[Bond Case Briefs]

Municipal Finance Law Since 1971

[Oil Price Decline Mostly Positive for Municipals… At Least for Now.]

Summary

- Most states and local governments should benefit from higher tax receipts as more consumer discretionary income leads to a pick-up in spending.
- Negative effects will be localized around energy producing areas, especially if oil prices stay low for an extended period.
- Longer-term implications could be negative for credit quality if weaker economic conditions in other parts of the world create a drag on U.S. growth.

The dramatic move lower in crude oil prices over the last six months is good news for consumers at the pump. Since most gas tax revenues are collected on a per gallon basis, money formerly spent on gas should net most governments higher tax receipts if consumers spend the newfound money.

Of course, those states with economies heavily concentrated in energy production, namely Alaska, Wyoming and North Dakota, are likely to experience job losses and lower overall tax revenues. There will also be localized pain in cities and towns in other parts of the country involved directly in production or upstream vendors heavily tied to the energy industry. Cutbacks in production are already occurring and are likely to pick up, especially if crude oil prices stay lower for an extended period.

Fortunately, many governments understand their strong connection to the energy industry and conservatively set aside above average levels of reserves knowing that prices may one day fall, especially since they have done so in the past – crude oil has fallen by more than 50% five times since the mid-1980s. Of course, there will be outliers that experience financial distress and all governments directly connected to the industry are likely to run near-term deficits as they right size budgets to match lower tax receipts. Fortunately, many of those affected are starting from a very strong position, so we don't expect to see many, if any, municipal defaults as a result of the large decline in crude oil prices.

Toll roads are one transportation sector likely to benefit as lower gasoline prices lead to more travel and congestion, making toll roads an attractive alternative. Airports should also strengthen as their major tenants, the airlines, take advantage of lower costs and possible increases in travel. The decline in gasoline prices may also make increasing the Federal gas tax a more palatable solution to funding the Highway Trust Fund. More members of the new Congress, previously committed to not increasing taxes, have indicated that additional taxes on gasoline could be part of the solution for funding infrastructure.

Of course, oil price declines at least partly reflect economic weakening in other parts of the world. The U.S. economy has thus far stayed the course of slow, but positive growth. However, the economic malaise in other parts of the world could eventually slow growth in the U.S. and reverse some of the short-term benefits most municipal credits are currently experiencing.

Income from tax-exempt municipal bonds or municipal bond funds may be subject to state and local taxes, and a portion of income may be subject to the federal and/or state alternative minimum tax for certain investors. Federal income tax rules will apply to any capital gains.

There are risks associated with an investment in bond investments, including the impact of interest rates, credit and inflation. In general, bond prices rise when interest rates fall and vice versa. This effect is usually more pronounced for longer term securities.

Seeking Alpha

By Chad Farrington, CFA

Jan. 12, 2015 3:15 PM ET

BlackRock Likes Barbell Approach for Munis.

BlackRock's municipal-bond team of Peter Hayes, James Schwartz, and Sean Carney today points out that the muni market had a "perfectly positive" year in 2014, posting a net gain in each of the years' 12 calendar months, while muni mutual funds were nearly perfect on a weekly basis, posting net inflows in 50 out of 52 weeks. For 2015, BlackRock says investors should adopt a barbell strategy focusing on short-dated bonds maturing in two years or less and long-dated bonds maturing in 15 to 20 years. From BlackRock:

"Ratios remain attractive (at year-end, 30-year munis were outyielding 30-year Treasuries before tax, making their yields even more attractive after tax). Munis are built for income, and investor appetite for income is insatiable. To wit, demand remains very strong and we foresee another year of net negative supply—a scenario that is good for pricing. Our strategy heading into 2015 is to maintain a barbell approach, holding very short maturities for liquidity and longer maturities for yield pick-up and to benefit from a flattening yield curve. We see greatest value in lower-rated investment-grade securities. Overall, munis are a momentum-driven market. With 2014 momentum well intact, we see little reason for big changes as the calendar turns the page."

Sector-wise, BlackRock likes state tax-backed and essential-service bonds, particularly in Texas, Virginia and the Plains States, as well as school-district bonds and dedicated-tax bonds. BlackRock is underweight land-secured bonds, senior-living bonds and pre-refunded bonds, as well as Puerto Rico bonds.

Barron's

January 12, 2015, 3:23 P.M. ET

By Michael Aneiro

Muni Bond Manager's Journal: Biting Into the Credit Donut.

My team and I were finalizing a presentation to investors and trying to come up with a way to express the credit-driven nature of the municipal bond investment process. The continuous circle seemed like the best way, since the seven components were interdependent—what happened with one affected another.

I like to call it the “Circle of Credit,” reinterpreted loosely from The Lion King, but one wag thought it looked more like the brightly colored donut that Homer Simpson enjoys on his nearly eponymous show. No shock to anyone: the donut nickname stuck. Circle or donut, however, the point remains the same: every part of the analytic methodology is connected.

The process starts with the “Top 5” essential financial performance measures: debt service coverage, debt burden, debt-to-capitalization, days of cash on hand, and operating margin.

The exact calculation and components of each may vary depending on whether the borrower is a municipality issuing general obligation bonds or an authority issuing on behalf of a hospital, college or public utility.

After vetting the financials, we examine the covenants, liens and other documents that set out the legal protections for the bondholder should something go wrong.

For the longest time, a general obligation bond, which is backed by the unlimited taxation power of the issuer, was viewed as the strongest security for bondholders. However, as recent defaults in Detroit and Stockton, CA have shown, even “unlimited” tax pledges have limits.

A first mortgage lien or a first lien on dedicated tax revenues is now viewed as preferable, and bondholders are demanding greater yield for subordinate lien bonds, bonds with general revenue pledges, or bonds funded by annual budget appropriations. As these recent events also demonstrate, having a security protection is one thing, being able to enforce it is another.

Competition must also be considered. Municipalities compete for residents in both subtle and not-s--subtle ways. For example, property-tax rates, along with the quality of schools and other municipal services affect whether or not prospective homebuyers will move into a community. With deregulation of utilities in some areas, electricity customers can choose their power providers. Hospitals have to consider what a cross-town facility offers to attract patients.

We also pay attention to overall sector economics, the factors that shape the forces of supply and demand in the sector. For example, public utilities buy coal or gas to generate energy, and examining their supply chain and pricing are important considerations.

Along with the broad sector view, we see how general demographics affect the credits. A growing community may bode well for increasing a municipality’s tax base. There would also be increased demand on the utility grid, which would mean understanding if the existing infrastructure can handle the load or needs upgrading. It may also mean schools will need to borrow to upgrade and expand. An aging population influences the case mix and capital needs of the local hospital.

Legislative, regulatory and political events are important considerations in the public policy-driven world of municipal bonds. From tax exempt interest to changing rules on disclosure, there are policy issues affecting this market.

However, all politics is local—voters have their say on new bond issues in their community every election day, whether it is to build new schools, improve roads or replace municipal buildings. Local councils vote regularly on fees and charges, property tax increases, new housing developments and a host of other issues which may directly affect the creditworthiness of outstanding or to-be-issued bonds.

National macroeconomic trends get very credit specific quickly, as the 2008-2009 recession powerfully demonstrated. In communities across the country, the rising unemployment rate meant property values declined along with sales tax revenues, two key components of municipal budgets.

No sector was spared: toll roads saw revenues decline, hospitals saw uninsured care costs rise and so on down the credit line. Correspondingly, the numbers reported on the balance sheets, income statements and annual reports of municipal issuers across the country all reflected the decline.

Now we are seeing the influence of the recovery in the economy. Applying the “Top 5” financial performance measures to the financial statements, we see an improving trend in every sector, from housing to healthcare.

We’ve come full circle.

Forbes

1/14/15

Barnet Sherman, Contributor

Barnet Sherman is a director and portfolio manager at TIAA-CREF, a national financial services organization.

St. Louis Stadium Plan Likely Requires Public Approval.

ST. LOUIS — A proposed open-air football stadium that backers hope will persuade St. Louis Rams owner Stan Kroenke to keep the team from returning to Los Angeles will likely require voter approval of its public financing component.

A St. Louis municipal ordinance and a St. Louis County charter amendment each prohibit the use of taxpayer dollars on pro sports stadiums without the consent of voters, the St. Louis Post-Dispatch reported.

A two-man team appointed by Gov. Jay Nixon last week unveiled details of a 64,000-seat stadium along the Mississippi River downtown that would cost as much as $985 million. Up to $350 million could come from extending bond debt used to pay off the Edward Jones Dome, the Rams’ current home.

Additional details about the financing plan have not yet been released. And while both former Anheuser-Busch President David Peacock and current Jones Dome attorney Robert Blitz emphasized that the plan would not involve new taxes, it does depend on the infusion of an additional $12 million from the state, $6 million from the city and $6 million from the county each year, the same amount now provided from bond payments set to expire in 2021.

“It’s going to be tough to argue that a vote is not required,” said Peter Salsich Jr., a retired St. Louis University law professor.

Peacock and Blitz’s plan calls for as much as $250 million from Kroenke, $200 million in National Football League loans to the team, $55 million in state support and tax credits and $130 million in the sale of personal seat licenses, which allow fans to buy season tickets.

By: The Associated Press

January 14, 2015 5:07 pm

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562 Pa. Municipalities Categorized as Having 'Distressed' Pension Funds.

Pittsburgh Finance Director Paul Leger can draw a line from the problems of the city's underfunded pension to its recent property tax increase: Pension payments went up by $11 million and the millage rate increased 0.5 mills.

"That's $11 million you can't spend somewhere else, so you either have to move $11 million out of other expenditures for services or you have to increase revenues," Leger said. "What we did was increase revenues, a large portion of which went to that pension payment."

Pittsburgh is one of 562 Pennsylvania municipalities with distressed pension funds, according to figures Auditor General Eugene DePasquale released Wednesday.

About 1,200 municipalities in Pennsylvania administer their own pension plans. Collectively, they were $7.7 billion underfunded through 2012, up from $6.7 billion the year before.

"It's gone up by $1 billion with no sight of action yet by the Legislature," DePasquale said. "There's no way around it; we need a statewide solution."

Most of the shortfall was in Philadelphia, where the city's unfunded liabilities surpass $5.3 billion, according to July 2013 figures. Pittsburgh was the second-highest as of January 2013 at about $484 million.

Western Pennsylvania governments with plans among the 25 largest unfunded liabilities in dollars included Penn Hills, Monroeville, New Castle and Erie. Of the top 25 worst-funded plans by percentage, Braddock Hills made the list at 46 percent funded.

DePasquale recommends some short-term fixes. Governments should prohibit employees from "spiking" their pensions by working extra overtime, increase age and service requirements in accordance with increased life expectancies, and ensure all plans require members to contribute.

Long term, DePasquale wants local plans consolidated into a state system with job-specific classes: police officers, firefighters and non-uniformed employees.

"If you live in any of these municipalities, if it's not addressed, you're going to be dealing with tax hikes or cuts to public safety or a combination of it," DePasquale said.

DePasquale plans to release an audit on Pittsburgh's pension plan next month.

The city has taken steps to shore up its fund, including lowering its assumed rate of return on investments and paying more than its minimum required payments. But ever-increasing costs to meet obligations continue to put pressure on the budget, Leger said.

"We have to remember the promise to current employees that pension income will be available to them, but we also have to assure the taxpayers that all of their tax dollars will not eventually be going to pay pensions instead of providing services," he said. "It is a difficult tightrope to walk."

According to city data, the unfunded liability was $511 million in November; the plan is 57 percent funded.

Pension plans funded at 90 percent or higher are considered healthy, according to state criteria. Anywhere below that is under “minimal,” “moderate” or “severe” distress.

Brian Jensen, senior vice president at the Allegheny Conference for Community and Economic Development, said unfunded liabilities can result from a decrease in employees, which means fewer pay into the system, or a decrease in government payments into the fund. This causes fewer dollars to go into the plan, although the payments still must be made. Other budget problems, such as employee costs, tax-exempt properties and shifting tax bases, exacerbate the problem, Jensen said.

Eileen Norcross, a senior research fellow with the Mercatus Center at George Mason University who studies public finance, said pensions are “the Pac-Man of budgets,” eating into other areas with increasing costs to cover. In the extreme case of one Rhode Island municipality with a weak tax base, pensions were cut for retirees when Central Falls could not make payments.

“You’re going to see the possibility of service cuts and other changes to these local budgets in order to make good on these pension benefits,” Norcross said.

By Melissa Daniels

Wednesday, Jan. 14, 2015, 11:18 p.m.

Melissa Daniels is a staff writer for Trib Total Media. She can be reached at 412-380-8511 or mdaniels@tribweb.com.

Puerto Rico Facing Debt Risk Beyond Power Utility: Muni Credit.

Governor Alejandro Garcia Padilla’s strategy to bolster the Government Development Bank, which lends to the junk-rated commonwealth and its localities, hinges on a planned $2.9 billion bond sale backed by increased petroleum-tax revenue. Lawmakers intend to amend the deal this month to make it more attractive to investors. Without the borrowing, the GDB’s cash would drop by almost half by March 31, according to Moody’s Investors Service, crimping its ability to serve as a financing backstop.

Puerto Rico and its agencies are staggering under $73 billion of debt, which would rank the territory third among U.S. states. The island needs to meet revenue targets and get its economy to grow to enable it to provide services to its 3.5 million residents and also repay investors, said Municipal Market Analytics Inc.’s Bob Donahue.

“The challenges that are coming down the pike here are greater than they’ve ever been,” said Donahue, managing director of the Concord, Massachusetts-based research firm. There’s concern that the commonwealth has to pay short-term bills “at the same time as public-safety responsibilities must be met.”

Record Overhaul

The Electric Power Authority, called Prepa, is working on a plan to restructure $8.6 billion of liabilities this year, and commonwealth officials have warned that bondholders may take a loss. The move, which would be the largest restructuring ever in the $3.6 trillion municipal market, became feasible after lawmakers in June passed a measure allowing some public corporations to restructure debt.

"The GDB and the Puerto Rican government continue to execute their plan to strengthen the island's fiscal health and support its economic growth," Melba Acosta, president of the bank, said in an e-mail. "We passed the Recovery Act last year in order to ring-fence our general-obligation debt from that of Puerto Rico's public corporations, which are making progress in resolving their financial difficulties."

Repayment Order

Puerto Rico's borrowings include $13 billion of general-obligation debt, most of which is tax-exempt nationwide and held by individuals, mutual funds and hedge funds. About 54 percent of muni mutual funds own Puerto Rico securities, according to Morningstar Inc.

Debt of other agencies and even general obligations — which the commonwealth's constitution stipulates must be repaid before other bills — may face an overhaul as well unless the economy gains momentum and residents stop leaving, said Bart Mosley, co-president of Trident Municipal Research in New York. The population has dropped each year since 2005, shrinking 7 percent, according to U.S. Census data.

In a bid to balance budgets, lawmakers have raised taxes and boosted utility and transportation fees while also cutting payrolls, raising the retirement age and requiring public workers to contribute more to pensions.

If legislators ask for more changes to retirement benefits and tax increases, residents may push officials to trim the island's debt by negotiating with investors, Mosley said.

Debt Choice

"It would be very hard to assume that they don't choose to go down something that looks like a sovereign-debt restructuring at some point with the general-obligation debt," Mosley said.

