, which make principal and interest payments when the state or local government that sold them fails to pay, are central to any restructuring effort in Puerto Rico because they back a wide variety of bonds from the commonwealth’s nearly 20 debt-issuing entities, complicating the island’s ability to prioritize payments. The situation also threatens to derail a modest comeback for the insurers, who suffered losses in the 2008 financial crisis after guaranteeing risky mortgage-backed securities.

While Puerto Rico’s approach shouldn’t cause significant strain on insurers in the short term, “it’s not good news for them,” said Rob Haines, an analyst at the research firm CreditSights.

Mark Palmer, an analyst at BTIG, said the island’s crisis was entering a new phase in which lawsuits were likely, yet a pattern has emerged in which “Puerto Rico announces the least impactful default possible, that doesn’t involve constitutionally protected debt, then uses that as a platform to lobby Congress” for bankruptcy protections.

Puerto Rico, investors and bond insurers did reach a negotiated accord last month, inking a deal to restructure the Puerto Rico Electric Power Authority, or Prepa. While that still requires legislation from Puerto Rico lawmakers, along with other hurdles, it raised hopes that negotiations can resolve some disputes in the absence of either bankruptcy filings or lawsuits.

John Miller, co-head of fixed income at Nuveen Asset Management LLC, which manages about $100 billion of municipal bonds, said Puerto Rico’s payment strategy was “the least disruptive to the marketplace” and “an effort to demonstrate their commitment to bondholder negotiations” while the island seeks debt relief from Congress.

“The ability of Puerto Rico to keep making all but a few smaller payments may actually add to the skepticism there, and cause U.S. politicians to push for the release of current financials and the imposition of a control board,” he said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated Jan. 4, 2016 11:55 a.m. ET

Write to Aaron Kuriloff at aaron.kuriloff@wsj.com

The Rieger Report: Bonds In 2016?

2015 had been a year of low or no returns for major asset classes. Income asset classes such as preferred stock and municipal bonds did outpace the S&P 500 Index and did so without the volatility but others did not bode as well. What about 2016? Let’s look at the leaders for 2015 first:

From a total return perspective the S&P U.S. Preferred Stock Index returned over 5.4% in 2015 with investment grade municipal bonds tracked in the S&P National AMT-Free Municipal Bond Index returning just over 3.25%. Investment grade corporate bonds issued by ‘blue chip’ companies tracked in the S&P 500 Investment Grade Corporate Bond Index barely held even and corporate

junk bonds ended in the red. The traits of each market may give us a hint as to what 2016 may look like.

What might impact the 2016 investment grade bond market?

- A slow rising interest rate environment is generally expected by the markets. A change to that expectation could rattle the bond markets. Status quo could help hold yield spreads low and prices up.
- The high quality and relatively low volatility nature of investment grade bonds may remain attractive if the equity, commodity and junk bond markets continue to see volatility.
- Pension funds have longed for higher yielding but quality fixed income assets to match their obligations. That demand may help hold yield spreads in place for investment grade bonds.
- Investment grade municipal bonds have seen steady demand and that demand has not yet been offset with a sharp rise in new debt issuance. The supply/demand imbalance persists as we enter 2016 but could change over time if new issuance resurges. Beyond Puerto Rico, now affecting the municipal high yield segment, headline risk is low but bears watching. Overall, the low volatility, low default rate and tax-free income of municipal bonds may all continue to contribute to keeping demand up for this asset class.
- The investment grade corporate bond market is expecting less new issuance and some projections are for a steep drop in new issuance in 2016. This could impact the supply/demand equilibrium and help to hold yield spreads relatively low when compared to U.S. Treasuries. High quality and incrementally higher yielding corporate bonds may continue to draw investor interest as an alternative to U.S. Treasuries as a result.
- Floating rate preferred stock is an asset class designed to pay dividends that rise and fall with base interest rates. As rates go up, this may be a key driver of the asset class performance in 2016. Demand for fixed rate preferred stock could remain strong as alternatives that offer incrementally higher yields come with increased credit risk.

Table 1: Select indices and their 2015 total returns

What might impact the 2016 'junk' bond markets?

- Yield spreads of junk bonds could widen further. This is even more dangerous to high yield bond holders than modest rate increases. Rising corporate bond default expectations could put pressure on yield spreads, pushing bond prices down on these fixed rate unsecured obligations.
- The energy and materials sectors have played big roles in the performance of the overall junk bond market. Any rebound or continued depression of the price of oil could have a dramatic affect on these sectors. The single B and CCC segments of the market have been volatile as a result. Please refer to Table 3 for returns.
- Senior loans tracked in the S&P/LSTA U.S. Leveraged Loan 100 Index were down in 2015 along with their 'junk' bond counterparts. Another modest rate hike will help these senior secured floating rate notes. Generally, as rates go up these senior loans will pay higher interest rates. Historically, senior loans have had a lower default rate than corporate bonds. Over the last several years, holder protections, or covenants, have been favoring the borrowers, so if defaults do rise, this could impact this market. It should be noted that in a distressed situation, senior loans do get paid before unsecured debt. In general, the senior loan asset class has lower exposure to the energy and materials sector than the fixed rate high yield corporate bond asset class.
- Demand for yield in the municipal bond market continues to be strong. However, Puerto Rico has been a real and significant drag on performance for the bond funds that hold this paper. Beyond Puerto Rico, defaults have remained low. The taxable equivalent yield of high yield municipal

bonds vs. high yield corporate bonds may continue to give the yield advantage to municipal bonds in 2016.
- The liquidity of the junk bond markets was tested in 2015. It is reasonable to expect more scrutiny of the liquidity of the lowest quality segments of the junk bond markets in 2016.

Table 2: Select high yield indices and 2015 total returns

Table 3: Select U.S. high yield corporate indices and their total returns

Seeking Alpha

By J.R. Rieger

Jan. 2, 2016 4:49 PM ET

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McGuire Woods: President Signs Extender Package for PTC and ITC - Renewable Energy Tax Credits.

Nearly two weeks ago, Congress passed the omnibus Consolidated Appropriations Act, 2016 (the "Omnibus Bill"), and the Protecting Americans from Tax Hikes Act of 2015 (the "Act"), both parts of a package that President Obama signed into law on Friday, December 19, 2015. Both the Omnibus Bill and the Act make substantial changes to numerous expiring or already expired tax provisions, many of which will directly impact renewable energy development.

The more important provisions of the Omnibus Bill and the Act affecting renewable energy projects include:

- **Production Tax Credits (PTC)** – The PTC under Section 45 of the Code had expired at the end of 2014 and the Act extends the PTC through the end of 2019 for wind; however, the credit is phased out beginning in 2017 (i.e., 100 percent PTC in 2015 and 2016, 80 percent for 2017, 60 percent for 2018 and 40 percent for 2019). Other technologies − such as geothermal, municipal waste, landfill gas, and open- and closed-loop biomass − received only a two-year extension of the PTC, through the end of 2017. The ability to elect from the PTC into the ITC was extended on the same basis, and with the phase-out for wind beginning in 2017. The PTC still contains the requirement that construction must have "begun" before the applicable tax year.
- **Investment Tax Credits (ITC)** – The ITC under Section 48 of the Code also received a favorable extension through 2019 for qualifying solar projects. The ITC was set to phase down from its current 30 percent credit to 10 percent for qualifying solar equipment at the end of 2016. The Omnibus Bill maintains the 30 percent ITC for qualifying solar projects through the end of 2019.
- **Residential Solar Tax Credit** – The residential solar tax credit under Section 25D of the Code

was set to expire at the end of 2016 and now has been extended through the end of 2019. The residential solar tax credit allows the homeowner to take a 30 percent tax credit related to the construction costs of a qualifying solar installation, most commonly residential rooftop solar panels.
- **Bonus Depreciation** – The 50 percent bonus depreciation was extended through 2019 but begins phasing out in 2018 (i.e., 50 percent in 2015, 2016 and 2017; 40 percent in 2018; and 30 percent in 2019).
- Among other renewable tax provisions included were extensions for credits applicable to alternative fuel, renewable diesel and biodiesel.

Additionally, there was a two-year extension through 2016 for the deduction applicable to energy-efficient commercial buildings under Section 179D of the Code. Lastly, there was a five-year extension of the New Markets Tax Credit Program under Section 45D of the Code. The extension applies for the five years beginning 2015 and ending 2019, with $3.5 billion in allocation for each year. The carryover availability for unused limitation has been extended through 2024.

December 28, 2015

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Fitch Replay: 2016 US Education & Nonprofit Outlook.

Listen to teleconference discussing our 2016 Outlook for US Education & Nonprofit.

Key insights include demographic challenges, state support for universities, and affordability challenges.

Clock Ticking on Advisors' Compliance With SEC Pay-to-Play Rules.

Now that FINRA, MSRB have filed pay-to-play rules with SEC, compliance with third-party solicitor provision at hand

Now that the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board have filed their proposed pay-to-play rules with the Securities and Exchange Commission, the clock will start ticking on when advisors must start complying with the third-party solicitor provision of the SEC's "pay-to-play" rule, says Karen Barr, president and CEO of the Investment Adviser Association.

While advisors have been required to comply with most provisions of the SEC's pay-to-play rule since 2011, the SEC delayed the compliance date of the third-party solicitor aspect of the rule so that FINRA and the MSRB would have time to adopt a pay-to-play rule for broker-dealers and municipal advisors, Barr told ThinkAdvisor Thursday.