Rating companies cut Puerto Rico to junk in February 2014. Moody's scores it five levels below investment grade at B2, while Standard & Poor's assigns a BB, three steps higher.

Financial pressures may intensify if the Infrastructure Financing Authority, called Prifa, is unable to sell the debt repaid with petroleum taxes. A law passed in December capped the average coupon at 8.5 percent, and set a minimum price of 93 cents on the dollar. Legislators plan to change those guidelines this month.

General obligations sold in March 2014 and maturing in July 2035 traded today with an average yield of 9.45 percent, or 87 cents on the dollar, data compiled by Bloomberg show.

Cash Need

The Development Bank needs the sale as proceeds would allow the Highways & Transportation Authority to repay $2.2 billion it owes the bank. That amounts to 21 percent of GDB loans. The bank said it had about $1.5 billion of net liquidity as of Nov. 30. That would drop to $819 million by March 31 if Prifa fails to issue the bonds, Moody's said in October.

"It's very precarious," Donahue said of the bank's liquidity. "A determination by the auditors that it's insolvent almost certainly puts an end to their ability to assist and leaves the commonwealth and the agencies on their own."

The general fund also faces challenges. Revenue collections through November were $32.5 million below projections for this fiscal year, according to the Treasury Department. Principal and interest payments — which consume about 15 percent of the budget — are set to increase by $287 million in the year beginning July 1, according to S&P.

The commonwealth doesn't anticipate another agency debt restructuring beyond Prepa, and the $2.9 billion borrowing plan allows the highways authority to avoid such a move, Natalia Guzman, senior vice president at the GDB, told investors in an October presentation.

'Fixing Prepa'

"Our resolve to do what is right and necessary to preserve our credit and grow the island economy is now stronger than ever," Garcia Padilla said in a July conference call with investors, about three weeks after signing the restructuring measure.

Officials project that reducing the power agency's $1.75 billion of tardy customer bills and shrinking its debt will reduce electricity costs and spark the economy. Residents and businesses pay about twice as much as mainland consumers for power, according to Moody's.

Strengthening Prepa may not shield other agencies or the general obligations, said Philip Fischer, head of muni research at Bank of America Merrill Lynch in New York.

"We certainly would hope that fixing Prepa will fix the economy, Fischer said. ''But it strikes us as unlikely. Prepa is just one of the problems.''

'Unsustainable' Finances

Puerto Rico and its agencies have a history of selling bonds to balance budgets and repay short-term debt. Now that practice comes at a steeper cost as hedge funds and other alternative investors, who target riskier securities for their relatively high yields, have largely replaced traditional muni buyers.

The GDB on Oct. 9 sold tax-exempt notes maturing in June 2015 and priced to yield 7.75 percent. That compared with 0.14 percent on benchmark one-year munis, Bloomberg data show.

''Growing debt and a contracting economy is an unsustainable condition,'' Alan Schankel, a managing director at Janney Montgomery Scott LLC in Philadelphia, wrote in a Dec. 16 report. ''It seems very unlikely that Prepa will be the last case of restructuring for Puerto Rico issuers.''

The fiscal 2015 budget assumes economic growth of 0.2 percent, according to S&P. The company has said that isn't enough to deal with rising debt costs and a retirement system that was 3 percent funded as of June 2013, lower than any U.S. state.

The restructuring bill allows Prepa, the aqueduct and sewer authority and other public corporations to ask investors to take a loss. General obligations, Prifa debt, sales-tax bonds and GDB debt are exempt from the law. Without economic growth, Garcia Padilla may have to expand the measure, Donahue said.

''If the governor finds that he has no option, it's something that everyone who is involved in Puerto Rico should consider," he said.

Bloomberg Muni Credit

By Michelle Kaske Jan 14, 2015 8:44 AM PT

To contact the reporter on this story: Michelle Kaske in New York at mkaske@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Alan Goldstein

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Refunding Pushes U.S. Municipal Bond Sales to $8.77 bln Next Week.

Jan 16 (Reuters) – The U.S. municipal bond refunding renaissance will be in full bloom next week, with nearly half the $8.77 billion in scheduled debt sales from issuers eager to refinance at the market's current lowest interest rates, Thomson Reuters data shows.

Out of the $6.64 billion negotiated sales expected, $3.35 billion will be refunding, and the Texas Transportation Commission's $1.75 billion refinancing of turnpike debt will be the largest negotiated deal of the week.

The Texas bonds coming to market on Thursday, with Barclays Capital as lead underwriter, will refund $686 million toll revenue bonds as well as retire a $1.1 billion federal Transportation Infrastructure Finance and Innovation (TIFIA) loan.

"The reason we're doing this is simply to obtain debt service savings given current market conditions," said Benjamin Asher, the department's debt management officer during the sale's road show.

The TIFIA loan carries a 5.51 percent interest rate and yields on most U.S. municipal bonds are currently well below that level in the secondary market, even for lower-rated credits.

On Friday, the yield on a top-rated 30-year bond was 2.54 percent, the lowest since December 2012, according to Municipal Market Data, a unit of Thomson Reuters. The yield on a highly rated 10-year was 1.75 percent, the lowest since May 2013.

The state's transportation department has been seeking to lower its debt load for the last year, and it used some of the proceeds from a $1.6 billion deal in November to refinance outstanding bonds, as well.

In the middle of 2014 municipal bond interest rates began falling, and reversed a sharp decline in the borrowing of states, cities, and other governments. Issuance in the $3.6 trillion market totaled more than $314 billion last year and came in slightly ahead of the previous year's sales – something no one would have predicted on Jan. 1, 2014.

"After posting gains in December, the municipal bond market was able to claim a perfectly positive year. Issuance was very strong in December, as was demand, both defying typical patterns and pointing to continued strong momentum heading into 2015," wrote the BlackRock Municipals Group in a note earlier this week.

Refunding has plumped the sales. Out of the $2.14 billion in competitive sales expected for next week, 40 percent will be refinancing. The biggest sale on the competitive calendar is a $460.2 million general obligation refunding deal from the state of Washington.

(Reporting by Lisa Lambert; Editing by Diane Craft)

Tips for Talking Munis with Clients as Rate Hike Looms.

(Reuters) – Municipal bonds remain a favorite of financial advisers and tax-conscious clients, even though they could be vulnerable to interest rate hikes later this year.

Munis – notes issued by states, cities, and counties to finance infrastructure and other projects – can offer a near-guaranteed return to clients, with slightly higher yields than treasuries, investment advisers say. They also offer federal, and potentially state and city, tax benefits.

Kevin Ashworth, an adviser and investment director at EP Wealth Advisors in Torrance, California, helps to generate tax-free income for clients through federally tax-exempt municipal bond mutual funds, or local general obligation bonds.

Many clients are now eager to sell fixed-income investments before rates increase, Ashworth said.

But he tells them they “can’t abandon fixed income altogether,” and stresses the benefits of munis. “We view municipals as the safe asset for clients.”

Ron Weiner, president and founder of RDM Financial Group in Westport, Conn., says advisers who recommend muni bonds shouldn’t shortcut the calculations needed to see whether an individual client will reap worthy after-tax returns.

“You have to do the math of the individual tax bracket,” he said, noting that clients sometimes end up with a higher after-tax yield if they forgo muni tax breaks and pay income taxes on corporate bond interest.

Even when owning an individual municipal bond makes sense, it can be challenging for a client to find the right vehicle, given strong demand and relatively few issues, advisers say.

NOT SEEKING THE ‘HOME RUNS’

Mutual funds can offer a wider mix of muni bonds, said Jay Sommariva, senior portfolio manager of fixed income at Fort Pitt Capital Group in Pittsburgh.

But he recommends mostly high-grade bonds with good track records issued by local cities and school districts, that offer the greatest tax benefits for area clients.

“We’re not looking for the home runs,” Sommariva said. He focuses, instead, on quality and a nominal coupon that provides a reasonable spread over Treasuries, and a return.

Clients may expect more of a return from municipal bonds than they perhaps should, after a year in which the securities did particularly well. The Standard & Poor’s Municipal Bond Index, for example, returned over 9 percent in 2014, as the risk of defaults in Detroit and other cities faded and interest rates and yields were low.

Advisers must help clients realize that outsized returns are not the point of municipals, or any fixed-income investment.

A fixed-income portfolio is supposed to produce reliable income, said Brian Battle, analytics group director at Performance Trust Capital Partners in Chicago.

Battle believes strongly in the tax and near-guaranteed returns offered by municipals. He tells clients the municipal sector is a high quality one, and “unique to the U.S.”

Educating clients about the purpose of fixed-income and municipals can be difficult right now, but it must be done, said Weiner of RDM Financial Group.

“We’re settling clients into the idea that bonds are for safety,” he said.

BY HILARY JOHNSON

Fri Jan 16, 2015 8:33am EST

(The author is a Reuters columnist. The opinions expressed are her own.)

(Editing by Linda Stern, Suzanne Barlyn and Bernadette Baum)

De Blasio: Overhaul N.Y. City Corporate Tax Structure.

Mayor Bill de Blasio on Monday proposed a major overhaul of New York City’s corporate tax structure that would conform important parts of the city’s business tax system with state tax law.

De Blasio said the move would modernize an outdated system and provide relief to small businesses and local manufacturers while streamlining city and state corporate tax codes.

The changes would be retroactive to Jan. 1. Gov. Andrew Cuomo is expected to release his state budget proposal later this month. The governor and state legislature must approve the city’s proposal.

New York State overhauled its business taxes last year.

According to city finance Commissioner Jacques Jiha, the overhaul would ensure that firms need not maintain separate records for city and tax purposes and create consistency in tax computing that is essential for joint audits.

De Blasio said the changes would be revenue neutral. The mayor said the moves would prevent major administrative burdens for both taxpayers and the city. “These are common-sense reforms that will modernize and streamline a corporate tax code that hasn’t seen real changes since the 1940s,” he said.

Carol Kellermann, president of the Citizens Budget Commission, said her watchdog organization has backed the concept, but wants to study it further. “We’ve supported it as a way to simplify and create a uniform basis of taxation, but whether it is truly revenue neutral is what I’d concerned about,” she said in an interview. “We’d need to see more information.”

Kellermann considered vague a statement by officials that said broadening the tax base “by eliminating certain special deductions and exemptions” would offset a revenue loss estimated at up to $300 million.

The overhaul would exclude the first $10,000 of capital tax base; reduce the tax rate for small non-manufacturers with less than $1 million in allocated net income from 8.85% to 6.5%, and reduce the tax rate for small manufacturers with less than $10 million in allocated net income from 8.85% to 4.425%. The city would also provide a smaller rate reduction to manufacturers with incomes between $10 million and $20 million.

The city would retain the alternative tax base on capital, merge the bank tax into the corporate franchise tax for large corporations, change the method for computing net income that broadens the tax base by treating most income as business income, and redetermine how corporations attribute net income based on the location of a firm's markets rather than the location of its business operations.

"The state made these changes a year ago and the city pretty much had to conform, at least in broad strokes," said George Sweeting, deputy director of the Independent Budget Office. "It would be nice to have more information about the number of firms and the kinds of firms affected, and how much revenue is lost or gained through each."

According to de Blasio, the latter would eliminate a tax penalty for increasing operations and employment while incentivizing business to locate employees and jobs within the five boroughs. The proposal also called for adopting unitary combined reporting rules, to prevent shifting of income and expenses among related entities to inappropriately reduce taxes.

"This long-overdue reform represents another initiative that moves the city forward while protecting our long-term fiscal health," said budget Director Dean Fuleihan.

THE BOND BUYER

BY PAUL BURTON

JAN 12, 2015 3:04pm ET

[Webinar on MSRB Rule G-18 on Best Execution of Transactions in Municipal Securities.]

Date: Thursday, February 5, 2015

Time: 3:00 p.m. – 4:00 p.m. ET

Description: The MSRB will host a webinar to review recently approved changes to [MSRB Rule G-18 on best execution], which will require municipal securities dealers to seek the most favorable terms reasonably available for their retail customers' transactions. The new rule, effective December 7, 2015, will establish standards for how dealers handle and execute customer orders for municipal securities.

[Register.]

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

We are pleased to announce 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, IFRS, and tax updates, and focuses on specialized industry accounting matters frequently seen by rate-regulated entities. The annual update also includes a section on accounting and reporting matters specific to renewable energy.

New sections in the January 2015 edition include:

- Accounting and reporting considerations related to carve-out financial statements
- The new revenue recognition standard

Additionally, to address potential challenges in accounting and reporting of financial instruments, leases, and a host of other topics as a result of issued FASB exposure drafts, we have included a section about Board proposals and have highlighted nuances that might affect our industry.

View the publication.

IRS Publication: Tax on Unrelated Business Income of Exempt Organizations.

The IRS has released Publication 598 (rev. Jan. 2015), Tax on Unrelated Business Income of Exempt Organizations.

View the publication.

SEC Exam Priorities Include Muni Advisors, Retail Investor Protection.

WASHINGTON – The Securities and Exchange Commission's examination priorities for 2015 include protecting retail investors and assessing the compliance of municipal advisor firms, commission officials said Tuesday.

SEC exams are handled by the Office of Compliance Inspections and Examinations, known as OCIE. The office checks whether firms registered with the SEC are complying with federal securities laws, and passes its findings along to the enforcement division if it thinks it has uncovered wrongdoing.

SEC chair Mary Jo White and Commissioners Daniel Gallagher and Michael Piwowar have all recently and repeatedly expressed interest in bulking up protection for the retail investors who dominate the muni market and OCIE's 2015 priorities reflect that.

"Our examination program collects information for the commission on a range of important trends, issues, and risks," White said in a release about the priorities, which was followed by a press conference. "OCIE helps us to maintain a strong presence with SEC registrants and to make a positive impact for the benefit of investors and our markets."

Besides evaluating securities firms' sales practices and recommendations to retail investors, OCIE is also interested in examining whether mutual funds with exposure to interest rate increases are being transparent with investors in the face of a likely rate climb in future months. The Federal Reserve Board of Governors has held rates at artificial low levels for years, but is expected to move off that policy.

"With interest rates expected to rise at some point in the future, we will review whether mutual funds with significant exposure to interest rate increases have implemented compliance policies and procedures and investment and trading controls sufficient to ensure that their funds' disclosures are not misleading and that their investments and liquidity profiles are consistent with those disclosures," the SEC said in its announcement about the priorities.

OCIE will also be conducting examinations of municipal advisors, who have been required to register with the SEC since July of last year. The SEC in August announced a two-year exam program focusing on MAs who are not members of the Financial Industry Regulatory Authority. FINRA will examine and discipline firms affiliated with its member-dealers. FINRA announced its own exam priorities last week.

Andrew Bowden, director of OCIE, said sharing his office's priorities with the public has a positive effect on compliance behavior. This will mark the third time OCIE has published its priorities for the coming year, he said.

"We share our annual examination priorities to promote compliance," Bowden said. "We have observed that when we share our areas of focus, many industry participants independently review their controls in the areas we have identified."

THE BOND BUYER

BY KYLE GLAZIER

JAN 13, 2015 2:48pm ET

IRS Tax Exempt Bonds Director's Updates for Fiscal Year 2015.

When: February 5, 2015; 2 p.m. (Eastern)

Learn about:

- Market segment program
- Voluntary Closing Agreement Program, including new processes
- Customer satisfaction surveys
- Compliance checks and surveys
- Other activities

Register for this event. You will use the same link to attend the event.

IRS FSLG Newsletter.

The January 2015 edition of the Federal State and Local Government Newsletter is now available.

Inside this issue:

- Withholding on Remuneration Paid to Foreign Students, Scholars, Teachers, Researchers and Trainees
- Tax Treatment of Employer-Provided Meals
- Adjustments for Additional Medicare Tax
- New Edition of Publication 963 Available

- Directory of FSLG Specialists

Click [here](#)to read the January 2015 edition of the FSLG Newsletter.

Cash-Flow Crunch Wanes as Note Sales Set Record Low: Muni Credit.

U.S. states and localities issued the fewest short-term notes in at least a decade in 2014, the latest sign that municipal budgets nationwide are strengthening.

Sales of the securities, which mature in less than 18 months, fell to $40.3 billion last year, the least in Bloomberg data dating back to 2003. Volume is down from a 2010 peak of $78.5 billion and may sink further: Supply will drop 0.7 percent in 2015, according to a Securities Industry and Financial Markets Association survey.

The largest note issuers, Texas and California, whittled their offerings in 2014 to the lowest since before the recession that ended in 2009, even with interest rates close to the lowest since the 1960s. Demand for notes, used to bridge cash shortfalls, is dimming as the National Association of State Budget Officers forecasts revenue growth will probably accelerate in fiscal 2015.

“The immediacy of having to issue debt on the short end has decreased significantly,” said Steven Shachat, who oversees $1.2 billion of munis, including a money-market fund, at Alpine Woods Capital Investors in Purchase, New York. “States and municipalities are really starting to instill some fiscal responsibility.”

Bridge Tool

Municipalities typically sell notes to raise money before tax revenue flows in, or to begin funding projects before selling longer-dated securities. Now there’s less need to go that route. More finance officers are reporting improved fiscal conditions than any time in the 29-year history of a survey conducted by the Washington-based National League of Cities.

The decline in shorter-maturity issuance is part of a borrowing slowdown in an era of local-government austerity. The municipal market contracted for an unprecedented fourth straight year in 2014 as refinancings and maturing bonds exceeded the amount sold, data compiled by Bloomberg show.

While the broad municipal market has outperformed corporate debt in the past year, shorter-dated local securities have trailed. Munis due in one to two years have gained 0.6 percent in the past 12 months, while comparable company obligations have earned 0.8 percent, Bank of America Merrill Lynch data show.

In California, the most-indebted state, long-term sales fell 8.3 percent from 2013, to $42.4 billion last year. The state also borrowed the least since 2006 for cash-flow needs.

California issued $2.8 billion in revenue-anticipation notes in September to pay bills during the slowest period for tax receipts, down from $5.5 billion in 2013 and $10 billion in 2012.

California Reversal

California’s credit standing has improved more than any state’s since the recession, winning it the highest Moody's Investors Service rank in 13 years. Governor Jerry Brown has limited borrowing even as taxes on income and corporate earnings have eclipsed estimates.

"By reversing some of the more egregious cash strategies adopted in recent years, the governor improves our ability to weather cash shortfalls in the future," California Controller Betty Yee said in a statement this month. "The governor, legislature and voters deserve much credit for bringing revenues and expenditures into alignment."

Texas is also reducing reliance on short-term debt. The second most-populous state in August offered its smallest note sale since 2007. At $5.4 billion, it was down from $7.2 billion the prior year, though still the largest short-term borrowing nationwide in 2014.

'Budget-Busters'

"Coming out of the Great Recession, states have had to very much live within their means, because there was little cushion for additional expenditures or unexpected growth in programs," said Arturo Perez, a fiscal analyst at the National Conference of State Legislatures in Denver. "There's not much in regards to budget-busters that states are reporting."

Municipalities have mended their finances since fiscal 2010, when states faced a combined $191 billion of budget gaps, according to data from the Henry J. Kaiser Family Foundation. The improvement has helped push interest rates close to zero on notes, with AAA munis maturing in one year yielding 0.22 percent, compared with a five-year average of 0.31 percent, Bloomberg data show.

States and cities may seize on low borrowing costs to issue longer-dated debt in 2015, while cutting back on note sales. Short-term offerings will probably fall to $42.5 billion this year from $42.8 billion in 2014, although total supply will climb 2.7 percent to $357.5 billion, according to a Sifma survey last month.

"Issuing debt in the very short end of the market means issuing at almost zero — that's somewhat of a hard opportunity to pass up," said Shachat at Alpine Woods. "It really is an ideal time to be issuing debt to finance any type of infrastructure needs."

Bloomberg Muni Credit

By Brian Chappatta

Jan 12, 2015

To contact the reporter on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Alan Goldstein

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SEC Issues Annual Staff Report on Examination Results of Credit Ratings Agencies.

On December 23, 2014, the US Securities and Exchange Commission ("SEC") issued an annual staff report on the results of examinations of credit rating agencies registered as nationally recognized statistical rating organizations ("NRSROs") as required by the Dodd-Frank Act. The examinations covered the eight areas as laid out in the Dodd-Frank Act as well as information technology, cyber security, and certain ratings activities. In the examinations, recommendations were made for: (i) the use of affiliates or third-party contractors in the credit rating process; (ii) the management of conflicts of interest related to the rating business operations; and (iii) the adherence to policies and procedures for determining or reviewing credit ratings. The SEC also submitted a separate report on NRSROs to Congress. The report reviews the state of competition, transparency, and conflicts of interest at NRSROs. It further contains a discussion regarding the new requirements for NRSROs adopted by the SEC in August 2014 to increase transparency and accountability.

The annual SEC staff report is available here.

The report to Congress is available here.

Last Updated: January 14 2015

Article by Shearman & Sterling LLP

Senate Finance Panel Takes Step Toward Comprehensive Tax Reform.

WASHINGTON -The Senate Finance Committee took a step toward comprehensive tax reform on Thursday by launching five bipartisan working groups charged with issuing a report with recommendations by the end of May.

Several municipal market participants and tax experts suggested the recommendations could include changes to municipal bonds.

The groups will examine current tax law, policy trade-offs and options for reform. They will work with the Joint Committee on Taxation to come up with an in-depth analysis of options and possible legislative solutions in their subject areas, according to a release issued by Senate Finance Committee chairman Orrin Hatch, R-Utah, and ranking minority member Ron Wyden, D-Ore.

The groups' recommendations "will serve as a foundation for the development of bipartisan tax reform legislation," the release said.

Frank Shafroth, director of the Center for State and Local Government Leadership at George Mason University, said muni changes are "more likely than not" to be part of the recommendations, since Congress is still looking to find ways to offset lowering tax rates.

Dustin McDonald, director of the Government Finance Officers Association's federal liaison center, also said that the groups will be looking at ways to raise revenue that could be used to lower rates. "I think they'll be no stone unturned," he said.

The tax reform plan released by former House Ways and Means Committee Chairman Dave Camp, R-Mich., would have capped the value of tax-exemption at 25% and eliminated the tax exemption for new private-activity bonds. McDonald said it is unclear if the working groups will use Camp's plan as a guide, but "the same concerns remain for us" that any tax-reform plan would include changes to bonds.

While John Godfrey, government relations director for the American Public Power Association, agreed that the working groups are unlikely to stay silent on bonds, he said that the groups won't necessarily make changes that would hurt bonds.

If the groups focus on improving the tax code and do not have to come up with a certain amount of money that can be used to lower rates, there are "some opportunities to make improvements," such as updating private-activity bond rules to make it easier for public power utilities to finance electric power transmission investments using PABs, Godfrey said.

Tax experts pointed out that the House Ways and Means Committee similarly had tax reform working groups in 2013. They had mixed views on how these new groups would impact the chances for tax reform.

Howard Gleckman, a resident fellow at the Urban Institute, said the groups "can't hurt" the chances for tax reform, and it's always good to have members engaged in a topic. But he acknowledged that Camp's working groups didn't necessarily help him move tax reform, and Camp only used a little of the groups' product in his bill.

Godfrey suggested the groups will create subject-matter experts, which could help efforts to do piecemeal tax reform.

But Shafroth said the groups will have to collect a lot of information, which will "bog down" the tax-reform process.

Micah Green, chair of the financial services and tax policy practice group at Squire Patton Boggs, said "irrespective of these bipartisan working groups, it will remain a difficult task to develop a consensus on broad based comprehensive individual and business tax reform."

However, "this process will surely serve as a significant framework for the debate on the various major topics of focus for each group," Green said. "The municipal bond community should take this as a very serious opportunity to have meaningful and timely input."

Michael Decker, Securities Industry and Financial Markets Association managing director and co-head of municipal securities, said, "We're glad to see that Congress is working in a bipartisan manner to address the important issue of tax reform. We look forward to working with these groups on issues important to the municipal bond community, such as preserving the tax exemption for muni bonds."

The working groups will have Democratic and Republican co-chairs. The community development and infrastructure working group will be co-chaired by Sens. Dean Heller, R-Nev., and Michael Bennet, D-Colo.

Mike Nicholas, chief executive officer of the Bond Dealers of America, called the senators "two good choices."

In 2009, Bennet and other senators sent a letter to then-Treasury Secretary Timothy Geithner urging the department to backstop municipal debt during the financial crisis.

Bennet "has been an advocate for municipal debt in the past," Nicholas said.

Also, Bennet previously served as superintendent of the Denver public schools and as chief of staff to a former mayor of the city.

The senator "understands municipal issues and capital expenditures for school construction. That background will certainly be important in analyzing these issues in the context of this particular working group," Green said.

Speaking about Heller, Nicholas said, "We've always found him to be reasonable and open-minded to discussions."

Gleckman said that Bennet and Heller have reputations for reaching across the aisle.

In addition to infrastructure, the groups will focus on individual income tax, business income tax, international tax and savings and investment.

THE BOND BUYER

BY NAOMI JAGODA

JAN 15, 2015 4:15pm ET

MSRB: Municipal Financial Disclosures Rise Sharply in 2014.

Disclosures of annual financial information and operating data and audited financial statements (or CAFRs) from issuers of municipal securities rose sharply in 2014, with nearly 68,000 total disclosures, compared to approximately 55,000 in 2013. Over 10,000 of these disclosures were submitted to the MSRB in December 2014, the most in a single month since the MSRB became the official repository for continuing disclosures. The higher volume may be attributed to underwriters and issuers participating in the Securities Exchange Commission's Municipal Continuing Disclosure Cooperation initiative. The initiative was announced in March 2014 and provided issuers and underwriters the opportunity to self-report previously unreported disclosure documents in an effort to comply with continuing disclosure obligations specified in SEC Rule 15c2-12.

For data on municipal new issuance, trading activity, continuing disclosures or variable rate resets, visit the MSRB's EMMA website.

MSRB: Board Member Search Emphasizes Pricing and Trading Knowledge.

The MSRB recently announced that is is accepting applications for its Board of Directors, which helps craft policies on the regulation of financial professionals, market structure, the MSRB's Electronic Municipal Market Access (EMMA®) website 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.

Given the MSRB's current rulemaking and transparency objectives, the MSRB is encouraging individuals with strong knowledge of the pricing and trading of municipal securities, including those with institutional "buy-side" experience, to apply. The MSRB will fill four public and three regulated-entity Board positions for three-year terms that begin October 1, 2015. All qualified individuals from around the country representing diverse organizations and market perspectives should consider applying. MSRB Rule A-3, available on the MSRB's website, msrb.org, outlines requirements for all applicants.

To be considered for a position on the MSRB Board of Directors, submit an application by February 20, 2015. Applications are available on the MSRB Board of Directors Application Portal.

S&P's Public Finance Podcast (Outlooks For Higher Education And Public Power).

In this week's Extra Credit, Senior Director Jessica Matsumori and Director Jeff Panger discuss our 2015 outlook for the higher education and public power sectors, respectively.

White House Fact Sheet: Increasing Investment in U.S. Roads, Ports and Drinking Water Systems Through Innovative Financing.

Building a 21st-century infrastructure is a critical component of the Administration's efforts to accelerate economic growth, expand opportunity, create jobs and improve the competitiveness of the American economy. As part of this effort, President Obama launched the Initiative in July 2014, calling on federal agencies to find new ways to increase investment in ports, roads, bridges, broadband networks, drinking water and sewer systems and other projects by facilitating partnerships between federal, state and local governments and private sector investors.

Today, the Obama Administration is announcing new steps that federal agencies are taking to bring private sector capital and expertise to bear on improving our nation's roads, bridges, and broadband networks. First, the Administration is launching a new Water Finance Center at the Environmental Protection Agency and highlighting the progress of the Rural Opportunity Investment Initiative at the Department of Agriculture. These efforts will help local and state governments access federal loan and grant programs to get more projects off the ground. The Administration is also announcing a new set of infrastructure tax proposals that will level the playing field for projects that combine public and private investment so that local and state governments can more easily work with the private sector to advance the public interest.

At an event at the Anacostia River Tunnel Project Site in Washington, DC later today, the Vice President — joined by Environmental Protection Agency Administrator Gina McCarthy and USDA Secretary Tom Vilsack — will stress the importance of these critical investments. Today's event is part of the Vice President's ongoing work to highlight the importance of doing more to invest in our nation's infrastructure to create jobs, help American businesses, and grow our economy.

Additional information about the new Build America initiatives is provided below:

Investing in Drinking Water and Wastewater Systems through a new Center at EPA. To help address more than $600 billion in needs for drinking water and wastewater management over the next 20 years, today the Administration is launching a new Water Finance Center at EPA. The Center will work closely with municipal and state governments, utilities and private sector partners to use federal grants to attract more private capital into projects and promote models of public private collaboration that can address the real needs of cities and towns to provide safe water, rebuild sewer systems and keep streams and rivers clean.

Driving Investment to Rural America via a New USDA Rural Opportunity Investment Initiative. The Administration is announcing the Rural Opportunity Investment Initiative at the U.S. Department of Agriculture, which will identify opportunities for investment in promising rural water, energy, and broadband projects, reduce barriers to investment and connect projects with investors.

Leveling the Playing Field for Public-Private Partnerships. Today the Administration is leveling the playing field for municipalities seeking public private partnerships by proposing the creation of an innovative new kind of municipal bond, Qualified Public Infrastructure Bonds (QPIB).

In addition, the Administration is advancing major highway and port projects through the Transportation Investment Center at the Department of Transportation, working with local and state governments to improve project planning, and attracting investors for U.S. projects from around the world through the SelectUSA Program.

Investing in a 21st-Century American Infrastructure

Investing in a 21st-century American infrastructure is an important part of the Obama Administration's plan to build on the progress our economy is making by creating jobs and expanding opportunity for all hardworking Americans. Infrastructure like roads, bridges, ports, water purification plants and reservoirs provide critical services to consumers and businesses while protecting public health and the environment.

The construction project in Anacostia is an example of the benefits of investment in water management. Each year, 2 to 3 billion gallons of contaminated sewage water pour into the Anacostia River. The new tunnel will control this run-off, improving public health, protecting the environment, and giving a major boost to economic development on the Anacostia River's banks.