Earlier in 2015, the SEC staff "stated publicly that [the SEC] would not enforce these provisions until the later effective date of either FINRA- or MSRB-adopted pay-to-play rules," which must be approved by the SEC. Both FINRA and MSRB filed their proposed rules on Dec. 16.

Barr notes that IAA had concerns with how FINRA's original proposal would have affected solicitors affiliated with investment advisors, but IAA is "pleased that FINRA eliminated the problematic provision" in its final rule that was sent to the SEC.

The SEC released "much-needed clarity" provided in mid-June frequently asked questions (FAQ) regarding compliance with new provisions in its pay-to-play rule.

FINRA's proposed rule change would amend FINRA Rules 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) to establish "pay-to-play" and related rules that would regulate the activities of member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisors.

The MSRB's proposal seeks to safeguard the municipal securities market against pay-to-play practices, and the appearance of those practices, when state and local governments hire outside financial professionals.

The proposed regulations would extend the MSRB's well-established municipal securities dealer pay-to-play rule to all municipal advisors, including those acting as third-party solicitors, ushering in the first time that MSRB rule provisions are specifically tailored to the activities of those that solicit business from municipal entities on behalf of third-party municipal securities dealers, municipal advisors and investment advisors.

"For more than 20 years, the MSRB's pay-to-play rule for dealers has served as a model for other regulations to address public corruption, or the appearance of corruption," said MSRB Executive Director Lynnette Kelly, in a statement. "Applying this proven model to municipal advisors will ensure that all regulated municipal finance professionals are held to the same high standards of integrity."

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors, "whose advice to state and local governments can impact municipal finance deals in the billions of dollars," MSRB says.

The proposed amendments to MSRB Rule G-37 would curb the giving of political contributions to state and local officials in exchange for the award of municipal advisory business and provide greater transparency regarding municipal advisors' political contributions. Consistent with the existing rule for dealers, the rule would generally prohibit municipal advisors from engaging in municipal advisory business with municipal entities for two years if certain political contributions have been made to officials of those entities who can influence the award of business.

Also like the existing rule for dealers, municipal advisors would be required to disclose their political contributions to municipal entity officials and bond ballot campaigns for posting on the MSRB's public Electronic Municipal Market Access website.

ThinkAdvisor

By Melanie Waddell

Washington Bureau Chief
Investment Advisor Magazine
@thinkadv_career

December 31, 2015

S&P General Obligation Medians for Counties: Update as of Oct. 9, 2015.

Standard & Poor's Ratings Services derives the general obligation (GO) county medians from rating reviews completed under our GO criteria (USPF Criteria: Local Governments General Obligation Ratings: Methodology And Assumptions, Sept. 12, 2013, on RatingsDirect). The county medians are derived from the 947 counties Standard & Poor's rated as of Oct. 9, 2015.

We present the medians by rating category. These medians exclude municipalities and special districts such as school districts. We are publishing a separate GO municipality median report concurrently with this article.

We calculate the metrics, for which we provide the medians, based on raw data, or in some cases, data that we have adjusted (for more information, see the related research article below), and they are only one component of the rating analysis. The metrics play a part in the quantitative analysis in five factors: economy, budgetary flexibility, budgetary performance, liquidity, and debt and contingent liabilities. Qualitative adjustments within each factor (which the medians do not reflect) also play an important part in the analysis.

Standard & Poor's plans to update the medians for both municipalities and counties semi-annually.

Continue reading.

03-Dec-2015

MSRB Seeks Board of Directors Applicants.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the $3.7 trillion municipal securities market, is accepting applications for its Board of Directors. The Board sets the strategic direction of the organization, makes policy decisions, authorizes rulemaking and market transparency initiatives, and oversees MSRB operations.

The MSRB is seeking individuals knowledgeable about the municipal market to help craft policies on the regulation of financial professionals, market structure, the MSRB's Electronic Municipal Market Access (EMMA®) website — a vital tool used by market participants to monitor municipal security trade price and disclosure information — and other topics.

The MSRB Board consists of 11 independent members that are representative of the public, including investors, municipal entities and other non-MSRB regulated individuals. The Board also has 10 members that represent MSRB-regulated entities, including broker dealers, bank dealers and municipal advisors. The MSRB is seeking applicants to fill four public and three regulated-entity positions, one of which is a municipal advisor. The seven Board terms begin October 1, 2016.

Qualified individuals from around the country representing diverse organizations and market perspectives should consider applying. Applicants with strong knowledge of the pricing and trading of municipal securities, including those with institutional "buy-side" experience, are encouraged to apply. The MSRB is particularly interested in investor applicants. MSRB Rule A-3 outlines requirements for all applicants to the Board, including specific eligibility requirements to serve as a

public or regulated Board member.

To be considered for a position on the MSRB Board of Directors, submit an application, which is available on the MSRB Board of Directors Application Portal, no later than February 19, 2016. Questions can be directed to Sara Majroh, Manager, Corporate Governance, at 202-838-1359 or at smajroh@msrb.org.

Date: January 4, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

OUTLOOK: Tax Reform Bill Unlikely But Muni Market Must Remain Vigilant.

WASHINGTON – Congress will not act on comprehensive tax reform next year, but House Republicans could try to move forward with international or corporate tax reform, according to tax experts.

In any case, muni market groups must remain vigilant in educating lawmakers about the importance of municipal bonds, the experts and market participants said in interviews about 2016.

"There will be no important tax legislation next year, nothing's going to get to the finish line," said Howard Gleckman, senior fellow at the Tax Policy Center.

Senate Majority Leader Mitch McConnell, R-Ky. "has made it clear that it's a nonstarter and Obama's just not interested," he said.

Just after he replaced John Boehner as House Speaker, Rep. Paul Ryan, R-Wis., said he wanted the House to pass a tax reform bill by July 18-21, when the Republican presidential convention is to be held in Cleveland. More recently Ryan said it would impossible to do comprehensive tax reform while president Obama is still in office, but he did not close the door on international or corporate tax reform.

"I understand Ryan's enthusiasm," said Gleckman of the former House Ways and Means Committee chairman who was, and is expected to continue to be, very focused on tax reform. "I just don't see it."

Several congressional observers said that by enacting the $1.1 trillion omnibus spending bill and the tax bill this month, lawmakers do not have much left to do next year.

"Everyone would agree that what Congress ended getting done at the end of the session was a larger package than expected," said Micah Green, a partner and co-head of government affairs and public policy group at Steptoe & Johnson. The tax bill extends expired tax provisions through the end of 2016, he said.

"Congress has basically completed its to-do list," said John Godfrey, senior director of government relations at the American Public Power Association. "The pressure to act has been lifted."

However, Godfrey cautioned that tax policy is driven by headlines as well as deadlines, and said that

if there is more controversy over U.S. companies moving their headquarters overseas to avoid U.S. taxes, that could spur efforts at international tax reform.

New House Ways and Means Committee Chair Kevin Brady, R-Texas, recently told reporters he wants to focus on international tax reform in 2016 and set the stage for a broader tax overhaul after the presidential election. In November, just after replacing Ryan, Brady said he planned to solicit the views of House members on tax reform over the next few months.

"I suppose you could see a scenario where there is agreement on international tax reform," said Green. "But as you build up to the elections, making hard choices is harder and harder to do."

"I don't think we're going to see anything in the form of comprehensive tax reform until after the elections," said Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America. "I think there will continue to be discussions."

"There are two areas of risk," said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association.

First, in broader discussions on comprehensive tax reform, tax-exempt interest "will most certainly be on the table," he said.

Second, if some form of tax reform legislation that is not comprehensive is considered and there is a need for revenue raisers to pay for provisions, "there's always the risk that some tweaking of the tax-exempt bond statutes will find itself in that discussion," Decker said.

"Even if you don't have comprehensive tax reform there's still substantial risk that municipal bonds will be on the table for corporate tax reform as a pay for," Godfrey agreed.

Bill Daly, director of governmental affairs for the National Association of Bond Lawyers pointed out that corporate tax reform could very well involve munis, as there are tax provisions that limit the amount of tax-exempt bonds that some companies like banks or insurers can hold.

But he added that, "It's hard to see [Congress] doing much with the truncated session" for next year's presidential election. Members will be out part of July, all of August, all of October and most of November.

Still, he said, "The muni market needs to be vigilant no matter what."

Green agreed. "I've always said that the time to make the case for the value, the efficiency of municipal bonds is before there's movement on tax reform," he said.

Muni market participants in past years have had confront Obama's repeated budget proposals for capping the value of tax exemption at 28% for higher income earners. Former House Ways and Means Committee chair Dave Camp in 2014 released a draft comprehensive tax reform proposal that would have imposed a 10% surtax on muni bond interest for higher earners and eliminated the tax exemption for new private-activity bonds.

"Once you're on the menu, you're always on the menu," said Godfrey.

Giroux said BDA is going to continue to try to educate congressional staff and members about the importance of municipal bonds. She said she assumes the group will do another educational seminar for staff next year.

Obama and other lawmakers have proposed reinstating direct-pay bonds like Build America Bonds, but with lower subsidy rates.

"We think you can make a strong argument to revive BABs," said Decker. "But there seem to be key members of Congress that just don't like that product and if that continues to be the case, it's hard to imagine there'd be much movement in Congress."