But the current level of infrastructure investment in the U.S. is far too low and too many worthwhile projects go unfunded. The system of water pipes that bring drinking water to homes and businesses, for example, is rapidly aging. An estimated 237,600 water mains break every year. We also lose more than 46 billion gallons of water per day through leaking pipes — enough water to supply the 10 largest American cities for almost two weeks. And the costs for maintenance are only increasing. Over the next fifteen years, utilities will have to spend three times as much on pipe replacement as the current system continues to decline.

The Administration's activities through the Build America Investment Initiative will help interested local and state governments build more of these projects by bringing together the public and private sector to identify challenges and explore creative financing strategies — not only in water but in transportation, energy and broadband.

Private capital is not a substitute for public investment. That's why the President has repeatedly called on Congress to increase public funding for our highways, bridges, and transit system. Last spring, the Administration proposed the GROW AMERICA Act, a 4-year, $302 billion surface transportation reauthorization proposal. But in the absence of Congress acting on this commonsense proposal, the President will continue to do whatever he can through his own authority to promote American economic growth where there is need or opportunity. And right now, there is a real opportunity to put private capital to work in revitalizing U.S. infrastructure.

That's why today the Administration is announcing efforts across government including new executive actions and a new tax proposal to encourage investment across infrastructure sectors and in regions around the country.

Investing in Drinking Water and Wastewater Infrastructure through a new Center at EPA

The U.S. needs at least $600 billion in investments in water infrastructure over the next 20 years to keep our taps flowing and our rivers and lakes clean. Today, the Administration is launching a new interagency center at the Environmental Protection Agency to increase innovative financing support for water systems across the country. The Water Finance Center will:

<u>Stimulate private investment and make federal dollars go further:</u> Around the country, towns, cities and states are exploring how to bring innovative financial tools such as public private partnerships to the water sector to get more projects off the ground. The new Center will help interested local and state governments to bring private sector investment and expertise into water system construction and management. Among other roles, the center will bring together investors and project sponsors; highlight promising deals; provide peer-to-peer learning and workshops; and develop case studies and toolkits. The Center will work with states to maximize the benefits of more than $3 billion in annual federal water investments.

<u>Help attract investment to small communities.</u> Many rural communities are served by small water utilities that lack the resources to explore financing alternatives, engage the private sector and attract investment. The new Water Center will work with on-the-ground partners to provide financial training and technical assistance to small communities and rural water systems.

Driving Investment to Rural America via a new USDA Rural Opportunity Investment Initiative

Investments in rural water, energy, broadband infrastructure can create jobs and accelerate economic growth. To help rural projects attract more investment, the Administration is announcing the Rural Opportunity Investment (ROI) Initiative at USDA. In close collaboration with both public and private partners, the ROI Initiative will:

<u>Connect projects to investors:</u> The ROI Initiative will facilitate and catalyze rural investment opportunities for the public and private sectors. The Initiative will look to generate and facilitate rural investment through USDA field staff across the country and strengthen relationships with the private sector. Public-private collaborations launched by USDA earlier this year — like the $10 billion CoBank rural infrastructure fund between CoBank and Capital Peak Asset Management and a $150 million Rural Business Investment Company — are the type of innovative financing mechanisms that the Initiative will continue to incubate in an effort to develop and finance infrastructure projects.

<u>Improve access to USDA credit programs:</u> The Initiative will also focus on opportunities to leverage private sector financing against the over $30 billion in existing USDA programs and resources to provide funding to vital rural infrastructure projects; including water and wastewater systems, energy efficiency improvements, broadband networks, and other rural infrastructure needs.

Leveling the Playing Field for Public Private Partnership

The Administration is proposing the creation of an innovative new municipal bond, Qualified Public Infrastructure Bond (QPIB). Today, public private partnerships that combine public ownership with private sector management and operations expertise cannot take advantage of the benefits of municipal bonds. QPIBs will extend the benefits of municipal bonds to public private partnerships, like partnerships that involve long-term leasing and management contracts, lowering the cost of borrowing and attracting new capital.

A similar existing program, Private Activity Bond (PABs), has already been used to support financing of over $10 billion of roads, tunnels, and bridges. QPIBs will expand the scope of PABs to include financing for airports, ports, mass transit, solid waste disposal, sewer, and water, as well as for more surface transportation projects. Unlike PABs, the QPIB bond program will have no expiration date, no issuance caps, and interest on these bonds will not be subject to the alternative minimum tax. These modifications will increase QPIB's impact as a permanent lower cost financing tool to increase private participation in building our nation's public infrastructure. QPIBs would not be available for privately-owned facilities or privatizations of public facilities.

More details on QPIBs will be available in the upcoming Budget.

Growing Investment in Transportation Infrastructure through the DOT Transportation Investment Center

In July, the President announced the launch of a new center at the Department of Transportation to catalyze private investments in our transportation system. Since the launch of the Center, DOT has taken important steps forward, including:

<u>Facilitating access to hundreds of millions of dollars in credit assistance for vital transportation projects:</u> In Fiscal Year 2014, DOT loaned a record $7.5 billion to 13 projects through the TIFIA program, leveraging more than $25 billion in infrastructure investments. Since the launch of the Center, DOT has accelerated high-impact projects like Portsmouth Bypass, a 16-mile, 4-lane highway in Scioto County, Ohio.

<u>Expediting Project Financing and Delivery:</u> To help get highway, port, bridge, tunnel and transit projects moving faster, the Center is providing hands-on technical assistance and facilitating efficient project delivery to projects, including adding additional projects to the Administration's successful permitting dashboard. The Center is also providing targeted technical assistance to support project planning for projects like the Essex County-Port Newark Container Terminal (PNCT) P3 Project — a recent TIGER grant recipient.

<u>New Tools:</u> The Center will be releasing new products, including supplemental provisions for toll concession model contracts and a new guide on incorporating Federal-aid funding into P3s. These products build on tools released over the past several months. In addition, DOT is developing model contracts that show how transportation projects can advance "high-road" labor practices that create good, middle-class jobs and benefit current and aspiring workers alike. These will be an example for other federal agencies as they work to support public private partnerships moving forward.

Breaking Ground on more Roads, Bridges and other Infrastructure Projects

Today, the President is signing a Presidential Memorandum to improve the early phases of infrastructure project planning and design by aligning federal funding for planning and predevelopment at the Departments of Commerce, Transportation, Homeland Security, Housing and Urban Development and Agriculture. These agencies and others will be working closely with local and state governments and other stakeholders over the coming months to ensure that the federal government is doing all it can to support critical predevelopment activities. Private foundations are also doing their part to support innovation in planning and predevelopment activities, with The John D. and Catherine T. MacArthur Foundation, Ford Foundation, and The Rockefeller Foundation announcing support for new projects around the country.

Promoting Investment in U.S. Highways and Ports

For the first time, the Administration is hosting a global event with a clear US infrastructure track at the March 2015 SelectUSA Investment Summit. This Summit will bring together over 2500 leading investors and executives from around the world and connect them with US business opportunities.

A high profile session focused on infrastructure to highlight the growth and diversity of the US P3 market and present day opportunities in the USA for global companies

A roundtable to promote the development of relationships between global investors and American partners to jointly explore US infrastructure investments.

These actions and announcements are the first steps that the Administration is taking as part of the Build America Investment Initiative's two-year action plan, as outlined in a recommendations to the President.

January 16, 2015

Muni Market Participants Applaud QPIB, Water Proposals.

WASHINGTON – Municipal market participants applauded President Obama's proposal on Friday to create a new type of tax-exempt municipal bond that could be used to help finance public-private infrastructure projects, but one questioned whether it will pass muster with Congress.

The president also included several other proposals, such the creation of a new Water Finance Center to help state and local governments leverage federal grants to attract private investors in water and sewer projects, in a package of infrastructure initiatives announced on Friday.

The initiatives were described by the White House in a fact sheet and by Vice President Joe Biden during at the dedication of the Anacostia River Tunnel Project site here. "We want to see private capital moving off the sidelines because we want to put it to work," Biden said. "This isn't privatization, this is collaboration."

Obama is expected to talk about the proposals in his State of the Union speech on Tuesday and will detail them in his budget, which is to be released on Feb. 2.

The initiatives stem from recommendations made in a 19-page report from the Build America Investment Initiative Interagency Working Group, chaired by Treasury and Transportation Secretaries Jack Lew and Anthony Foxx. That report was sent to the White House late last year.

The new Qualified Public Infrastructure Bonds are a centerpiece of the proposals. They would be a hybrid between governmental bonds and private-activity bonds with fewer restrictions than PABs. In contrast to PABs, QPIBs would not have issuance caps and would not be subject to the alternative minimum tax.

They also would not have the private business use test that is currently are used to determine if bonds are governmental bonds or PABs. Under current law, bonds are PABs and not government bonds if more than 10% of the project is used by private parties and more than 10% of the debt service is paid for, or secured by, private parties. But to be tax-exempt, a PAB has to be used to finance projects that fall within several categories, including airports and sewer facilities.

QPIBs could be used to finance airport, port, mass transit, solid waste, sewer, water and surface transportation projects, but only if they are governmentally-owned. QPIBs could not be used for privately-owned projects or privatizations of public facilities.

As a result, they would be particularly beneficial for governmentally-owned projects that have long-term leases or concessions with private parties.

The modifications to the PAB rules for QPIBs "will increase [their] impact as a permanent lower cost financing tool to increase private participation in building our nation's public infrastructure," the White House said in its fact sheet.

The QPIBs drew positive response.

"We think this could be a low-cost approach to stimulating much-needed infrastructure investment," said Standard & Poor's managing director and analyst Robin Prunty in New York. "But there is a cost associated with it, and as a result extensive deliberation in Congress is likely."

"Interest in the public-private 'P3' approach is growing, and many states are developing programs that combine public ownership with private sector management and operations expertise," Prunty said. "But the financing structures can be complex and generally have not benefited from tax exemption. States and other municipal market issuers have found them to be an attractive alternative to deliver large-scale infrastructure projects." "If the financing becomes more cost-effective, we expect that interest could grow. Currently, 33 states have authorized P3s and many projects have been financed or are in the planning stages," Prunty said. "The U.S. projects have primarily focused on transportation, such as roads, toll lanes, and transit projects. However, the Long Beach Courthouse in California is an example of a social infrastructure P3 project, and other states with active transportation P3 projects are also considering approving legislation allowing social infrastructure P3s. We have also started to see interest at the local level."

Susan Collet, president of H Street Capitol Strategies, said, "I think [QPIBs take] some significant steps forward in making the private-activity bond model more robust." She also said they would be "helpful to a lot of issuers."

Collet said the proposal seems to be consistent with the America Fast Forward bond proposal in that the Obama administration wants new models for bonds to enhance infrastructure. AFF bonds, proposed by Obama in 2013, would be taxable, direct-pay bonds that could be used to finance infrastructure financing.

If Congress wants to include infrastructure financing as part of tax reform, QPIBs could be something considered, Collet said, adding, "I do think it's going to be a starting point for discussion." But the tax committees may scrutinize PABs as part of tax reform to make sure their purposes are worthy of tax exemption, she said.

Michael Decker, Securities Industry and Financial Markets Association managing director and co-head of municipal securities, said, "It's a welcome proposal."

The proposal will make it easier to use tax-exempt financing when more than a de minimis amount of private involvement in projects, he said, adding, the bonds would "hopefully open the door for new financing structures" and more infrastructure.

Decker noted that tax reform is on the agenda and the Senate Finance Committee just set up working groups, including one on infrastructure. "I think this idea should be in the mix for those discussions."

If Congress wants to amend the tax code to make it more efficient and promote investment, “this certainly fits the bill,” he said. The QPIBs are in contrast with proposals like the 28% cap on the valuation of tax-exemption, he added. The President has proposed the 28% cap in his last several budget proposals.

Mike Nicholas, chief executive officer of the Bond Dealers of America, said, “The BDA is favorable to this proposal under the guise it would provide municipal issuers of all shapes and sizes the ability to work together with private enterprise to expand opportunities for tax-exempt financing.”

“However, the new QPIBs or any other component of the infrastructure financing proposal can’t lead to changes to the tax-exemption for muni bonds or to structural change to municipal bond issuance which has worked efficiently to the benefit of issuers and taxpayers for 100 years,” he said.

The U.S. Chamber of Commerce likes what it sees in the president’s P3 initiative at this point but the detail will be important, said Janet Kavinoky, the Chamber’s executive director for transportation and infrastructure.

“Although P3s are not a substitute for public investment, as the president’s announcement clearly states, they can bring innovation, cost discipline and time savings, and enable projects to go forward that cannot do so under conventional procurement methods,” she said. “The Chamber will take a close look as the proposals are revealed in detail in the budget and continue working with the administration on this important initiative.”

Sen. Ron Wyden, D-Ore., ranking minority member of the Senate Finance Committee, is on board with the proposal. “We were glad to see many of our Finance Committee suggestions incorporated into these proposals and support their efforts to pursue new opportunities for public-private partnerships,” said a spokesperson for him.

The new Water Finance Center would be created within the Environmental Protection Agency. “The Center will increase innovative financing support for communities to sustain their water, wastewater and stormwater infrastructure. This Center is part of the President’s Build America Investment Initiative – a government-wide effort to increase infrastructure investment and promote economic growth by creating opportunities for state and local governments and the private sector to collaborate, expand public-private partnerships, and increase the use of federal credit programs,” said Kenneth Kopocis, deputy assistant administrator in EPA’s Office of Water.

Michael Deane, executive director of the National Association of Water Companies, said the Water Finance Center and QPIBs would provide “an excellent opportunity” for the federal government to help communities that are interested in P3s.

NAWC still wants the volume caps to be lifted for regular water and sewer PABs and is also working with the Treasury to get it to clarify the remedial action rules so that governments can ensure the bonds they used to finance water facilities remain tax exempt if they enter into P3s.

The President also signed a memorandum Friday to align federal funding by several federal agencies for planning and predevelopment for the early phases of infrastructure projects.

Obama will also urge Congress to increase funding for transportation infrastructure along the lines of the four-year, $302 billion Grow America Act the administration proposed in 2014.

“Private capital is not a substitute for public investment,” the White House statement said in its fact sheet.

THE BOND BUYER

BY JIM WATTS and NAOMI JAGODA

JAN 16, 2015 1:03pm ET

Kyle Glazier contributed to this story

Goldman Sachs Joins BlackRock in New Flexible Funds: Muni Credit.

An investor may argue that if a fund beats 96 percent of peers in a five-year run, it doesn't need fixing.

That's not the philosophy of the municipal-bond chiefs at Goldman Sachs Asset Management and BlackRock Inc. (BLK)

The Goldman Sachs arm, which oversees $37 billion in munis, changed its core tax-free mutual fund this month to give it flexibility to extend or shorten maturities and buy junk debt. The fund, ranked in the top 5 percent of its class in the past five years, follows BlackRock's Strategic Municipal Opportunities Fund (MAMTX), which altered its mandate a year ago and saw assets more than triple.

"This is a market that provides a lot more opportunity if you can be more flexible than just having a specific duration band that you have to stay in, or only investment grade," said Ben Barber, head of munis in New York at the Goldman Sachs unit. "There's more volatility — that leads to more opportunity."

The moves jettison labels in the $3.6 trillion municipal market that restrict purchases to certain maturities or credit ratings, and take a page from unconstrained bond funds in the taxable universe. While those were the best-selling part of fixed-income in 2014, they underperformed intermediate-term funds, traditionally the most popular bond investment, according to Morningstar Inc.

Swing State

The Goldman Sachs fund aims to buy bonds that others sell amid swings in fund flows resulting from shifts by individual investors, who own the majority of the market either directly or through mutual funds.

Local debt rallied 9.8 percent last year, the most since 2011, as individuals added $21 billion to muni funds, Lipper US Fund Flows data show. In 2013, they pulled a record $63 billion amid a 2.9 percent loss, the worst since 2008.

Barber said he envisions Goldman Sachs's Dynamic Municipal Income Fund as an investment for all market circumstances. He and co-manager Scott Diamond plan to adjust average maturity and credit quality based on market moves.

Under its former name, the Goldman Sachs Municipal Income Fund (GSMTX), it had a duration of within one year of its benchmark, according to July documents filed with the U.S. Securities and Exchange Commission. It invested in securities rated at least BBB, two levels above junk.

Duration Stretch

Now, average duration can range from two to eight years, and speculative-grade debt may represent 30 percent of the fund.

That’s still a stricter mandate than some peers. The Eaton Vance Municipal Opportunities Fund (EMOAX), which began in 2011, isn’t constrained by duration and can invest 50 percent in junk. It delivered better returns than 99 percent of peers in the past three years.

Under the new mandate, the Goldman Sachs fund could have added high-yield and long-maturity debt when those areas cheapened in 2013, Barber said. Individuals that year yanked $9.9 billion and $27.5 billion, respectively, from funds focused on those segments.

“Each year over the last five or six years is different in terms of where flows go into or come out of,” Barber said. “It creates pressure on one portion or another of the curve.”

BlackRock’s $2.7 billion strategic muni fund could serve as a guide. The world’s largest money manager altered it in January 2014 to allow for an average duration of zero to 10 years, said Peter Hayes, who oversees about $114 billion as head of munis.

Duration reflects bonds’ price sensitivity to movements in interest rates. The longer the duration, the more the security’s price will rise as interest rates fall.

Junk View

The fund, formerly known as the BlackRock Intermediate Municipal Fund, previously had at least 80 percent in investment grade, according to documents from November 2013 detailing the strategy change. The average maturity was from three to 10 years.

The fund can now invest as much as 50 percent in junk-rated bonds and 20 percent in securities other than tax-free munis, and may use derivatives, according to the prospectus.

The BlackRock strategic fund attracted about $1.9 billion of cash in 2014, after starting the year with $680 million, Bloomberg data show. That was the second-highest growth rate among muni mutual funds.

The fund outperformed 88 percent of peers in the past year, and 96 percent for the last five. The new mandate is tailored to outperform as interest rates rise, said Hayes, who began managing it last year. It’s betting on declines in Treasury futures, according to data from the company as of Nov. 30.

Unconstrained Risk

“People don’t expect a negative return in their muni portfolio, so the way we’re managing this is to try to give them some positive return when rates rise,” Hayes said in a telephone interview.

“The risks are clearly asymmetric: Rates are more likely to go up than go down, so this is the type of vehicle that should succeed in that environment,” he said.

It’s fitting that BlackRock and Goldman Sachs are among the first adopters of more flexible muni funds, since they were among early entrants into unconstrained taxable funds, said Jason Kephart, an alternative-strategy analyst at Morningstar in Chicago.

Those taxable funds also highlight the risks in betting on movements in interest rates, he said. The $25.4 billion Goldman Sachs Strategic Income Fund (GSZIX), which began in 2010, trailed 98 percent of peers for the past 12 months as it fell 2.6 percent while the broad bond market gained almost 7 percent, Bloomberg data show.

The BlackRock Strategic Income Opportunities Portfolio (BSIIX) trailed about 60 percent of peers, according to Bloomberg data that categorizes it among aggregate bond funds. That's the same group against which the Goldman Sachs Strategic Income fund is measured, according to Bloomberg classifications.

'Manager Risk'

"Beyond interest-rate risk and credit risk, you're taking on 100 percent manager risk because they have so much freedom," Kephart said in an interview. "You have to be right about interest rates for these funds to really work."

Analysts failed to predict the muni rally in 2014 as the consensus forecast was that interest rates would rise. Projections are mixed for this year: Forecasts range from gains of 5 percent to losses.

The Goldman Sachs fund's biggest stakes as of Sept. 30, before its transition, were bonds due in 2034 for Houston's airport system and convertible capital-appreciation debt backed by Puerto Rico sales taxes, Bloomberg data show. Tax-exempt general obligations from California and Illinois were also in the top 10.

The entry of Goldman Sachs shows the segment will keep growing, said Lyle Fitterer, who helps run the $1.6 billion Wells Fargo Advantage Strategic Municipal Bond Fund. (VMPAX)

"People are really worried about what's going to happen to their bond portfolios once interest rates start to rise," said Morningstar's Kephart. Increased flexibility "has been popular in taxable income, so I don't see why it wouldn't become as popular in tax frees."

Bloomberg Muni Credit

By Brian Chappatta Jan 20, 2015 9:36 AM PT

To contact the reporter on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, William Selway

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Fitch Revised Criteria for Rating U.S. Public Finance Short-Term Debt.

On January 7, Fitch revised its criteria for rating U.S. Public Finance Short-Term Debt.

The revised criteria can be found here. (Registration required.)

FINRA Disciplinary Hearings Forum.

The SIFMA FINRA Disciplinary Hearings Forum

February 12, 2015

SIFMA Conference Center, NYC

SIFMA's FINRA Disciplinary Hearings Forum is a half-day interactive program that will provide valuable insights and practice tips both for lawyers experienced in FINRA proceedings and those new to the forum.

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- The complaint, answer, pre-hearing conference, and settlement and mediation
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- Government Accountability Office Study on Long-Term Liabilities.
- FINRA Lays Out Exam Priorities.
- SIFMA, ICI Urge SEC Not to Approve MSRB Test Proposal.
- Moody's Request for Comment – Tax Increment Debt.
- Bondholder Sues Bankrupt San Bernardino for Favoring Calpers.
- Dynamic Scoring Could Make Tax Reform Easier.
- Continuing Disclosure After MCDC: Complimentary Webinar
- *Ex parte Bronner* – Supreme Court of Alabama holds that the prudent-man rule did not advance a specific duty that could have served as a basis for a court order to the executive branch to take certain action going forward, as would surmount the wall of sovereign immunity from action by public employee and teacher against CEO of the retirement systems, and officers and members of their boards for alleged breach of fiduciary duty for investing in state-based investments that arguably produced lower returns than could have been obtained elsewhere.
- *California v. U.S. Dept. of Labor* – District Court holds that the DOL's refusal to issue 13(c) certifications to California transit agencies following passage of California pension reform legislation was arbitrary and capricious in violation of the APA, as the statute did change the parameters within which collective bargaining could proceed but did not give a transit agency unilateral authority to eliminate collective bargaining in its entirety.
- *In re Ravenna Metropolitan District* – Bankruptcy Court rules in favor of bondholders in their objection to municipal district's bankruptcy filing, finding that district had not met its burden of showing that it was insolvent under the current-state-of-affairs test due, in part, to the fact that the failure to make an interest payment on the bonds was not an event of default that rendered the bonds immediately due and payable.
- And finally, in what we can only hope is a matter of first impression, the Court of Appeal of Alabama holds that an undershirt is not a part of an educator's teaching/coaching uniform. Good to know that's settled.

PENSIONS - ALABAMA

Ex parte Bronner

Supreme Court of Alabama - December 31, 2014 - So.3d - 2014 WL 7403996

Public employee and teacher brought putative class action against CEO of Employees' Retirement System, who was also the CEO of the Teachers' Retirement System, and the Retirement Systems, and officers and members of the boards of the Systems, alleging that defendants breached their fiduciary duties. More specifically, the plaintiffs objected to the investment in Alabama-based investments that they alleged resulted in lower returns than could have been obtained via other investments. The Circuit Court denied defendants' motion to dismiss. Defendants sought writ of mandamus.

The Supreme Court of Alabama held that:

- Prudent-man rule did not advance a specific duty that could have served as a basis for a court order to the executive branch to take certain action going forward, as would surmount sovereign immunity;
- Beyond-authority exception to sovereign immunity did not apply; and
- Permanent injunction requiring Systems to follow prudent-man rule would have run afoul of the separation of powers.

The "prudent-man rule," which allows boards of state retirement systems to approve, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with the matters would use in the conduct of an enterprise of a like character and with like aims, investments in bonds, mortgages, stocks, and other investments, did not advance a specific duty that could have served as a basis for a court order to the executive branch to take certain action going forward, as would surmount the wall of sovereign immunity from action by public employee and teacher against CEO of the retirement systems, and officers and members of their boards for breach of fiduciary duty.

Granting permanent injunction to public employees requiring state retirement systems to follow the prudent-man rule and refrain from investing in any Alabama-based investment that the CEO, officers, or boards of the systems were aware or expected would yield less of a return than alternative or other investments would have run afoul of the separation of powers. Employee and teacher sought a mere reiteration in a court order of what was already the statutorily-prescribed standard applicable to the investment decisions, and the complex task of continually analyzing, comparing, and choosing from among the myriad of different investment vehicles available in the sophisticated investment world was a task delegated by the legislature to the executive branch and to the boards of control in particular.

CONTRACTS - ALABAMA

WM Mobile Bay Environmental Center, Inc. v. City of Mobile Solid Waste Authority

United States District Court, S.D. Alabama, Southern Division - December 22, 2014 - Slip Copy - 2014 WL 7336095

The City of Mobile Solid Waste Authority (SWA) and WM Mobile Bay Environmental Center, Inc. (WM Mobile) (as successor in interest) are parties to a 1993 Solid Waste Management Contract for landfill operations and other solid waste management operations (the Contract).

In 2003, SWA entered into a Lease Agreement with Waste Away Group, Inc. (Waste Away) – WM Mobile's parent company – whereby Waste Away leased the Landfill from SWA for a term ending October 2038. The Lease was part of a bond issue by SWA in which tax-exempt bonds were issued and the proceeds were used by Waste Away to obtain new disposal cells and liner systems, improve the leachate and methane gas collection systems, and acquire equipment for the landfill.

WM Mobile brought suit against SWA for breach of the terms of the 1993 Contract. WM Mobile sought a declaratory judgment to establish the current rates for waste disposal at the Landfill and hauling waste from the transfer station to the Landfill. WM Mobile also sought a declaratory judgment as to SWA's contract obligation to work with WM Mobile to expand the service area for the Landfill. SWA filed a counterclaim for breach of contract against WM Mobile alleging that royalties had been underpaid for 2012 and 2013.

In response, SWA argued that the 2003 Lease Agreement between Waste Away and SWA was dispositive of all the claims relating to the financial relationship between the parties because the Lease restructured the financial obligations and other terms of the 1993 Contract.

WM Mobile argued that the Lease had no bearing on this litigation, as it was not a party to the Lease. WM Mobile also argued that the Contract provided that it "may be modified, amended, discharged or waived only by an agreement in writing signed by each party" but there was no such agreement and no clear expression in the Lease that it was intended to modify or amend the Contract.

The District Court held that:

- The 2003 Lease Agreement did not supplant the 1993 Contract, denying all of SWA's motions for summary judgment brought under this argument;
- There existed a genuine issue of material fact as to whether SWA failed to negotiate price adjustments and reimbursements in good faith, and whether WM Mobile provided sufficient documentation, denying WM Mobile's motion for summary judgment on this issue;
- SWA officially approved the expansion of the landfill on two occasions, but that the expansion efforts were thwarted by the
- City's and County's inaction, granting SWA's motion for summary judgment on this issue;
- WM Mobile was owed reimbursement and indemnification in the amount of $23,064.50;
- WM Mobile owed royalties on the solid waste deposited by Waste Management and its affiliates, and therefore, WM Mobile was not entitled to summary judgment as to this count;
- SWA had breached the Contract by delivering certain City of Mobile waste to another landfill, with the issue of damages to be determined at trial.

Shout out to my peeps at Maynard, Cooper & Gale!

LAW ENFORCEMENT - CALIFORNIA

[Los Angeles Police Protective League v. City of Los Angeles]

Court of Appeal, Second District, Division 8, California - December 26, 2014 - Cal.Rptr.3d - 14 Cal. Daily Op. Serv. 14, 302

Taxpayer and association representing sworn peace officers employed by city sued city, chief of police department, and board of police commissioners, seeking to invalidate police department's special order regarding impounding vehicles driven by unlicensed drivers. The Superior Court granted taxpayer and association summary judgment. Defendants appealed and petitioned for writ of supersedeas, which was granted.

The Court of Appeal held that:

- Special order was matter within discretion of police chief, such that taxpayer lacked standing, and
- Association lacked standing to challenge special order.

Special order that instructed police officers when to impound vehicles driven by unlicensed drivers was matter within wide discretion of police chief, as public official, such that taxpayer lacked standing to challenge special order on ground that it was preempted by statutes governing impounding of vehicles driven by unlicensed drivers. Special order did not create new law or conflict with existing law, but rather special order simply implemented existing law by providing guidance to ensure uniform enforcement of Vehicle Code, and police chief was permitted to set policies for city on police matters as authorized policymaker.

Association representing sworn peace officers employed by city lacked standing to challenge special order adopted by board of police commissioners that instructed police officers when to impound vehicles driven by unlicensed drivers, despite contention that association's members might violate state law by complying with special order and that statute allowing peace officer to impound vehicle when officer determined that person was driving vehicle without ever having been issued a driver's license vested discretion solely in individual officer. Legislature did not intend to remove police chief's discretion in implementing statutes regulating impoundment of vehicles driven by unlicensed drivers, special order implemented state law, and implementation of state law did not concern matter within association's scope of representation.

PENSIONS - CALIFORNIA

California v. U.S. Dept. of Labor

United States District Court, E.D. California - December 30, 2014 - F.Supp.3d - 2014 WL 7409478

Under Section 13(c) of the Urban Mass Transportation Act (UMTA), state and local governments seeking federal grants for transit assistance must seek certification from the Department of Labor (DOL) that the "interests of employees affected by the assistance" are protected by "fair and equitable" arrangements. These employee protective arrangements are called 13(c) agreements.

In 2012, California enacted the Public Employees' Pension Reform Act of 2013 (PEPRA) "to reform California's public employee pension systems and to bring the staggering cost of funding such systems under fiscal control." Under PEPRA, employees hired after January 1, 2013 must contribute at least 50 percent of the normal costs of their defined benefit plan, and PEPRA establishes a cap on the amount of compensation that can be used to calculate a retirement benefit for new and "classic" employees. The law ends the ability of public employees to purchase nonqualified service time, or "airtime," toward their pensions, with no further applications for such credit accepted after January 1, 2013. In addition, it implements a two percent at age 62 defined benefit for all new non-safety employees and uses the highest average annual compensation over a three-year period as final compensation for pension calculations, excluding bonuses, unplanned overtime and unused vacation or sick leave from this calculation.

Subsequently, certain California transit agencies ("Plaintiffs") were informed by the DOL that the implementation of PEPRA prevented 13(c) certification due to the DOL's conclusion that PEPRA infringed on the collective bargaining rights guaranteed by Section 13(c). This ruling had the effect of eliminating all federal funding of state transportation projects. Plaintiffs sued, alleging violations of the Administrative Procedures Act (APA) and the Spending Clause of the U.S. Constitution. Both parties moved for summary judgment.