Both he and Giroux said BABs have lost some support among issuers because of sequestration, which has reduced their federal subsidy payments. "Sequestration needs to be addressed," said Decker.

Asked about some lawmakers' attempts to push for more tax credit bonds, Decker said, "It's just a structure that doesn't work well, that's never been proven even on a small scale basis."

When Congress in 2010 offered certain bonds in both direct-pay and tax credit modes, and allowed issuers to choose between them, none chose tax credit bonds.

Gleckman said rising interest rates may take more of the spotlight than tax reform in 2016.

"Probably the most important thing in the municipal market is the Federal Reserve Board and what's going to happen to interest rates."

If the Fed continues to raise rates, he said, "It's going to make it more expensive to borrow money" and it's going to "close the window" on advance refundings.

THE BOND BUYER

BY LYNN HUME

DEC 30, 2015 10:52am ET

(Re)Building Downtown: A Guidebook for Revitalization.

When Alex Morrison, executive director of the Urban Development Authority for Macon-Bibb County, Georgia, started on a comprehensive plan for downtown revitalization, "we knew we wanted walkability and housing," he said. "But the how and where [were] driven by the public process." His emphasis on community engagement drove home a point in a new guidebook, *(Re)Building Downtown: A Guidebook for Revitalization*, from Smart Growth America (SGA).

A recent event hosted by the nonprofit group showed that downtown revitalization is not just for the largest cities. The guide is designed to be used by communities of all sizes no matter what their stage of development or redevelopment. Macon is a medium-sized city of 155,000, but the strategies can be used in suburban shopping centers, former industrial parks, or other underused places with the potential for redevelopment. The goal is to create a vibrant, walkable neighborhood that will attract businesses and residents alike.

"This is really about place making," says Chris Zimmerman, SGA's vice president for economic development.

Macon has some neighborhoods more than 100 years old and with many long-term residents. Planners created focus groups where they interviewed over 2,000 stakeholders—major employers,

small business owners, and residents—about what they wanted to see under the new plan.

Not only did the community involvement increase support for the plan, it also changed the plan's contours. Residents said they wanted a more walkable community. So instead of a road project, the city created a neighborhood park. New Town Macon, a public/private partnership created to encourage downtown revitalization, has a buggy and trail network and a heritage trail along the river that winds through the city's neighborhoods. A park that had not been used because residents felt it was dangerous now has a fountain with a public plaza and the support of the community.

Macon also included an equity component in its plans from the beginning. When a study found that a certain number of new housing units could be added downtown, city planners used a downtown assistance program to ensure that a portion would be affordable housing.

Before its downtown revitalization, Macon had a four-lane highway running through the city. People sped through the city instead of lingering. Now, the streets are laid out on a more pedestrian scale.

"Our streets evoke a sense of leisure," said Morrison.

Macon's revitalization has had its struggles. The business community wanted Anderson's office to tear down the city's historic opera house so it could build new developments on the site. "I told them they had the wrong guy," he says.

"You can't save every one of [the historic buildings]," Anderson says. "Pick the ones that are singular to your community, [the ones] that if you lost [them] you would lose the character of your community."

In Missoula, Montana, retailers fled downtown when a regional shopping mall was built in the 1970s. In the mid-1980s, the downtown merchants organized, recruited, and served as advocates and marketers for the city's downtown as the revitalization process began. Mayor John Engen, elected in 2005, has continued the process.

Engen's office created a master plan, working with the local business improvement district and parking commission to sell them on the process. After the downtown master plan was discussed for two years with the many stakeholders, it was ratified by the city council.

The next step was revising the zoning code. "In some cases, it was 70 years old," says Engen. "It did not reflect what Missoula, Montana, was in the early 2000s." The rezoning plan brought controversy and even a lawsuit. But the new zoning regulations were approved by the city council in 2009. The new zoning code and subdivision regulations will work together to promote high-quality development in Missoula, Engen said.

East metropolitan St. Paul, Minnesota, is an example of how transit-oriented development can help revitalize an urban area. A new light-rail line has brought $2 million in new development to the Twin Cities. But the eastern part has a ten-mile (16 km) arterial strip that was created for the automobile era and that encourages people to pass through instead of stopping and spending time and money. East Metro Strong, a public/private partnership working to attract business and economic development to the area, has been working with SGA on ideas to revitalize the corridor.

SGA's free online resource breaks the redevelopment process down into seven steps:

- Understand your community. It is important to reach out to and meet with as many stakeholders as possible.
- Create an attractive, walkable place. This step includes providing multiple transportation options.

- Diversify the downtown economy. Diversity means jobs, new homes, and a diverse array of retail and business.
- Build in equity. Opportunities for affordable housing should be built in from the start, along with a way for current residents to stay in the neighborhood.
- Improve government regulations and processes. Make sure that zoning regulations permit the type of development you seek.
- Finance projects. Creative thinking about financing may yield surprising benefits.
- Establish ongoing place management. A revitalized downtown will need continuing maintenance.

The Urban Land Institute

By Joan Mooney

December 21, 2015

(Re)Building Downtown: A Guidebook for Revitalization
Smart Growth America
1707 L St NW #1050, Washington, DC 20036; www.smartgrowthamerica.org.
2015. 35 pages. Ebook, free.

GFOA Financial Policies Examples.

Welcome to the companion website for the GFOA publication Financial Policies. Here you will find complete sample policies and supplemental materials to help you develop financial policies for your own government. The categories linked below correspond to the chapters in the Financial Policies book and contain real-world examples from governments that participated in GFOA's research on the topic.

- General Fund Reserves
- Reserves in Other Funds
- Revenues
- Expenditures
- Operating Budget
- Capital Asset Management
- Long-Term Financial Planning
- Debt Management
- Investment
- Accounting, Auditing, and Financial Reporting
- Internal Control and Risk Management
- Economic Development
- Procurement

A variety of sample policy portfolios and formats are also available in order to illustrate what a complete policy portfolio looks like.

S&P General Obligation Medians for Municipalities: Update as of Oct. 9,

2015.

Standard & Poor's Ratings Services derives the general obligation (GO) municipal medians from rating reviews completed under our GO criteria (USPF Criteria: Local Governments General Obligation Ratings: Methodology And Assumptions, Sept. 12, 2013, on RatingsDirect). The municipal medians are derived from the 3,287 municipalities Standard & Poor' rated as of Oct. 9, 2015.

We present the medians by rating category. These medians do not pertain to counties and special districts such as school districts. We are publishing a separate GO county median report concurrently with this article.

We calculate the metrics, for which we provide the medians, based on raw data, or in some cases, data that we have adjusted (for more information, see the related research article below), and they are only one component of the rating analysis. The metrics play a part in the quantitative analysis in five factors: economy, budgetary flexibility, budgetary performance, liquidity, and debt and contingent liabilities. Qualitative adjustments within each factor (which the medians do not reflect) also play an important part in the analysis.

Standard & Poor's plans to update the medians for both municipalities and counties semi-annually.

Continue reading.

03-Dec-2015

Why Florida May Be the Next Big Source of PACE Bonds.

Property Assessed Clean Energy (PACE) loans have been available in Florida since 2010, but lending as well as securitization of these loans has lagged far behind California, largely due to a series of lawsuits challenging the program's validity.

A ruling by the Florida Supreme Court in October could change that, allowing the Sunshine State to live up to its potential for green energy projects. Under the Florida PACE law, local governments can issue revenue bonds to provide financing for residents and businesses that agree to make energy conservation, renewable energy, and wind resistance improvements, and have non-ad valorem assessments placed on their property tax bills to repay the debt.

The lawsuits argued that the financing agreements for the PACE programs included the unlawful use of judicial foreclosure if the assessments would wrongfully allow PACE administrators to use the courts to foreclose on delinquent borrowers.

Florida is no California. It is neither as populous nor as wealthy, nor does it have the same laws promoting energy efficiency. And while it gets plenty of sunshine, solar panels are far less popular than they are in the Golden State. The biggest use of PACE financing in Florida, by far, is to make houses and other buildings hurricane-proof.

Ygrene Energy Fund has closed about $55 million in projects in Florida to date which represents $110 million in energy savings, according to Stacey Lawson, the company's president and CEO. The company administers programs for Clean Energy Green Corridor District, which includes Miami, South Miami, Pinecrest, Palmetto Bay, and Miami Shores, communities that total about 650,000 people.

Ygrene partners with municipalities and helps them set up PACE programs and they provide financing and administration for the program. It has $150 million warehouse facility which allows it to provide capital to fund the upgrade for the property owner. The tax lien is placed on the property tax bill and the homeowner pays that back over 20 years. Ygrene gets the 20-year cash streams from the property taxes. Once it collects a large enough warehouse of projects it securitizes them.

The company completed its first securitization of Florida PACE bonds in July 2015. The transaction privately placed $150 million of bonds backed by both California and Florida PACE assessments; as well a mixture of residential and commercial PACE (though a significant majority of the assessments were residential). Kroll Bond Rating Agency assigned 'AA' ratings to the class A notes, which were privately placed with an unnamed insurance company. It was the first rated securitization to include multi-state PACE.

Lawson expects the program to take off in 2016. "The districts that we have opened are still relatively contained to Miami-Dade and Broward counties, but now that we have the court ruling in favor of PACE we are seeing fast expansion of municipal and county interest," she said. "Going into 2016 we will see the trend of expansion in terms of service territory really take off".