The District Court held that:

- The DOL's interpretation of PEPRA and Section 13(c) was arbitrary and capricious in violation of the APA, as PEPRA did change the parameters within which collective bargaining could proceed but did not give a transit agency unilateral authority to eliminate collective bargaining in its entirety (granting Plaintiffs' motion for summary judgment);
- In rejecting 13(c) certification based on its evaluation of PEPRA's impact on new employees, DOL misinterpreted the law when it rejected state law defining when a public employee becomes entitled to pension benefits (granting Plaintiffs' motion for summary judgment); and
- DOL's refusal to grant 13(c) certification was not inconsistent with limits on federal power embodied in the Spending Clause and did not violates the state's fiscal sovereignty in violation of the Tenth Amendment (granting Defendant's motion for summary judgment).

The matter was remanding to the DOL for further proceedings consistent with the order.

BANKRUPTCY - COLORADO

In re Ravenna Metropolitan District

United States Bankruptcy Court, D. Colorado - December 15, 2014 - B.R. - 2014 WL 7494935

In connection with its development of a residential community, Developer organized the Ravenna Metropolitan District in 2004 under the Colorado Special District Act to provide public infrastructure and services. The District issued $10 million in bonds. The District pledged the revenues from its annual ad valorem mill levy imposed on all taxable property within the District. Colorado BondShares ("CBS") owns the bonds.

The District entered into a series of agreements with United Water and Sanitation District, a larger and more experienced special district to develop water facilities for both districts. In 2007, the District and an enterprise formed by the District (the "District Enterprise") entered into a Lease with the United. Under the Lease, the District Enterprise agreed to lease the water system from the United.

Around the same time, United issued $5.8 million in special revenue bonds that were intended to fund the construction of the water system. Pursuant to the Lease, the District Enterprise was required to make semi-annual lease payments to be used to pay United's bonds. Upon redemption of the United bonds, United would convey the water system to the District. The District Enterprise agreed to fund the semi-annual payments, in part, through the imposition of a fee on District property owners called the Facilities Acquisition Fee ("FA Fee"). The Lease also imposed a "moral obligation" on the District to use its mill levy to cover the Lease payments if the collected FA Fees were insufficient to fund Lease payments.

After years of fluctuating financial fortunes and negotiations amongst the parties, the District filed a chapter 9 bankruptcy petition on April 2, 2014. Both CBS and United filed objections to the District's petition, arguing it did not meet the eligibility requirements set forth in 11 U.S.C. § 109(c) and that the petition was not filed in good faith and should be dismissed under § 921(c).

The Bankruptcy Court held that the District had not met its burden of showing that it was insolvent under the current-state-of-affairs test.

That ruling resulted from the following:

1. The Bonds were not "due." The Court relied on *Hamilton Creek Metro. Dist. v. Bondholders Colo. BondShares* (In re Hamilton Creek Metro. Dist.), 143 F.3d 1381, 1384 (10th Cir. 1998) in its analysis, finding that the District's only obligation under the bond agreement was to impose the mill levy and apply the proceeds to the bonds. The failure to make a full interest payment was not an event of default under the bond agreement, partial payments were contemplated, and thus the bonds were not "due," as the debt was not "presently enforceable."
2. There existed a bona fide dispute as to whether the District could be held liable for the District Enterprise's payment obligations under the Lease.
3. The District had sufficient ability to fund its existing operational and maintenance costs.

The Court also held that the District had failed to meet the second test of insolvency, known as the forward-looking test and defined in the statute as "unable to pay its debts as they become due."

The Court then held that the District had failed to demonstrate either that negotiations were impracticable or that it negotiated in good faith, or that it fully explored other alternatives prior to filing to bankruptcy.

And finally, the Court held that the petition had not been filed in good faith due, as it had been done primarily to obtain leverage in its negotiations with its creditors.

ZONING - CONNECTICUT

Town of Rocky Hill v. SecureCare Realty, LLC

Supreme Court of Connecticut - January 6, 2015 - A.3d - 315 Conn. 265

Town sought declaratory and injunctive relief that group of private entities, who together had contracted with state to provide nursing home services to state prisoners and others in state custody, were prohibited from opening or operating the proposed facility on the property because such use would be noncompliant with town zoning regulations. The Superior Court granted group's motion to dismiss for lack of subject matter jurisdiction. Town appealed.

The Supreme Court of Connecticut held that:

- Group was not an arm of the state entitled to assert sovereign immunity defense, and
- Town zoning regulation was not preempted by statute allowing the state to contract to establish nursing home services.

Group of private entities that together had contracted with state to provide nursing home services to state prisoners and others in state custody was not an "arm of the state" entitled to assert sovereign immunity as defense in declaratory and injunctive relief action that town had brought against the group regarding zoning violation. Though group was performing an important government function and the financial impact of an adverse judgment would fall partly and significantly on the state, group was not entirely financially dependent on the state, group's budget was not closely monitored by the state, the state did not have comprehensive control over the group, it's officers and directors were not state functionaries, and nursing home staff were not state employees, state did not "create" the group of privately held entities, rather it contracted out for their services, and state itself intended compliance with local regulation.

Town zoning regulation was not preempted by statute allowing state to establish or contract to establish nursing home services to state prisoners and others in state custody, as legislature did not intend statute to limit the application of local zoning regulations to nursing home projects established under the authority of the statute, and regulation did not irreconcilably conflict with the statute or frustrate state's statutory objective of establishing nursing homes for those in state custody.

LIABILITY - LOUISIANA

Waterstraat v. Vernon Parish School Bd.

Court of Appeal of Louisiana, Third Circuit - December 30, 2014 - Not Reported in So.3d - 2014-623 (La.App. 3 Cir. 12/30/14)

Pedestrian was struck by high school teacher/football coach when he left the school grounds during school hours to fetch an undershirt to wear under his coaching uniform.

The trial court found that teacher was acting in the course and scope of his employment with the School Board at the time of the accident, and that the School Board was liable to pedestrian for the damages she sustained in the accident pursuant to the doctrine of respondeat superior. School board appealed.

A lengthy, amusing analysis of the nature and role of the undershirt ensues.

The Court of Appeal affirmed, finding no error in the trial court's ruling that teacher's act of driving home, during school hours, to secure an undershirt, was a reasonably foreseeable act actuated by a desire to serve his employer.

In reaching this conclusion, the court also noted that the school policy as set forth in the Teacher Handbook did not provide mandatory language, but rather requested that a faculty or staff member not to leave during school hours, and to sign out and obtain permission of the principal before doing so. The would seem to suggest that School Boards could strengthen their arguments that an employee was acting outside the scope of his/her employment by requiring, rather than requesting, that they obtain permission and sign out prior to leaving school grounds.

ELECTIONS - LOUISIANA

Fontenot v. Lartigue

Court of Appeal of Louisiana, Third Circuit - December 30, 2014 - So.3d - 2014-1327 (La.App. 3 Cir. 12/30/14)

Unsuccessful police chief candidates brought action against newly elected police chief contesting his election. The District Court entered judgment sustaining exceptions of prescription, peremption, and no cause of action and denied unsuccessful candidates' motions for new trial and to amend judgment. Unsuccessful candidates appealed.

The Court of Appeal held that:

- The seven day period for challenging a candidate's qualifications, rather than the nine day period for contesting an election applied to action challenging police chief's qualifications for the office of police chief, and
- Claim filed after the seven day period permitted by statute was subject to the exception of no cause of action.

ZONING - MAINE

Beckford v. Town of Clifton

Supreme Judicial Court of Maine - December 31, 2014 - A.3d - 2014 ME 156

Property owners petitioned for judicial review of decision of town Zoning Board of Appeals (ZBA) which denied their appeal from Planning Board's decision to approve application for permit to construct and operate five-turbine wind energy project. The Superior Court vacated decision of ZBA to approve permit application. Applicant and town appealed. Property owners cross-appealed.

The Supreme Judicial Court held that Superior Court lacked jurisdiction over appeal from ZBA's decision, ruling that the appeal period began on the date the ZBA held its vote, not on the date the ZBA issued its written findings.

BANKRUPTCY - MICHIGAN

In re City of Detroit

United States Bankruptcy Court, E.D. Michigan, Southern Division - December 31, 2014 - B.R. - 2014 WL 7409724

Chapter 9 debtor-city sought confirmation of eighth amended plan of adjustment, and approval of settlements with creditors.

The Bankruptcy Court held that:

- Proposed settlement was fair and equitable, warranting its approval;
- Plan was in the best interests of creditors, as required for confirmation;
- Plan was feasible, as required for confirmation;
- Plan was proposed in good faith, as required for confirmation;
- Plan did not discriminate unfairly in favor of pension classes, as required for confirmation;
- Impairing and discharging § 1983 claims against city would not violate Fourteenth Amendment; and
- Takings Clause claims against city would be excepted from discharge.

FIRST AMENDMENT RETALIATION - MISSISSIPPI

Advanced Technology Bldg. Solutions, LLC v. City of Jackson, Miss.

United States District Court, S.D. Mississippi., Northern Division - January 2, 2015 - Slip

Copy - 2015 WL 46167

Advanced Technology Building Solutions (ATBS) filed a First Amendment retaliation lawsuit against the City of Jackson after it was unable to obtain funding for an urban redevelopment project. A jury awarded damages in the amount of $600,000 to ATBS. The City filed a Motion for Judgment Notwithstanding the Verdict, asserting that its policymaker, the City Council, never had the opportunity to decide whether to grant funding to ATBS, because ATBS's request for funding stalled while under consideration by a separate entity, the Jackson Redevelopment Authority (JRA).

The District Court granted the City's Motion, finding that ATBS had failed to present any evidence that the City of Jackson, through its duly elected City Council, committed an "adverse action."

"The bulk of Plaintiff's evidence at trial centered around the individual conduct of the Mayor and his communications with the director and individual members of the JRA. ATBS's contention that the City of Jackson should be held liable for the Mayor's actions because a separate entity, the JRA, may have delegated some authority to the Mayor was without merit. The Mayor's interaction with the JRA director and the JRA board members, no matter how those actions are characterized, cannot bind the City of Jackson without the approval of the Jackson City Council."

"Because the City Council never decided to deny ATBS's request for funding, ATBS cannot demonstrate that the City of Jackson, through official policy or act, committed an adverse action. An adverse action by the City of Jackson is a essential element of a First Amendment retaliation claim, and absent such proof the jury's verdict in this matter must be set aside. For the foregoing reasons, the Court finds that the City of Jackson is entitled to judgment as a matter of law."

ZONING - MISSISSIPPI

Hotboxxx, LLC v. City of Gulfport

Supreme Court of Mississippi - January 8, 2015 - So.3d - 2015 WL 110614

Privilege license applicant brought action against city, challenging constitutionality of city zoning ordinance which restricted areas of town in which adult businesses could be located. Action was removed from Chancery Court to federal court, which dismissed action without prejudice for lack of standing. Applicant brought second action, citing same issues presented in first case. The Chancery Court issued order of dismissal with prejudice for lack of standing. Applicant appealed.

The Supreme Court of Mississippi held that:

- Chancellor did not commit reversible error in finding that privilege license application was incomplete and invalid, and
- Applicant's initial status as lessor of commercial property located in area of city affected by ordinance did not create colorable interest required to confer standing.

Initial status of owner of adult business as lessor of commercial property located in area of city affected by city zoning ordinance which restricted areas in which adult businesses could be located was insufficient to demonstrate that owner had colorable interest required to confer standing for action challenging constitutionality of ordinance, where, under terms of contract, lease was voided by time of action due to owner's inability to obtain necessary business licenses or approvals from city.

BANKRUPTCY - PENNSYLVANIA

In re the Baptist Home of Philadelphia

United States Bankruptcy Court, E.D. Pennsylvania - December 31, 2014 - B.R. - 2014 WL 7409545

The Baptist Home of Philadelphia ("Debtor"), a nonprofit corporation, filed a chapter 11 bankruptcy case on April 25, 2014. At the time, the Debtor operated a senior care facility with 206 licensed skilled nursing beds and 126 independent living and personal care units in the northeast section of the City of Philadelphia.

Among the secured debts included in the bankruptcy schedules was approximately $24 million owed to U.S. Bank, the Bond Trustee.

A Joint Motion of the Debtor and the Bond Trustee for Relief from the Automatic Stay was filed seeking authorization for a pre-confirmation distribution on account of the Bond Trustee's claim. All interested parties, including the Committee, agree that a pre-confirmation distribution to the Bond Trustee was in the best interests of the estate and creditors and that a complete payoff of the Bond Trustee's claim was desirable given the interest running on the Bond Trustee's claim.

Before a complete distribution to the Bond Trustee could be made, the court was required to resolve a dispute regarding the appropriate amount of the distribution necessary to pay off the Bond Trustee's claim. The dispute arose from divergent interpretations of a settlement agreement (the "Settlement Agreement") approved by this court in June 2014. The parties referred to the dispute as the "Carve–Out Dispute" and the parties reported that the amount at issue was approximately $460,000. Resolution of the Carve–Out Dispute was important to all parties because once the extent of the Bond Trustee's distribution entitlement was known, the court could authorize distribution of the balance of the Bond Trustee's claim, thereby terminating the accrual of interest and expenses.

By order dated December 18, 2014, the court entered an interim order authorizing the Debtor to pay the Bond Trustee's claim less the roughly $460,000 at issue in the Carve–Out Dispute (the "Holdback"). The specific issue before the court was whether the Bond Trustee or the Committee had the superior claim to the Holdback in the event that the ultimate distribution in the case was insufficient to pay in full both the Bond Trustee's claim and the allowed unsecured claims.

The court agreed with the Debtor and the Bond Trustee that the Settlement Agreement unambiguously expressed the parties' intent to provide a minimum recovery to unsecured creditors from the sale proceeds derived from the Bond Trustee's collateral and was not intended to reduce the Bond Trustee's allowed secured claim or subordinate any portion of that claim in favor of the unsecured creditors. Consequently, the court entered an order authorizing the Debtor to distribute the Holdback to the Bond Trustee.

BENEFITS - VIRGINIA

City of Danville v. Tate

Supreme Court of Virginia - January 8, 2015 - S.E.2d - 2015 WL 114064

City brought action against retired firefighter, seeking recovery of firefighter's sick leave pay. The Circuit Court, City of Danville, dismissed, and city appealed.

The Supreme Court of Virginia held that:

- Workers' Compensation Commission had no jurisdiction to decide dispute between city and retired fireman over city's claim for recovery of its sick leave payments, and
- City had no authority under city ordinance or regulation to recover sick leave pay from retired firefighter on the basis that he had also received workers' compensation for the same disability period.

Workers' Compensation Commission had no jurisdiction to decide dispute between city and retired fireman over city's claim for recovery of its sick leave payments to firefighter, where city never requested a credit against a workers' compensation award for amounts paid firefighter during the same period for sick leave under statutory provision that allowed an employer to request credit subject to the approval of the Commission.

City had no authority under city ordinance or regulation to recover sick leave pay from retired firefighter on the basis that he had also received workers' compensation for the same disability period, as the recovery authorized by the provisions relied on by city pertained to a distinct type of claim by the city against an employee's workers' compensation payment, and not his sick leave payments.