The Florida ruling cleared up a clause in documents that allowed for judicial foreclosure, which is a mortgage remedy, as a recovery remedy for PACE administrators. According to Jonathan Schaefer, Program Manager Florida PACE Funding Agency, "the insertion of judicial foreclosure was never in the spirit of the PACE legislation law."

The ruling essentially declares that judicial foreclosure should not be part of PACE and concluded that the only remedy for the investor is the uniform method of collection, which is standard way that all property taxes are repaid via.

The ruling also dismisses the Florida Banker's Association claim that argued that the PACE law is unconstitutional because it gives the special assessment on a tax bill a lien that supersedes the payment of a mortgage on the property. "The court basically decided that the challenge was not valid – the Florida Bankers did not have standing, nor evidence that that they had been injured by PACE," said Lawson. "That was a big win for PACE in Florida and PACE in general because it indicated that there was court support for PACE."

The Supreme Court ruling probably means the matter is resolved for now, said Schaefer. "At this point in time legislation is clear and cities and counties that were sidelined because of the lawsuits are certainly going to be looking to do PACE," he said.

Florida's PACE legislation allows for PACE financing on renewable energy improvements, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

Unlike California's PACE law, Florida's PACE statute also permits improvements to buildings that make them more resistant to damage from wind and severe weather events.

The state has seen a rise in sea level (sea levels in South Florida have risen nine inches over the past century and by the end of the century, scientists predict sea levels could rise another 6 feet from climate change, according to clearpath.org) and severe storms have contributed to increasing floods in Florida counties.

It is therefore not surprising that public programs, like PACE, that help drive better protection and

resiliency to homes from these risks is a very central topic of public policy now, according to Lawson.

PACE in Florida can fund projects like water barriers to prevent water intrusion or lifting the foundation of homes to protect homes against sea level rise. PACE can also finance a whole range of projects related to hurricane resiliency – such as storm windows, foundation strengthening and roof strengthening. “In terms of other measures on energy side, Florida homeowners are very consistent with what we see in CA – popular measures are heating & air conditioning, rooftop solar and energy efficient roofing,” said Lawson. “But I would estimate that hurricane resiliency is about 40% the project volume in Florida.”

California on the other hand is largely driven by renewables mostly because of the state’s mandate for clean energy.

Cisco DeVries, president of Renew Financial, the financing company behind CaliforniaFirst, a PACE financing program for residential and commercial properties, says that the potential for Florida is big, though maybe not California big. He is currently in the state setting up shop. On Sept. 29, Renew announced that it acquired ECOCity partners, a leading PACE program administrator based in St. Petersburg in Florida that serves local governments from South Florida to the Panhandle.

CaliforniaFirst provides financing for the purpose of renewable energy, efficiency upgrades, water management or seismic retrofit. Loans are secured by bonds, and the reimbursement is billed through the annual property tax bill. So the loan has the same seniority as the government’s property taxes. The loan can have a term to up to 25 years. DeVries said it’s a similar set up in Florida.

In the past year, Renew has completed financing for over $68 million in energy efficiency projects, expanded market coverage from 30% of California to 70%.

DeVries said that the Florida model is based on CaliforniaFIRST. “We expect the integration to be smooth and to greatly enhance the PACE experience in Florida very shortly, ” he said. He sees potential for varied PACE lenders to fund energy upgrades on roughly 50,000 to 75,000 Florida homes per year for about $1 billion in loans annually. Projects would include some solar-panel installations but also lots of replacements for air conditioning, windows, roofs and other basics in more efficient formats.

PACE lenders could fund another $1 billion per year in energy upgrades on businesses in the Sunshine Statin Florida, especially for small- and mid-sized companies, said DeVries.

This low-risk lending structure has opened up a sizable pool of third party capital providers. The bonds benefit from their senior lien position and its treatment as a property tax that is collected through standard tax mechanism. That means that the bonds are exceptionally secure and of very high credit quality. Repayment rates are near 100% and though there is a delay in cash flows the recovery is near perfect. “The great competitive proposition of PACE is that the loan is not tied to property owner, but to the property,” said Devries. “So credit score issues and property transfer issues are almost eradicated.”

Renew issued its first securitization of PACE bonds on September 3. The company issued $50 million of privately placed notes backed by California PACE bonds.

Ygrene’s first transaction to include Florida PACE, included loans that financed energy efficiency, renewable energy, and water conservation upgrades to both commercial and residential buildings.

The loans are repaid via annual property assessments with terms of five to 30 years that are based on the property's value, not the borrower's credit score.

"The market will continue to see deals that incorporate geographic diversity as well as asset diversity, said Lawson. Ygrene is currently working on a second securitization of multistate PACE bonds.

A third player, Florida PACE Agency, is administering a program to several counties in Florida's through its statewide PACE program called E-VEST.

Like, Ygrene and Renew, the Agency secured private capital to fund financing for projects. In 2013 it inked a deal for $500 million in funding through Irvine, Calif.-based Samas Capital LLC.

However, unlike other PACE administrators in the states, Schaefer said that the Florida Finding Agency doesn't need to tap the securitization market. That is because Samas' capitalization is equity so there isn't a real need to takeout the lending via a securitization.

"Other PACE administrators in the state have secured financing through a line of credit so they are in a bigger hurry to free up that capital and need to tap the securitization market as a result," said Schaefer.

THE BOND BUYER

NORA COLOMER

DEC 22, 2015 2:10pm ET

The Latest Weapon Against Climate Change: Property Tax Bills.

Private finance is pumping millions of dollars into green retrofits in some of the U.S.'s most vulnerable areas.

Miami, if you haven't heard, is in trouble. Like, fish swimming in the streets kind of trouble. Like, sinking into the ocean kind of trouble.

And while Florida's leaders are having their own kind of trouble processing the reality of bigger hurricanes and badder floods, businesses and property owners are taking action. In October, for instance, big-box retailer BrandsMart USA completed a $3.1 million upgrade to their Miami Gardens store, toughening it up for future hurricanes and making it more energy efficient.

But the most innovative part of the project may be how it was paid for—through the Property Assessed Clean Energy, or PACE, program. PACE is a framework that provides low-risk financing for efficiency and resiliency upgrades to buildings by putting payments on property tax bills, stretched out over up to 20 years. According to a tally by the nonprofit PACENation, 31 states and the District of Columbia currently have PACE-enabling legislation, most implemented since California pioneered the program in 2008. PACENation has tracked just under $1.4 billion in completed PACE projects during that time.

BrandsMart's project was financed by Ygrene, one of the larger PACE servicers. Ygrene (pronounced "why green"—and the name is energy spelled backwards) sets up and administers PACE programs

for municipalities, with revenue coming from borrower fees. The company has funded or approved more than $750 million in projects since its founding in 2010, making it among the largest players in a growing ecosystem that also includes California's CleanFund and Connecticut's Greenworks Lending.

According to Ygrene CEO Stacey Lawson, PACE is part of a broader trend of climate and infrastructure programs teaming public and private efforts. As Ygrene's numbers make clear, energy efficiency projects are long-term financial winners (to say nothing of the benefits of surviving a hurricane or saving the planet), but paying for them up front is a high bar for property owners.

Now, because of the repayment certainty of having the debt attached to property taxation, PACE loans can be bundled into in-demand securities. Lawson says "they're triple A assets," attributing past AA ratings to the newness of the market. In fact, there's been concern that PACE assets are a little too good, since they get tax-like priority over mortgage repayments. That has in some cases thrown a wrench into home sales and refinancing.

"Governments are thinking about what kind of change to [they] want to effect?" says Lawson. "But business is all about, how do we have that happen, and have that happen sustainably and profitably?" She thinks aggressive marketing of PACE to building owners, in particular, is more a private-sector strength.

Lawson knows quite a bit about getting government and business to work together. In addition to her a tech career, the Californian made a run for Congress in 2012. "You're getting Wall Street to move green—you couldn't do that without the government component," she says. "But also, government couldn't effect that without private industry players."

Of course, there are limits to what even the largest building-level projects can do to fight the effects of climate change. It's widely believed that saving Miami is going to take massive intervention—think Dutch-style seawalls and massive pumps. Projects on that scale will go far beyond the private improvements property owners are making, and mean the government will have to get its hands dirty, too.

Fortune

by David Z. Morris

December 16, 2015, 4:41 PM EST

Municipal Bond Sales to Rise in January After 23% Jump in 2015.

Municipal bond sales in the U.S. are set to increase in the next month while the amount of redemptions and maturing debt falls following a year when new issues and the size of the market expanded.

States and localities plan to issue $8.3 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $5.6 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.
Municipalities have announced $9.8 billion of redemptions and an additional $10.3 billion of debt matures in the next 30 days, compared with the $20.1 billion total that was scheduled a week ago.

For all of 2015, sales rose 23 percent to $376.8 billion from the $305.5 total in 2014, Bloomberg data show. New issues fell short of the record $407.7 billion in 2010. The U.S. municipal market expanded by 0.7 percent this year to $3.53 trillion.

Issuers from New Jersey have the most debt coming due this month, with $1.6 billion, followed by Illinois at $1.43 billion and Indiana with $1 billion. New Jersey Turnpike Authority has the biggest amount of securities maturing, with $1.28 billion.

Investors added $647 million to mutual funds that target municipal securities in the week ended December 16, compared with an increase of $825 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt increased by $160 million last week, boosting the value of the ETFs 0.85 percent to $18.9 billion.

State and local debt maturing in 10 years now yields 89.2 percent of Treasuries, compared with 90.1 percent in the previous session and the 200-day moving average of 100.9 percent, Bloomberg data show.

Bonds of California and Massachusetts had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on California's securities narrowed 9 basis points to 2.18 percent while Massachusetts' declined 8 basis points to 2.11 percent. Puerto Rico and New Jersey handed investors the worst results. The yield gap on Puerto Rico bonds widened 147 basis points to 11.82 percent and New Jersey's rose 8 basis points to 2.91 percent.

Bloomberg Data News

December 28, 2015 — 3:47 AM PST

This story was produced by the Bloomberg Automated News Generator.

- Doubly Bound: The Cost of Issuing Municipal Bonds.
- Financing Infrastructure Through Resilience Bonds.
- SIFMA Issues 2016 Municipal Issuance Survey.
- Dealers Want MSRB, FINRA to Adopt Same, Less Costly Markup Proposals.
- Moody's Seminar: Financial Analysis of Local Governments
- MSRB to Implement Core Conduct Rule for Municipal Advisors.
- GASB Issues Guidance for External Investment Pools and Pool Participants Ahead of SEC Rule Change.
- GASB Issues Proposed Guidance on Fiduciary Activities, Asset Retirement Obligations, and Pensions.
- *Fish v. Township of Lower Merion* – Supreme Court of Pennsylvania holds that Township's application of business privilege tax to businesses whose sole income consisted of rent payments on leased real property was not barred by provision of Local Tax Enabling Act precluding "any tax" on leases or lease transactions; disapproving *Cheltenham Twp. v. Cheltenham Cinema, Inc.* and *F.J. Busse Co. v. City of Pittsburgh*.
- *Ordinance 2354-12 of Tp. of West Orange, Essex County v. Township of West Orange* – Supreme Court of New Jersey holds that Township's redevelopment bond ordinance was not subject to

referendum, where Township passed ordinance through exercise of redevelopment powers conferred on municipalities by Local Redevelopment and Housing Law.
- And finally, although perhaps not the ideal probationer, the community service participant in *Giordanella v. City of New York* who attacked his supervisor with a rake is definitely your secret weapon in the event of the dreaded Zucchini Apocalypse. Shouldn't be hard to find, as he undoubtedly occupies a very, very fixed address.

MUNICIPAL ORDINANCE - CALIFORNIA

Harrison v. City of Rancho Mirage

Court of Appeal, Fourth District, Division 2, California - December 18, 2015 - Cal.Rptr.3d - 2015 WL 9258957

Condominium owner brought complaint for declaratory and injunctive relief, alleging that city ordinance, which provided rules and regulations for renting private homes as short-term vacation rentals and required that a person over the age of 30 sign a contract, violated Unruh Civil Rights Act. The Superior Court granted city's demurrer without leave to amend, and owner appealed.

The Court of Appeal held that:

- City was not acting as a "business establishment" under the Unruh Act, and
- Owner could not amend complaint to challenge ordinance on grounds it violated planning and land use law.

City was not acting as a "business establishment" when it amended existing municipal code regarding short term vacation rentals of private homes to require that a person over the age of 30 sign a contract, and thus Unruh Civil Rights Act did not apply to city's action; city merely increased the minimum age of a responsible person from the age of 21 years to 30, and city was not directly discriminating against anyone.

ZONING - CONNECTICUT

E and F Associates, LLC v. Zoning Bd. of Appeals of Town of Fairfield

Supreme Court of Connecticut - December 22, 2015 - A.3d - 320 Conn. 9 - 2015 WL 8730002

Abutting landowner appealed decision of zoning board of appeals granting a zoning variance that allowed the vertical expansion of a nonconforming building in a business district zone. The Superior Court dismissed appeal. Abutting landowner appealed.

The Supreme Court of Connecticut held that peculiar characteristics of property that made it difficult to construct a second story on building that would comply with zoning setback requirements did not justify granting a variance, overruling *Stillman v. Zoning Board of Appeals*, 25 Conn.App. 631, 596 A.2d 1; *Jersey v. Zoning Board of Appeals*, 101 Conn.App. 350, 360, 921 A.2d 683; *Giarrantano v. Zoning Board of Appeals*, 60 Conn.App. 446, 453, 760 A.2d 132.

ANNEXATION - IOWA

[Concerned Citizens of Southeast Polk School Dist. v. City Development Bd. of State]

Supreme Court of Iowa - December 11, 2015 - N.W.2d - 2015 WL 8526410

Citizens group sought review of decision of city development board approving annexation of land near high school. The District Court affirmed. Citizens group appealed.

The Supreme Court of Iowa held that the notice of appeal from a final judgment or order of the district court must be filed within 30 days of the date the judgment or order was electronically filed, not the date of the notice of filing.

UTILITY DISTRICT - MISSOURI

[U.S. v. Geranis]

United States Court of Appeals, Eighth Circuit - December 15, 2015 - F.3d - 2015 WL 8957488

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 United States 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.

BONDS - NEW JERSEY

Ordinance 2354-12 of Tp. of West Orange, Essex County v. Township of West Orange

Supreme Court of New Jersey - December 21, 2015 - A.3d - 2015 WL 9282972

Challengers filed action in lieu of prerogative writs, claiming that township's redevelopment bond ordinance was invalid. The Superior Court dismissed action. Challengers appealed. The Superior Court, Appellate Division affirmed.

On certification, the Supreme Court of New Jersey held that:

- Ordinance was not subject to referendum, and
- Filing of referendum petition did not modify 20-day time limitation for filing prerogative-writs action challenging validity of bond ordinance.

Township's redevelopment bond ordinance was not subject to referendum, where township passed ordinance through exercise of redevelopment powers conferred on municipalities by Local Redevelopment and Housing Law.

Challengers' filing of referendum petition challenging township's municipal bond ordinance did not modify 20-day time limitation for filing prerogative-writs action challenging validity of a bond ordinance.

LIABILITY - NEW YORK

Giordanella v. City of New York

Supreme Court, Appellate Division, Second Department, New York - December 16, 2015 - N.Y.S.3d - 2015 WL 8825545 - 2015 N.Y. Slip Op. 09251

Employee of city department of sanitation brought personal injury action against city after he was assaulted by participant in community service program with rake, alleging city failed to provide proper security. City moved for summary judgment. The Supreme Court, Queens County, granted motion. Employee appealed.

The Supreme Court, Appellate Division, held that:

- City did not owe special duty to employee to provide proper security, and
- City did not owe statutory duty to employee pursuant to statute directing employers to comply with health and safety regulations.

City did not voluntarily assume duty to city employee, who worked for department of sanitation, for

injuries he sustained when he was assaulted with rake by community service participant, and thus city did not owe special duty to employee.

City did not owe statutory duty to department of sanitation employee, who was injured when community service participant assaulted employee with rake, pursuant to statute which applies to recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and directs employer to comply with health and safety regulations.

IMMUNITY - OKLAHOMA

Gowens v. Barstow

Supreme Court of Oklahoma - December 15, 2015 - P.3d - 2015 WL 8922587 - 2015 OK 85

Motorist brought action against driver of emergency vehicle, who was paramedic supervisor, and his employer, for property damage and injuries sustained in automobile collision. The District Court found that driver was negligent and reckless and awarded motorist damages capped at $125,000 under the Government Tort Claims Act (GTCA). Employer appealed. The Court of Civil Appeals reversed. Motorist petitioned for writ of certiorari, which was granted.

The Supreme Court of Oklahoma held that:

- Trial court's finding that driver was acting within scope of his employment when he collided with motorist was reasonable;
- Acts performed with reckless disregard do not automatically rise to level constituting malice or bad faith, as to result in acts being outside of scope of employment under GTCA, overruling *Fehring v. State Ins. Fund*, 19 P.3d 276;
- Evidence supported finding that driver acted with reckless disregard for safety of others;
- Trial court was not required to apportion liability to city; and
- Motorist was entitled to cap of $125,000 in damages.

Acts performed with reckless disregard do not automatically rise to a level constituting malice or bad faith, as to result in those acts being outside of the scope of employment under the Governmental Tort Claims Act (GTCA) and, while malice or bad faith can be inferred from conduct exhibiting reckless disregard for the rights of others, such determination shall be made on a case-b--case basis; overruling *Fehring v. State Ins. Fund*, 19 P.3d 276.

ZONING - PENNSYLVANIA

Wyomissing Area School Dist. v. Zoning Hearing Bd. of Wyomissing Borough

Commonwealth Court of Pennsylvania - November 25, 2015 - A.3d - 2015 WL 7566242

School district applied for zoning permit to erect a fence around athletic fields. Zoning hearing board denied the application. School district appealed, also filing a complaint in mandamus and a motion for peremptory judgment in mandamus, seeking to compel the grant of application. The Court of Common Pleas, Berks County, affirmed, dismissing the mandamus action. School district appealed.

The Commonwealth Court held that:

- Construction of fence around athletic fields located on school property would not amount to an expansion of property's current accessory athletic use, and thus did not require school district to request a special exception under borough ordinance;
- Construction of fence would not create a new "stadium use" and, thus, did not require school district to request a special exception under borough ordinance; and
- Evidence was insufficient to support finding that construction of fence would violate borough ordinance.