MUNICIPAL ORDINANCE - WASHINGTON

City of Bonney Lake v. Kanany

Court of Appeals of Washington, Division 2 - December 30, 2014 - P.3d - 2014 WL 7403963

City brought action against property owner, asserting he maintained an impermissible accessory dwelling unit (ADU) above garage in violation of municipal code, and seeking to collect fines. The Superior Court granted summary judgment in favor of city for $48,000. Property owner appealed.

The Court of Appeals held that enforcement of municipal code provisions governing imposition of building code violation fines did not deprive property owner of procedural due process.

There was nothing discretionary about the daily fines at issue, they were automatic, and property owner had the full opportunity to appeal all aspects of his specific violation, including the ongoing daily fine, and whether fines accrued before or after the initial appeal period.

TAX - VIRGINIA

CVAS 2, LLC v. City of Fredericksburg

Supreme Court of Appeals Virginia - January 8, 2015 - S.E.2d - 2015 WL 103731

City brought suit against real estate developer seeking to have developer's real estate sold in order to collect outstanding payments for delinquent real estate taxes and special assessments. The Circuit Court entered decree of sale. Developer appealed.

The Supreme Court of Virginia held that:

- City had no authority to bring suit to sell the real estate as a means to collect delinquent real estate taxes;

- City had no authority to bring suit to sell the real estate as a means to collect delinquent special taxes; and
- City had no authority to bring suit to sell the real estate as a means to collect delinquent special assessments.

Because city did not strictly comply with time period in tax code allowing for a suit to sell real estate to be brought, the city had no authority under the code to bring suit to sell taxpayer's real estate as a means to collect delinquent real estate taxes.

Because city did not strictly comply with the time period in tax code allowing for a suit to sell real estate to be brought, and had not adopted an ordinance pursuant to code provision allowing for it to expedite and collect delinquent special taxes independent from its collection of another type of delinquent "locality's taxes," the city had no authority under the code to bring suit to sell taxpayer's real estate as a means to collect delinquent special taxes.

Because city had not shown that it had strictly complied with tax code provisions allowing for it to bring suit to collect delinquent special assessments on behalf of a community development authority, the city did not establish authority under the code to bring suit to sell taxpayer's real estate as a means to collect the delinquent special assessments.

U.S. Muni Bond Supply to Spike to $7.27 bln Next Week.

Jan 9 (Reuters) – Debt-hungry investors will get a hefty serving of U.S. municipal bond debt next week, with supply rising to about $7.27 billion from an estimated $4.24 billion this week, according to Thomson Reuters estimates on Friday.

Investors in debt sold by states, cities, schools and other issuers in the U.S. municipal bond market have been ravenous for tax-free bonds as supply dried up over the Christmas and New Year's holidays.

U.S. municipal bond funds reported $1.33 billion of net inflows in the week ended Jan. 7, the biggest weekly inflows since January 2013, according to Lipper data on Thursday.

A week ago, the yield on top-rated 10-year bonds was 2.01 percent, while the 30-year yield was 2.83 percent on Municipal Market Data's benchmark scale. Price gains over the first full trading week of 2015 pushed the 10-year yield down to 1.91 percent and the 30-year yield to 2.71 percent as of Thursday's market close.

Next week, the New York City Transitional Finance Authority will sell $750 million of building aid revenue bonds through Ramirez & Co, with retail presale periods on Monday and Tuesday and formal pricing on Wednesday. The deal's structure includes serial bonds due in 2016 through 2044, according to the preliminary official statement.

New York's Metropolitan Transportation Authority will sell $400 million of fixed-rate revenue bonds and $100 million of floating rate tender notes through J.P. Morgan, which has slated pricing for Thursday.

In the healthcare sector, Chicago's Rush University Medical Center will issue $502 million of revenue bonds through the Illinois Finance Authority. Goldman, Sachs & Co is scheduled to price the debt on Thursday.

Topping the week's competitive calendar is a $131 million wastewater refunding revenue bond issue for California's Orange County Sanitation District. The AAA-rated bonds are slated to price on Tuesday.

(Reporting By Karen Pierog; Editing by Chris Reese)

Vanguard to Introduce its First Municipal Bond Index Fund and ETF.

Vanguard today filed a registration statement with the U.S. Securities and Exchange Commission to offer a national municipal bond index fundwith an exchange-traded fund (ETF) share class. Vanguard Tax-Exempt Bond Index Fund will be the firm's first tax-exempt index fund and ETF. Vanguard is one of the largest managers of municipal bond funds in the industry—with about $140 billion in tax-exempt bond and money market funds—and one of the largest ETF providers, with $422.6 billion in assets.

Vanguard Tax-Exempt Bond Index Fund's target benchmark is the S&P® National AMT-Free Municipal Bond Index. The fund will offer investors exposure to investment-grade municipal bonds across the entire yield curve. The fund is intended to provide a sustainable level of current income that is exempt from federal personal income taxes.

"For investors in high tax brackets, a high-quality, broadly diversified municipal bond fund or ETF can provide tax advantages as well as diversification from the risks of the equity market," said Vanguard CEO Bill McNabb. "Vanguard is pleased to bring a low-cost index option to the municipal category as a complement to our lineup of low-cost actively managed tax-exempt bond funds."

The fund, which is expected to be available in the second quarter of 2015, will offer three share classes: Investor Shares, Admiral Shares, and ETF Shares (with estimated expenses ratio of 0.20%, 0.12%, and 0.12%, respectively). The municipal bond funds in Lipper's General and Insured Municipal Debt Funds category have an average expense ratio of 0.97%; comparable ETFs in the category have an average expense ratio of 0.49% (source: Lipper, a Thomson Reuters Company, December 31, 2013).

Investor Shares will require a minimum initial investment of $3,000 and Admiral Shares will require a minimum initial investment of $10,000. These share classes will also include a 0.50% purchase fee to defray portfolio transaction costs and enable the fund to more closely track its benchmark.

A municipal bond funds pioneer

Vanguard Fixed Income Group is one of the world's largest fixed income managers, overseeing more than $800 billion, of which $140 billion is invested in tax-exempt bond and money marketfunds. Vanguard offers 12 actively managed municipal bond funds (five national, seven state-specific) and six tax-exempt money market funds (one national, five state-specific).

Vanguard offered its first three tax-exempt bond funds (short-, intermediate-, and long-term) in 1977. It was the first mutual fund company to offer shareholders a choice among municipal bond funds of differing durations.

Adam Ferguson, a portfolio manager in Vanguard Fixed Income Group, will manage the new fund. Mr. Ferguson joined Vanguard in 2004 and currently manages multiple municipal bond funds.

Vanguard has an experienced municipal team of approximately 40 professionals, including portfolio managers, senior credit research analysts, research associates, and traders. The team's approach, whether managing money market funds, bond index funds, or actively managed bond funds, is to invest shareholders' money in a disciplined, risk-controlled manner.

A leader in ETFs

Vanguard offers 67 low-cost ETFs in the U.S., including 15 bond ETFs. Cash flow continues to be strong, with investors entrusting $63.5 billion to our ETFs year-to-date through November 2014 (and $55 billion in calendar year 2013).

About Vanguard

Headquartered in Valley Forge, Pennsylvania, Vanguard is one of the world's largest investment management companies. It manages more than $2.85 trillion in U.S. mutual fund assets, including more than $422.6 billion in ETF assets. The firm offers more than 160 funds to U.S. investors and more than 120 additional funds in non-U.S. markets. For more information, visit vanguard.com.

January 6th, 2015

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5 Top-Ranked Municipal Bond Mutual Funds for High Yield.

Debt securities will always be the natural choice of the risk-averse investor because this category of instruments provides regular income flow at low levels of risk. Income from regular dividends helps to ease the pain caused by plunging stock prices. When considering safety of capital invested, municipal bond mutual funds are second only to those investing in government securities. In addition, the interest income earned form these securities are exempt from federal taxes and in many cases from state taxes as well.

Below we will share with you 5 top rated municipal bond mutual funds. Each has earned a Zacks #1 Rank (Strong Buy) as we expect these mutual funds to outperform their peers in the future.

Nuveen CA High Yield Municipal Bond A (NCHAX – MF report) invests a lion's share of its assets in tax-exempted interest paying municipal bonds. The investment includes obligations approved by the State of California or by its affiliates, or issued by other sates of the US. The fund seeks high level of current income. The municipal bond mutual fund returned 21.3% over the last one year period.

The fund has an expense ratio of 0.87% as compared to category average of 0.91%.

Eaton Vance High-Yield Municipal Income A (ETHYX – MF report) seeks tax free high current income in form of interest payment. The fund invests the majority of its assets in municipal obligations affiliated by the District of Columbia and by other US states and territories. The obligations also include notes and commercial papers that are exempted from taxes. It focuses on acquiring high yielding municipal bonds. The municipal bond mutual fund returned 18.1% over the last one year period.

As of October 2014, this fund held 277 issues with 1.93% of its assets invested in New York Liberty Dev Corp Liberty Rev Bd 5%.

BlackRock High Yield Municipal Investor A (MDYHX – MF report) invests a large portion of its assets in municipal bonds that provide tax exempted return. The fund may invest a minimum of 65% of its assets in medium to low rated bonds. It may also invest a maximum of 10% of its assets in bonds that are considered to be distressed derivatives. The municipal bond mutual fund returned 17.6% over the last one year period.

Theodore Jaeckel Jr. is the fund manager and has managed this fund since 2006.

Invesco High Yield Municipal A (ACTHX – MF report) seeks tax free current income and taxable capital growth. The fund invests heavily in municipal bonds. It invests a minimum of 75% of its assets in medium and low rate municipal bonds that are expected to provide high yield. The fund also invests a maximum of 25% of its assets in bonds that derive revenues from industrial development. The municipal bond mutual fund returned 16.8% over the last one year period.

The fund has an expense ratio of 0.87% as compared to category average of 0.98%.

Lord Abbett High Yield Municipal Bond A (HYMAX – MF report) invests a major portion of its assets in tax free interest paying municipal bonds. The fund invests a significant portion of its assets lower rated bonds or junk bonds. Its dollar-weighted average maturity varies from 10 to 25 years depending on the market condition. The non-diversified municipal bond mutual fund returned 14.5% over the last one year period.

As of September 2014, this fund held 538 issues with 1.52% of its assets invested in Buckeye Ohio Tob Settlement Fi To 5.125%.

To view the Zacks Rank and past performance of all municipal bond mutual funds, investors can click here to see the complete list of funds.

About Zacks Mutual Fund Rank

By applying the Zacks Rank to mutual funds, investors can find funds that not only outpaced the market in the past but are also expected to outperform going forward. Learn more about the Zacks Mutual Fund Rank in our Mutual Fund Center.

Published on January 06, 2015

New Tool May Aid California Cities in Filling State’s Infrastructure Gap.

The devil is in the details when it comes to California paying to fill an estimated $59-billion-a-year, infrastructure deficit that’s leaving roads to deteriorate. The good news for cities is they just received a shiny new tool this year in their financing toolbox that could help pay for road repair, transit projects and even affordable housing.

It’s been a bit of a marquee week for those following transportation news, with Governor Brown literally signing off on California’s high-speed rail groundbreaking and the state’s infrastructure financing deficit getting a mention in the State of the State and Governor’s Inauguration speech, and the proposed state budget for the next fiscal year being released.

Unfortunately, the dollar amounts and detailed proposals for filling in that deficit were not included in Brown’s proposed outline of state spending today. But the Governor said they are identifying the problem and have a team working on the issue.

As the Summit and others have noted, however, the state can't solely rely on general obligation bonds to fill in gaps in infrastructure. That method adds to long-term debt and aren't permanent funding sources. Plus, federal funds for infrastructure have been unreliable and reducing in size. Also, as Gov. Brown acknowledged, lowering gas usage lowers the amount collected from gas taxes, meaning new ways of funding have to be found.

Something that could help with the situation for local governments, a bill Governor Brown approved last year handed cities a robust, revamped finance tool called Enhanced Infrastructure Financing Districts (EIFD) designed to boost local infrastructure and economic development projects. One of the big benefits of these EIFD's is that they put local governments in a better position to be able to leverage state resources and get even more money for projects, say financing experts.

"The state doesn't just hand out money for infrastructure projects," said Fred Silva, senior fiscal analyst at California Forward and presenter for the EIFD webinar. "It has policy preferences and asks for some local contributions through growth in the local economy. The EIFD public finance authority gives cities the power to better leverage state funds for infrastructure projects."

Those interested in EIFD's are invited to attend a free, public webinar hosted by Meeting of the Minds next week on Tuesday at 10:00am PST when a financing expert panel will take attendees through the new authorities available.

The comments from Gov. Brown regarding the funding gap are definitely a welcome statement. But, depending on the budget's proposals for boosting maintenance of California's transportation system, communities might see varying degrees of benefits, including upgrades of the highways running through them. That's why innovative funding tools like EIFD's will likely enter the conversation more in the next several years.

The webinar next Tuesday will explore the tools available under the EIFD mechanism, such as property tax increment authority, benefit assessments, fees and the ability to enter into public-private partnerships.

The tax increment financing authority, for example, lets cities "invest selected new property tax dollars into the neighborhood instead of into the city's General Fund."

Last year, the Summit produced a how-to guide on how local and regional agencies could use the new EIFD authority to invest in everything from sidewalk repair and water infrastructure, to the implementation of sustainable communities plans.

We'll also be taking a look through the Governor's budget plan for alignment in Summit Action Team work on infrastructure financing and report back here. And on Monday look out for the Summit's Roadmap to Prosperity, which will layout three big priorities for 2015 and beyond, including building up the state's infrastructure and sustainable communities.

JANUARY 08, 2015

BY JOHN GUENTHER

Moody's Request for Comment - Tax Increment Debt.

This Request for Comment describes our proposed methodology for rating tax increment bonds in the US. The approach described in this methodology applies to bonds secured by incremental property tax revenues only.

The proposed methodology includes a scorecard that assigns weights and values to the factors we consider consistently most important in tax increment bond analysis. We currently rate the debt of 65 redevelopment or economic development agencies, relating to over 110 unique tax increment financing (TIF) project areas. Tax increment bonds issued in California, known also as tax allocation bonds (TABs), comprise 80% of the rated credits. If the proposed methodology is adopted, we expect that approximately one-half of our California Tax Allocation Bond (TABs) ratings could be upgraded, while approximately 10% of our nonCalifornia tax increment ratings could be downgraded. See section titled, "California Tax Allocation Bonds" for additional information on California TABs.

Read the full Request for Comment.

How to Use Impact Bonds to Finance Social Good.

In four short years, social-impact bonds—complex fixed-income instruments aimed at financing social good—have grown from an obscure experiment in the U.K. to a rising market force in the U.S. and abroad. Insiders say that the business will more than quintuple within a year and that the next innovative wave of impact bonds, sometimes called "pay for success bonds," will likely come from local U.S. governments. Currently in the pipeline: A $7 million bond in Salt Lake City, Utah, aimed at boosting early education; a $17 million instrument to improve pre-kindergarten literacy in Chicago; and a $4 million deal tackling homelessness in Cuyahoga County, Ohio.

But let's back up. Social-impact bonds are a collaborative effort between philanthropically minded investors, nonprofits, and governments intent on solving social ills, while paying investors a return. Private investors provide project financing for nonprofits working to cut future public-sector costs by doing things such as reducing repeat youth incarcerations by 10%. When benchmarks are hit, investors get a return, based on what the government saved by not keeping such individuals in jail.