UTILITIES - TEXAS

Kidd v. Texas Public Utility Commission

Court of Appeals of Texas, Austin - November 25, 2015 - S.W.3d - 2015 WL 7697794

Individuals brought action against Public Utilities Commission, following denial of their request for public hearing on their request for rulemaking processes to address concerns related to deployment of certain meters by electric utilities.

The District Court granted Commission's plea to jurisdiction seeking dismissal of individuals' claims. Individuals appealed.

The Court of Appeals held that individuals did not have right to public hearing by Commission and, thus, trial court did not have subject matter jurisdiction over action.

Individuals, who requested that Public Utilities Commission conduct public hearing on their request for rulemaking processes to address concerns related to deployment of certain meters by electric utilities, did not have right to hearing, and, thus, trial court did not have subject matter jurisdiction, under Administrative Procedure Act, over their action brought against Commission following denial of their request for hearing. While provision of Act waiving sovereign immunity for declaratory judgment action challenging validity of agency rule required individuals to complain of Commission rule to successfully invoke court's jurisdiction, individuals' claims arose in admitted absence of rule and focused on procedure Commission employed prior to its decision not to adopt a rule, and provision of Act governing opportunity for public hearing prior to adopting rule did not impose non-discretionary duty upon Commission to provide individuals with hearing.

ZONING - WASHINGTON

Concerned Friends of Ferry County v. Ferry County

Court of Appeals of Washington, Division 2 - December 15, 2015 - P.3d - 2015 WL 8927147

Citizens and public interest groups filed petition in the Superior Court for review of Management Hearings Board order finding county in compliance with Growth Management Act (GMA) for designation of agricultural lands of long–term commercial significance. The Board then granted certificate of appealability allowing direct review which was granted.

The Court of Appeals held that:

- County's point system for designating agricultural resource lands was consistent with GMA; Ordinance assigning point values to parcels from least to most suitable soils was consistent with GMA and comprehensive plan;

- Ordinance could assign one point to parcels more than five miles from urban growth area and zero points to parcels within five miles;
- Ordinance could calculate farm size based only on ownership of contiguous parcels;
- Setting contiguous block of 500 acres or more for designation as agricultural land was reasonable attempt to find the smallest minimum size that would prevent scatter; but
- Failure to designate as agricultural resource land over 2,816 acres qualifying under county ordinance failed to comply with comprehensive plan and GMA.

Investment Returns: Defined Benefit vs. Defined Contribution Plans.

The brief's key findings are:

- The analysis compares returns by plan type from 1990-2012 using data from the U.S. Department of Labor's Form 5500.
- During this period, defined benefit plans outperformed 401(k)s by an average of 0.7 percent per year, even after controlling for plan size and asset allocation.
- In addition, much of the money accumulated in 401(k)s is eventually rolled over into IRAs, which earn even lower returns.
- One reason for the lower returns in 401(k)s and IRAs is higher fees, which should be a major concern as they can sharply reduce a saver's nest egg over time.

Download Full Brief.

Center for Retirement Research at Boston College

by Alicia H. Munnell, Jean-Pierre Aubry and Caroline V. Crawford

December 2015

Doubly Bound: The Cost of Issuing Municipal Bonds.

A new study looks at the one-time fees that governments pay the finance firms that help them sell their bonds in the municipal market. These fees are in adddition to the published interest rate the government pays the investors who actually buy the bonds. The study, commissioned by the University of California at Berkeley and the ReFund America Project, found that the average government issuer pays finance firms a 1.02 percent cut from their bond sale. But this percentage varies widely and tends to be larger for smaller issuers.

For example, a $2.1 million bond issued by the Dehesa School District in Southern California incurred $200,138 in fees — more than 9 percent of the principal amount. That means the school district is paying interest on more than $2 million in debt but in actuality received only $1.9 million after the bond sale. "Had this issuance followed the 1.02 percent average, its issuance fees would have been nearer $21,000," wrote the report's author, Marc Joffe, who is also a Governing contributor. "In our findings, six California school districts incurred costs in excess of 8.5 percent."

The report, however, offers solutions for lowering or equalizing costs. For one, better transparency could provide a template for standardized reporting. This report was done using public records requests, but the increasing popularity of government websites that detail their finances is also a

potential venue for reporting such fees. Another idea relates to the millions of dollars government issuers pay annually to get so-called CUSIP numbers, which are like social security numbers given to each bond issuance. The CUSIPs protect each issuance and its data as unique, but Joffe noted that the benefits "do not appear to merit the costs," suggesting that the charge from the privately operated CUSIP Service Bureau could reasonably be much lower.

Read the Study.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 18, 2015

SIFMA Survey Forecasts Issuance, Interest Rates, Trends for 2016.

Municipal participants who responded to a recent survey conducted by the Securities Industry & Financial Markets Association predict a total of $431.5 billion of new issuance arriving in the market in 2016.

The survey was conducted from Nov. 11 to Dec. 18. The forecasts represent the median values of all submissions of individual member firms that participated, including Citigroup, First Southwest Company, FTN Financial, JPMorgan, Loop Capital Markets LLC, Piper Jaffrey, Raymond James & Associates Inc., RBC Capital Markets, Wells Fargo Advisors, William Blair & Co.

The prediction on volume includes both short and long-term issuance — and is up slightly from the $428.8 billion of issuance that was estimated in 2015, according to the New York and Washington, D.C.-based U.S. securities industries group. Actual issuance for the year to date has totaled $377.29 billion of long term bonds and $32.30 billion of short term notes.

According to the survey, respondents predict $388.5 billion of long term issuance and $43 billion of short term next year.

Long-term tax-exempt issuance will reach $347.5 billion in 2016, according to respondents' predictions, while issuance of alternative minimum tax securities is forecasted at $10.5 billion in 2016.

Participants expect to see issuance of $30.5 billion of taxable municipal debt.

Refundings are predicted to comprise less of the total issuance, falling to 55%, according to the participants, from the 62.2% they had predicted for 2015.

Variable-rate demand obligation issuance will trend away from the record lows predicted for this year as $8.0 billion of VRDO paper is forecasted to come to market in 2016.

Floating rate note issuance debt to the tune of $12.5 billion is expected to surface in the coming year – after the 2015 volume of about $5.3 billion missed respondents' expectations on last year's survey for $12.5 billion in FRN debt in 2015.

In terms of use of proceeds, 62.5% of respondents believe that the largest issuing sector will be general purpose, followed by transportation, education and housing. The general purpose sector has been the largest issuing sector by gross amount in prior years, according to SIFMA.

Meanwhile, the curtailment of the tax-exemption on municipal bond interest once again ranked as a top concern among respondents going into the New Year. Participants said its elimination would have the greatest impact on the municipal market, while fiscal pressures resulting from underfunded pensions and the possibility of a default by one single, large and prominent issuer are also among their chief concerns.

For the purpose of the survey, a default was defined as the occurrence of a missed interest or principal payment or a bankruptcy filing, according to SIFMA.

Overall, respondents said they expect 30 issuers to default on a total par value of $69 billion in 2016 – with a bulk of the par amount in defaults consisting of defaults in Puerto Rico-related debt.

At least one respondent named Basel III capital and liquidity requirements among the factors with the highest importance in 2016, while two others cited “oil bust” and “authority to access Chapter 9” as their primary concerns in the New Year.

Interest rates were another hot topic for the participants, who predicted that the federal funds rate will rise to 0.50% by the end of March 2016, up from 0.38% at the end of December.

They expect it to gradually increase to 1% by the end of 2016, according to the survey.

The ratio of municipals to Treasuries, participants said, is expected to decline before again rising at the end the coming year.

Predictions call for the ratio of the yield on 10-year triple-A general obligation municipal securities to the 10-year Treasury benchmark to fall to 88.5% by the end of December 2015, after peaking to 103.21% at the end of September. However, respondents said that ratio will rise to 90.5% by December 2016.

Respondents expect the two-year Treasury note to increase to 1.65% by the end of 2016 from 1% at the end of December 2015. Additionally, they predict that the 10-year Treasury note yield will increase to 2.75% from 2.33% at the end of December 2015.

THE BOND BUYER

BY CHRISTINE ALBANO

DEC 23, 2015 1:50pm ET

Muni Bonds Winner in 2015; Junk Bonds Big Loser.

Municipal bonds have been the biggest winner in the U.S. fixed-income universe this year, while junk bonds have been the biggest loser.

The report card captures a balancing act among investors during a year of uncertain global growth, punctuated by a sharp decline in oil and other commodities, concerns about a slowdown in China’s economy and the Federal Reserve’s first interest-rate increase since 2006.

Many investors shed their exposure to corporate bonds sold by lower-rated firms, led by the energy sector that bore the brunt of the bear run in oil.

But with U.S. Treasury yields remaining stubbornly low–contrasting to bond bears' predictions of much higher yields this year–many dabbled into municipal bonds and high-grade mortgage-backed securities, or MBS, to obtain relatively higher income.

U.S. municipal bonds have posted a total return–including price gains and interest payments–of 3.19% this year through Tuesday, according to data from Barclays PLC.

MBS has returned 1.38%, while U.S. government debt has returned 1.03%.

On the losing side: junk bonds posted a negative return of 5.28%. Its sibling–investment-grade corporate debt–had a negative 0.68% return.

Another loser: Treasury inflation-protected securities, with a negative return of 1.8%. Lower oil prices have reduced inflation concerns, which sapped the appeal of financial assets that offer a hedge against higher consumer prices.

The S&P 500 stock index has returned 1.1%–including price gains and dividend payments, this year through Tuesday, according to FactSet.

THE WALL STREET JOURNAL

by MIN ZENG

Dec 23, 2015

Report Says 2016 Could Be New Era In Bond Refinancing In The Project Finance Sector.

OVERVIEW

- We believe that 2016 could usher in a new era in bond refinancing in the project finance sector.
- Our research shows that institutional investor interest and refinancing conditions for loans made and priced at the height of the global financial crisis are now ripe for capital market takeouts.
- Assuming that deal flow matches the high demand for infrastructure investment within the institutional investor market, we believe financing conditions for long-dated debt transactions in the capital markets can only get better.

LONDON (Standard & Poor's) Dec. 22, 2015–With the end of the low interest rate cycle now clearly in sight, and the likely consequence of this on swap rates, Standard & Poor's believes 2016 could herald a new era in project finance bond refinancings.

"Assuming that deal flow matches the high demand for infrastructure investment within the institutional investor market, we believe financing conditions for long-dated debt transactions in the capital markets can only get better," said Standard & Poor's credit analyst Michael Wilkins, in the report published today, "Project Finance: Rate Rise May Herald A Wave Of Refinancing In The Bond Market."

Rising rates could actually provide a boost to refinancings of infrastructure project debt in the capital markets.

In today’s low-yield environment, insurers and asset managers are particularly eager to invest in real assets such as infrastructure. That’s because these projects provide inflation-linked, relatively attractive risk-adjusted returns, with a low correlation to the economic cycle and healthy cash flow and income yield. Also, those low interest rates have meant banks have been able to fund themselves at a historically low cost. This has led to ample liquidity in the market and has helped increase bank lending to project finance and infrastructure (see “Are Rumors For Global Project Finance Bank Lending’s Demise Greatly Exaggerated?” published Jan. 14, 2015, on RatingsDirect).

At the same time, the amount of issuance in the project bond market has ticked higher over the last couple of years, which has also been partly due to low interest rates. Low interest rates have also been a factor in the upsurge in direct lending and private placements to infrastructure projects from institutions. Yet the number of capital market refinancings of bank loans via new project bond issues hasn’t matched this trend, partly due to the disincentives of breaking the swaps associated with bank financings.

However, with the prospect of a low-rate cycle coming to an end, this picture changes. As swap rates go up, the breakage costs for swaps are reduced on a mark-to-market basis, making breakage costs less punitive. Accordingly, refinancings of infrastructure project debt in the capital markets may receive a boost as a consequence.

Standards & Poor’s Ratings Services’ research shows that institutional investor interest and refinancing conditions for loans made and priced at the height of the global financial crisis are now ripe for capital market takeouts. Our simulations show that the mark-to-market swap breakage cost saving could be as high as 40% for some project loans if swap rates rise by 100 basis points (bps) from where they are today.

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. Alternatively, call one of the following Standard &
Poor’s numbers: Client Support Europe (44) 20-7176-7176; London Press Office (44) 20-7176-3605; Paris (33) 1-4420-6708; Frankfurt (49) 69-33-999-225; Stockholm (46) 8-440-5914; or Moscow (7) 495-783-4009.

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MSRB Reminds Regulated Entities of January 1, 2016 Implementation Date of Underwriting Fee Decrease.

The Municipal Securities Rulemaking Board (MSRB) reminds brokers, dealers and municipal securities dealers that amendments to MSRB Rule A-13, reducing the underwriting fee, become operative January 1, 2016. The underwriting fee is decreasing from .003% ($.03) to .00275% ($.0275) per $1,000 of the par value. The reduction in the underwriting fee followed an extensive holistic review of MSRB fees by its Board of Directors.

Read the regulatory notice.

NABL: Certain Tax-Exempt Bonds Extended in PATH Act.

On December 17, 2015 the House passed The Protecting Americans from Tax Hikes (PATH) Act of 2015, a $680 billion tax extender bill. Section 164 of the PATH Act authorizes the issuance of $400 million of qualified zone academy bonds in 2015 and 2016. Section 171 of the PATH Act extends through December 31, 2016 tax benefits, including tax-exempt bonds, in empowerment zones. Section 171 also modifies Section 1394 of the Internal Revenue Code, concerning tax-exempt enterprise zone facility bonds. The modifications are effective for bonds issued after December 31, 2015.

The Senate is expected to approve and the President to sign the PATH Act.

Click here to view the PATH Act (See page 69 for Section 164 and page 77 for Section 171).

Mind The GAAP: Financial Reporting Impact Of New Accounting Standards For Not-For-Profits.

In April of this year, the Financial Accounting Standards Board (“FASB”) circulated a series of proposed changes to generally accepted accounting principles (“GAAP”) applicable to certain not-for-profits. These changes, which are intended to provide clearer information to donors, creditors, and other users of financial statements, may have a significant impact on not-for-profit financial reporting (which has remained largely unchanged for nearly twenty years) and will, among other things, (i) impact the reporting of operating performance in an entity’s statement of activities and related metrics in the statement of cash flows, (ii) require the use of the direct method for preparing the statement of cash flows, and (iii) modify the reporting disclosure of net assets and “underwater” endowments.

The new standards will apply to most not-for-profit organizations, including public charities and private foundations, but not to entities that provide dividends, lower costs, or economic benefits to owners, members or participants such as mutual insurance entities, credit unions, farm and rural electric cooperatives, or employee benefit plans.

FASB has not offered a timeline for when these GAAP changes will take effect and they remain subject to revision.

Some highlights of the proposed changes are:

Defining Operating Activities

Not-for-profit entities (other than healthcare entities) are currently required to report their "change in net assets," a metric which is similar to the comprehensive income of a for-profit business. While entities now have flexibility regarding how that metric is calculated, the proposed standards will require the classification of all revenues, expenses, gains, losses or other changes in net assets as either operating or nonoperating activities, with operating activities consisting of all resources derived from or directed at carrying out an entity's mission and available for use in the current reporting period.

Cash Flows

The proposed operating activity reporting changes will be reflected on the statement of cash flows. Specifically, certain expenditures, gifts of cash to acquire property and equipment, and cash invested for programmatic purposes will be classified as operating cash flows. Returns from non-programmatic investments will be considered investing inflows, while interest on financing will be classified with financing activities. In addition, entities will be required to report operating activity cash flows using direct method reporting (which generally involves breaking out cash flows on a line item basis, rather than showing net income as modified by certain adjustments).

Net Asset Reporting

Currently, not-for-profit entities classify net assets as unrestricted, temporarily restricted and permanently restricted. Under the proposed standards, a new category, "net assets with donor-imposed restrictions," will replace the temporarily restricted and permanently restricted categories, with the differences among funds being described in the footnotes to the financial statements. In addition, the unrestricted category will be renamed "net assets without donor restrictions."

Underwater Endowments

Finally, the proposed standards will change the way entities report so-called "underwater" endowment funds. An endowment fund is considered to be "underwater" if the fair value of the assets and accumulated returns of the fund are less than the historical amount of the gift. Currently, GAAP requires entities to report a deduction in net assets without donor restrictions to the extent of the deficit. Under the proposed standards, entities will present the entire endowment fund, including whatever is underwater, in "net assets with donor restrictions" and disclose (i) the aggregate fair value of the underwater endowment funds, (ii) the original gift amount or the amount the entity must maintain according to donor requirements or the law, and (iii) the amount by which funds are underwater.

Apart from the administrative and reporting impact on not-for-profits, these changes may influence how donors view a not-for-profit's health and prospects. Not-for-profits can expect more questions about their financials, both because of these changes, in the near term, and because the proposed standards will lessen the similarities between for-profit and not-for-profit reporting.

Staff and board members of not-for-profit entities should familiarize themselves with the proposed changes, and should plan to meet with their auditors and counsel to evaluate how the new standards may affect their financial reporting and to determine whether any bookkeeping changes should be implemented in advance to prepare.

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Last Updated: December 14 2015

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.

Muni Experts Lament Rates, Credit Concerns, Volume as Year Ends.

Municipal experts awaiting this week's Federal Reserve's decision on interest rates said a host of other stressors — from a lack of supply and credit concerns to unfunded pension liabilities and yield-curve positioning — were high on their list of concerns.

It's been a year of headline-making news for troubled municipalities, political and government leaders, municipal legislation, market trends and federal regulation, but municipals took it in stride, according to analysts.

"Municipal investors have undergone a nerve-wracking couple of years, having to contend with the irrational threat of rising rates, the downgrade of very high-profile credits, the potential for market dislocating defaults, a shrinking high-yield sector and sporadic liquidity flare-ups — just to name a few," Vikram Rai, head of Citi's municipal strategy group wrote in a Dec. 3 municipal outlook called "A Year on the Edge."

And 2015 was no different. It had its share of everything from general market and seasonal volatility, to credit distress and fiscal debacles, and high-profile bankruptcies and defaults. Municipal analysts, strategists, portfolio managers, and experts reflecting on 2015 said, at times, there were more downs than ups.

Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management, said a lack of net new supply was most problematic for him this year.

He said he was challenged to find municipal bonds that fit into his investment-grade quality bias and longer-term investment parameters. U.S. Bank Wealth Management manages $130 billion of total assets, but declined to disclose the amount of municipal assets under management.

Initially, heavy refunding activity in the first half of 2015 gave Heckman hope for more robust volume throughout the second half of the year.

"That really gave us a firm confidence that the market would do very well this year in the face of rising rates," he said on Dec. 1. But his thesis "took a hit" mid-year, and "the decline in new issuance is actually getting worse, not better as we finish this year," Heckman said.

LACK OF SECONDARY TRADING

"We have tried to overcome a lack of supply in investment-grade bonds," he said. "We have tried very aggressively buying everything we see, but it's very hard when there is not a lot of secondary trading." He said recent layoffs in fixed-income trading operations contributed to the lack of trade flow and availability of bonds this year.

In a market and economic report released a day after his interview with The Bond Buyer, Heckman held out hope for a late-year supply burst.

“We expect issuance to surge in the month of December due to an above-average maturity schedule,” he wrote in a report for the week of Nov. 30. “In addition, this may be the last chance for issuers to refinance their debt prior to the Fed beginning to normalize the policy rate. The recent flattening of the yield curve could also add to the issuer incentive to refund in December,” he said in the report.

Heckman said the prospect of rising rates could have a swifter impact on the short end of the yield curve, and that he continues to be pressed to find long-term paper to fit his needs at year end.

“We believe bond portfolios should focus on an average maturity of five to seven years, and should include normal allocations to longer-term bonds, rather than focusing on short-term bonds,” he wrote in his Dec. 2 report.

“We would emphasize credit exposures since spreads are fair relative to high-quality securities, and the premium offered for lower-quality credits tends to compress in rising interest rate regimes,” he said. Heckman said buyers can find some benefits from the relatively steep muni yield curve since it mirrors the Treasury curve.

“This offers investors some ‘extra’ yield to compensate for the risk of longer maturities in a rising rate environment,” Heckman added. He is, however, avoiding certain credits, particularly those struggling with pension liabilities.

Anthony Valeri, senior vice president and investment strategist at LPL Financial, said the potential Fed rate hikes will be a headwind for municipals going into 2016.

“While they have historically held their value slightly better than comparable Treasuries during periods of rising rates, [municipal bonds] cannot completely disconnect from rate hikes,” he wrote in a Dec. 8 fixed-income outlook.

Valeri believes a significant increase in overall municipal debt growth is unlikely in the remainder of 2015. “States and municipalities battle with still-tight budgets that will likely keep bond issuance for new infrastructure projects limited,” he wrote in his report.

Valeri also believes net supply is likely to be limited in 2016, which should provide support to prices. “Like taxable bonds, municipal bonds are likely to witness a low-return environment as well and not escape the challenges facing all bond investors in 2016,” he wrote.

John Mousseau, director of municipal investments at Cumberland Advisors, said the relative attractiveness of municipal bonds was one thing that remained consistent through the year, amid volatility in credit, liquidity and issuance. He said there may be some added opportunities to pick up attractive municipals if a late December supply burst surfaces as issuers attempt to current-refund bonds with 2016 call dates.

“This will be large, but not like the bulge we saw last year,” he said in a recent interview. “In any case, munis of higher- grade variety at 4% are still a giveaway, in our opinion.”

But the opportunity could be short-lived depending on when the Fed decides to act, Mousseau said. He said once the Fed hikes begin, muni-Treasury yield ratios could decline, partly due to higher Treasury yields and declining municipal yields as the municipal supply subsides.

AVOIDING NEGATIVE ARBITRAGE

“If you go to decently lower ratios, that will prompt a flood of advanced refundings with calls out in

the 2021 range," he said. He said many issuers have largely focused solely on advance-refunding bonds out to 2018 and 2019 to avoid the negative arbitrage beyond those years eating into the cost savings.

That behavior could change, however, based on potentially declining ratios.

"With a roll-down the yield curve and lower ratios, refundable bonds with calls from 2021 to 2023 come into play," Mousseau said. The municipal-to-Treasury ratios will most likely end 2015 near their five-year average, according to Valeri of LPL.

As of Dec. 1, the 30-year ratio was at 104% and the 10-year at 95% — just slightly lower than the start of November, when there was intermediate- and long-term bond outperformance, he said. "We think that the recent strength signals near-term caution, but believe that municipal bonds have attractive long-term valuations," Valeri noted.

Peter DeGroot, managing director at JPMorgan Securities predicts municipals will outperform Treasuries on a relatively modest lift in long-dated yields. By mid-year 2016, "we believe that the Federal Reserve will have established a gradual approach to normalizing interest rates," DeGroot wrote in a Nov. 25 municipal market outlook.

He estimates that the two, five, 10-year and 30-year U.S. Treasury yields will be at 1.35%, 2.10%, 2.50% and 3.15%, respectively, about halfway through 2016, and further rising to 1.75%, 2.50%, 2.75% and 3.25%, respectively, by year end.

"Below expected economic growth would serve to limit the Fed tightening cycle and keep the curve closer to its current shape and absolute levels than we have forecast," DeGroot added.

POLICIES DIVERGE

Dawn Mangerson and Jim Grabovac, co-portfolio managers at McDonnell Investment Management in Oakbrook, Ill., said economic and monetary policy divergence was the key driver of capital market returns and valuations across global markets in 2015.

The consequence was a further strengthening of the dollar that added downward pressure on commodity prices broadly.

"This guided our expectations toward a benign outlook for inflation and limited upside potential for longer-term interest rates in the U.S.," the managers wrote in a Nov. 30 email.

Going forward, they expect economic and monetary policy to play an "outsized" role in 2016. Economic recovery entering its seventh year and additional labor market gains could afford the Federal Reserve "the opportunity to boost short-term rates off the zero-lower bound for the first time since 2008," they wrote.

"With global growth moderating, however, and relatively large interest rate differentials in favor of the U.S., we expect a stronger dollar will continue to dampen inflation and U.S. growth at the margin, thereby limiting both the scope and the alacrity with which the Fed pursues its attempt at policy normalization.

Analysts said 2016 should offer a fresh start and new value opportunities for municipal investors, even if volume is down.

JPMorgan forecasts net supply of negative $58 billion in 2016, and approximately negative $58

billion in issuance over 2016 — a 20% decrease from the negative $73 billion expected for full year 2015.

The seasonal factors approaching 2016 appear to be displaying a typical pattern with heavy mid- and end-of-year coupon and redemption periods showing low net supply, according to DeGroot of JPMorgan.

In addition, net supply is expected to support prices during January and February, with net negative $16 billion in supply over the two month period, he said.

"In 2015, expected richening of ratios in the January-February period failed to materialize as 10-year U.S. Treasury yields fell to two-year lows of 1.67%, and supply for the two months was a near record $62.5 billion," DeGroot wrote.

July and August saw net negative supply of $34 billion, or 24% above forecasted net supply for these months, he added. DeGroot called the relative performance in 2015's June to August period "solid," with average 10-year muni-Treasury ratios of 99% versus an average of 102% for the March to May period.

The firm anticipated positive October and November net supply of $4.7 billion, but recently reported that net supply is trending to about negative $6 billion after leaner-than-expected issuance over the two months.

DeGroot is among those keeping an eye on potential defaults in Puerto Rico-based issuers. The commonwealth had a tumultuous year that brought intense fiscal and economic strain and included several credit downgrades, an admission by Gov. Alejandro Garcia-Padilla that the island's debtors couldn't meet their responsibilities in the current economy, and a call for federal government assistance and pleas for special legislation allowing Chapter 9 bankruptcy.

"Fortunately, the impact to the broader fund community is far less dramatic given relative concentrated representation of Puerto Rico bonds across mutual funds and that Puerto Rico bond prices have been marked down considerably," DeGroot said in his report.

"Moreover, credit and cash flow difficulties in Puerto Rico are not systemic across the asset class and are highly idiosyncratic in nature," DeGrooted added.

Heckman said he will remain bullish through the first quarter of 2016 as he monitors two key market factors — the possibility of continuing interest rate increases and municipalities that have "severely underfunded pension liabilities." He believes the Fed will be "slow" and "methodical" when it comes to rate hikes in the New Year.

"Once they get into a rising interest-rate environment it's very difficult to see where they may stop, and that might have some dynamic impact on the yield curve," he said. "We have seen it flatten to a degree already."

He said a rising rate environment could benefit the long end of the curve and trigger some changes to his municipal portfolio strategy. "We could see an environment where we go from a longer-dated portfolio to a barbell strategy," he said.

STAYING CAUTIOUS

He, too, will be cautious about some sectors, including higher education, which faces changes to demographics and declining student population. And he'll keep an eye on Puerto Rico as it continues

its fiscal and economic “saga,” focusing on how Puerto Rico handles a $1 billion coupon payment due Jan. 1. He currently doesn’t own any Puerto Rico paper.

DeGroot said there are risks ahead and investors should be prepared for the unexpected, as was the case this year.

“The forecast for the shape and magnitude of yield changes in 2016 is remarkably similar to our forecast heading into this year,” DeGroot said in his report. However, the expected yield changes in 2015 did not materialize as gross domestic product growth of 2.1% underperformed an estimate of 2.7% and “the Fed chose to be more deliberate than we had anticipated,” he said.

“Not surprisingly, we view lower growth and inflation as the primary risks to our 2016 forecast as well,” DeGroot said. “Our interest rate forecast does not portend a repeat of this year’s spike in advance refunding volume and steep drop in longer dated yields, but a recurrence is clearly a risk to performance as we progress through 2016.”

THE BOND BUYER

BY CHRISTINE ALBANO

DEC 15, 2015 10:18am ET

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