For all their 21st century ethos and excitement, social-impact bonds are still a tiny business; there are just seven in the U.S. According to the Rockefeller Foundation, there are about $80 million in impact bonds in the country but it expects the domestic market to grow to $500 million by year's end. President Obama's 2015 budget called for $300 million to build out the social-impact bond industry. Outside the U.S., Australia, Canada, Germany, Columbia, India, and Israel are either already in or in the process of joining the social-impact bond business. (See Penta's Jan. 13, 2014, "Pay for Success Bonds Drum Up Interest" at Barrons.com.)

The largest U.S. deal to date is in Massachusetts, with $28 million in funding going to local nonprofit Roca, which tackles youth recidivism in the state's prisons. Roca literally takes ex-felons off the street and transports them in vans to its programs in Boston, Chelsea, and Springfield, where a dogged combination of therapy and work-training programs prepare them for life outside prison. Over the bond's seven-year maturity period, which started last January, Roca will support 929 at-risk males, 17 to 24 years old.

Investors in the Roca deal include Goldman Sachs and the Kresge family's foundation. If Roca hits its target—to trim the number of days ex-offenders are imprisoned by at least 40%—investors will be paid a 2% to 5% return annually, with lower incarceration rates triggering higher payouts. That relatively low return appeals only to the philanthropically minded investor, of course, but it's a great deal for Massachusetts, which could save as much as $7 million, even after paying off investors, if Roca hits its most ambitious target. But social-impact deals like this remain stunningly complex. "There's no blueprint here and we're working with four branches of government and across eight institutions with all different kinds of money," says Roca CEO Molly Baldwin. "Would we have wanted it to be smoother? The answer is yes."

Critics question social-impact bonds' viability. In August, the world's first such bond – in Peterborough, U.K., and also dealing with recidivism—missed its initial 10% reduction target, which would have triggered an immediate repayment of investor principal. Still, the reading came in at a respectable 8.4%; if the reduction in repeat imprisonments stays above 7.5%, the U.K. Ministry of Justice will return money to investors. "The performance of the first group indicates that investors are on track to receive positive returns in 2016," says one investor, the Rockefeller Foundation.

Meanwhile, the Laura and John Arnold Foundation, a family foundation in Houston, has made grants and loans worth $14.4 million to help develop the social-impact bond industry, and has invested directly in three impact bonds, including the Roca deal.

Josh McGee, a vice president of the Arnold foundation, says that, as currently structured, the deals take too long to complete. "There is a real question in the space right now about the best way to organize deals," he says. He's focusing on locally sourced social-impact bonds, such as the $4 million Cuyahoga County bond, structured around homelessness. McGee thinks local governments will ultimately prove more nimble than the lumbering states at structuring deals. In short, the nascent social-impact bond industry is ratcheting its way up the learning curve.

Barron's

January 2, 2015, 2:15 P.M. ET

By Robert Milburn

The CDFA // BNY Mellon Development Finance Webcast.

The CDFA // BNY Mellon Development Finance Webcast Series is aimed at addressing real-time issues through the perspective of the industry's top leaders, giving the entire development finance industry access to these critical discussions. The Webcast Series will include panels of speakers discussing topics, challenges, opportunities and critical issues within the capital markets, municipal bond, state and local finance, and general economic development communities. Webcasts are also recorded and saved for future review by individuals not able to attend the live presentations.

Upcoming Webcasts

Topic: Muni Market Momentum – Forecasting 2015

January 20, 2015
@ 1:00 pm Eastern

Despite many predictions, the municipal bond market experienced a year of strength and low rates throughout 2014. The interplay of declining supply with heightened demand allowed for a year of increased sales, falling rates, and generally improving credit. Will the muni market continue to feel success and stability as we move into 2015? During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, our expert panel will examine last year's trends and consider volume estimates, rate predictions, and other factors that could influence the municipal bond market in 2015.

Speakers:

Rena Nakashima, moderator
Senior Project Manager
The Bank of New York Mellon

Amy Laskey
Managing Director
Fitch Ratings

Natalie Cohen
Managing Director
Wells Fargo Securities

Michael Decker
Managing Director, Co-Head of the Municipal Securities Division
Securities Industry and Financial Markets Association

Click on the Register button below to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

REGISTER.

Mercedes-Benz USA Seeks Bonds for New Georgia Home: Muni Credit.

Mercedes-Benz USA is applying to borrow $93 million through a sale of municipal debt to build its new Atlanta-area headquarters, part of a package of incentives the carmaker may get for leaving New Jersey.

The development agency for Fulton County, home to Atlanta, voted Jan. 6 to proceed with negotiations on incentives for the unit of Daimler AG (DAI) as part of its relocation, the authority's executive director, Al Nash, said in a phone interview.

If the plan is approved by the county economic-development authority, the agency would issue taxable revenue-backed bonds for the project, Nash said. The deal may find stronger demand in the $3.6 trillion municipal-bond market, which has been shrinking since 2011, than in the $6.1 trillion market for company securities, said Burt Mulford at Eagle Asset Management.

"A $100 million corporate bond deal is relatively small, whereas the average deal for the municipal market is significantly less," said Mulford, who helps oversee about $2 billion of munis in St. Petersburg, Florida. If Mercedes offered the debt itself, "it might not be as well-received."

Land Lease

The Fulton County authority would take ownership of the headquarters' land and lease it to Mercedes-Benz for 10 years, in a deal that would reduce the the Germany luxury automaker's property taxes for the same period.

"It's very preliminary," Nash said. "They would have to decide what they want to do, there would be a public hearing and then we would approve it or deny it."

The Daimler unit announced its headquarters move from Montvale, New Jersey, this week. The Georgia Department of Economic Development will unveil the state's contribution to the incentive package on Jan. 12, according to an e-mail from a spokeswoman, Stefanie Paupeck Harper.

Mercedes would join Spelman College in Atlanta, charter school Amana Academy and the Georgia Tech Athletic Association in borrowing through the county development authority, data compiled by Bloomberg show.

The carmaker's move is a blow to New Jersey and Governor Chris Christie, who has said high property taxes are driving out business. It's also the latest signal that the U.S. auto industry is centered in the South, instead of the Midwest and Canada. BMW AG, Mercedes, Nissan Motor Co. (7201) and Volkswagen AG have plants in the region. Porsche and Nissan have also located headquarters there.

800 Jobs

The carmaker's U.S. manufacturing plant is in a town outside Tuscaloosa, Alabama, and it ships out of a port in Brunswick on Georgia's coast.

"First they moved in the manufacturing, then they bring in the white-collar jobs," said John Boyd, a principal in Princeton, New Jersey, with The Boyd Company, which advises companies on relocation.

Mercedes expects to bring 800 employees to the new site, according to documents filed with the county agency that also specified the size and tax status of the proposed borrowing. There are several locations under consideration for the headquarters, according to the company.

Industrial-development bonds, issued by local agencies on behalf of private companies, are the riskiest corner of the municipal market. While most muni debt is backed by state and city tax revenue or public-utility fees, the project securities often depend on the success of a single site.

Examples of projects funded with such debt include a power plant serving the shuttered Revel Casino in Atlantic City, New Jersey, a central Florida facility that converts sewage into fertilizer and a Noah's Ark theme park that's fighting with Kentucky to keep promised tax incentives.

Mariella Kapsaskis, a Mercedes-Benz spokeswoman in New Jersey, said she'd forward questions about the bond issue to the carmaker's legal department, because the company hasn't chosen a specific location for the new headquarters.

Bloomberg Muni Credit

By Margaret Newkirk and Brian Chappatta

Jan 8, 2015 11:06 AM PT

To contact the reporters on this story: Margaret Newkirk in Atlanta at mnewkirk@bloomberg.net; Brian Chappatta in New York at bchappatta1@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, William Selway

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[S&P U.S. Public Power 2015 Outlook: Despite Several Looming Issues, Credit Quality Should Remain Stable.]

Although the U.S. public power sector is likely to hit some bumps in 2015, Standard & Poor's Ratings Services believes credit quality overall will remain solid and ratings will stay stable for the sector. Despite some exceptions — such as the Puerto Rico Electric Power Authority in 2014 — we believe public power's general rate-setting autonomy and a lack of competition for retail customers will underpin the sector's credit quality. Our outlook incorporates the following expectations:

- Fuel prices, particularly for natural gas, will remain at low levels.
- The economy will expand manageably, enabling utilities to absorb growth without creating undue capital and operational burdens.
- Public power utilities will continue to effectively respond to regulatory measures the U.S. Environmental Protection Agency (EPA) has imposed in the past five years.

Despite this stable outlook, challenges remain. Some of these are broad and more long-term, affecting many utilities. They include the following:

- New EPA regulations targeting carbon emissions at existing power plants will likely weigh more heavily on carbon-intensive utilities than previous measures, and they could affect grid reliability.
- We expect fuel diversification to continue declining, exposing the industry to fuel price volatility.
- Aggressive budgeting of revenue from surplus energy sales might return, weakening financial metrics stressing retail rates if margins fail to materialize.

Continue reading.

09-Jan-2015

Government Accountability Office Study on Long-Term Liabilities.

Sure, day-to-day finances are improving for state and local governments. But this week's Municipal Market Analytics outlook points out that a recent Government Accountability Office study on long-term liabilities bolsters the firm's view that Medicaid and retiree health care represent major challenges for state and local governments. MMA (which changed its name this year from Municipal Market Advisors), said in its write-up that investors should note the secondary treatment unsecured bondholders received in last year's bankruptcy cases in Stockton, Calif., and Detroit. In MMA's opinion, investors should "retreat from issuers with both a large retiree health care liability AND a material risk of being dragged into chapter 9 [bankruptcy]." (In related news, a Luxembourgian bondholder company sued bankrupt San Bernardino, Calif., this week for favoring pensioners over bondholders as the city navigates its bankruptcy.)

Despite recent strides in the economy, state and local government revenues are not keeping pace with expenditure growth and the GAO expects the gap to widen without major policy changes. As a percentage of GDP, MMA notes, revenues are not expected to reach 2007 levels until 2058.

Meanwhile, health care costs are expected to nearly double, to 7.4 percent of GDP by 2060. According to the GAO, state and local governments will need to reduce expenses or increase revenues by 18 percent for the next half-century to close the fiscal gap. “We think the fiscal challenges will reasonably constrain infrastructure spending by these governments — and therefore, municipal debt issuance,” MMA said, adding that the greatest pressure would trickle down to the local level.

GOVERNING.COM

BY LIZ FARMER | JANUARY 9, 2015

Kansas Education Ruling Adds to Budget Stress, Says S&P.

A Kansas court decision on money for schools and a projected $280 million deficit have raised “additional obstacles” to balancing the state’s budget in this year and beyond, according to Standard & Poor’s.

A court ruled last week that public schools were unconstitutionally underfunded. While the ruling is expected to be appealed to the Kansas Supreme Court, S&P said today the impact “could require substantially higher education funding” if upheld. The ratings company said next year’s budget, beginning July 1, “will be an important component” of Kansas’s future credit quality.

Under Republican Governor Sam Brownback, the state has cut income taxes, contributing to shortfalls and, in August, a credit downgrade from S&P, to AA from AA+. The company also assigned a negative outlook to the state. Moody’s Investors Service also cut the grade.

Brownback, a 58-year-old who was re-elected in November, said last month he must take “corrective action” to close a $280 million budget hole created by the tax cuts, saying he would reduce spending on pensions and highways.

“We remain concerned about the one-time nature of most of the budget fixes,” the S&P report said.

Eileen Hawley, Brownback’s spokeswoman, said in an e-mail that the governor will present “structurally balanced budget proposals” for the 2016 and 2017 fiscal years next week.

Brownback has said he plans to continue the tax-cutting strategy as part of a plan to increase economic activity and attract new residents.

Kansas has the fifth-weakest pension system among the U.S. states, according to data compiled by Bloomberg.

Bloomberg

By Tim Jones

Jan 9, 2015 11:04 AM PT

To contact the reporter on this story: Tim Jones in Chicago at tjones58@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net William Selway

Worst-Funded U.S. Pension Shows Kentucky's Neglect: Muni Credit.

Kentucky's worker retirement plan, the nation's worst-funded state pension, is losing ground even after a three-year rally in stocks, underscoring the fiscal peril of forgoing payments into the pools.

A 15.5 percent return in fiscal 2014 wasn't enough to bolster the Kentucky Employees Retirement System, which serves 119,735 workers and retirees. Officials shortchanged the plan for more than a decade. They diverted the cash elsewhere, leaving KERS with 21 percent of the funds needed to pay promised benefits in 2014 as distributions exceeded revenue. No single U.S. state plan has a lower ratio, according to the Center for Retirement Research at Boston College.

KERS is one of five pensions in the Kentucky system, which the legislature restructured in 2013 to cut costs and ensure full funding. Its deficit shows that investment returns aren't enough to turn around struggling pensions. Forty-eight states have enacted changes to their plans since 2009 to lower expenses and provide adequate contributions, according to the National Conference of State Legislatures.

"We won't run out of money" as long as KERS gets full funding from the state and meets projected investment returns, said William Thielen, executive director of Kentucky Retirement Systems, which oversees the five pensions pools from Frankfort. "If we fail to meet those assumptions it will threaten our solvency."

Rebound Ripple

U.S. stocks have rebounded from the depths of the recession, pushing the Standard & Poor's 500 Index to three straight annual gains of more than 10 percent for the first time since the 1990s. States that fully funded their plans saw greater benefit from the rally.

Public pension assets have grown about 37 percent since 2009 on average, according to the National Association of State Retirement Administrators. While some plans grew by as much as 66 percent, states that didn't fully fund pensions — Kentucky, New Jersey and Pennsylvania — gained 22 percent or less.

"The funds that increased at the fastest rate had been getting a higher percentage of their required contribution," said Keith Brainard, the Georgetown, Texas-based research director for the association. "Fund returns aren't enough if you have more money going out than you take in."

Cash Diverted

As municipalities mended their finances following the recession, some used pension cash to plug budget deficits. New Jersey, after overhauling and pledging to fund its pensions, skipped $2.5 billion of promised contributions as revenue missed projections.

Partly because of inadequate contributions, the average funding level of state and local pensions has deteriorated even though investment returns have improved, according to a report last year from Moody's Investors Service on the 25 largest public plans. While returns averaged 7.5 percent from 2004 to 2013, unfunded liabilities tripled to almost $2 trillion.

Kentucky's pensions haven't been fully funded since fiscal 2002, Thielen said. The state has confronted budget deficits in the wake of the recession.

The KERS plan for workers in nonhazardous jobs shrank in the fiscal year that ended June 30. It paid out about $914 million of benefits and expenses, or $182 million more than it received from investments and contributions from workers and the state. The state made about $300 million of the $520 million contribution that actuaries had determined was needed to keep pace with outlays.

Benefit Switch

In 2013, lawmakers passed steps designed to cut the expense of Kentucky's plans by moving future workers into a type of plan that doesn't promise specific benefits. They also limited cost-of-living adjustments.

In fiscal 2015 and beyond, the state also committed to make full payments. If Kentucky receives that money and earns its 7.5 percent estimated rate of return, its funding ratio may still shrink to as low as 15 percent in coming years, though it will climb back to 100 percent over 30 years, Thielen said.

The strategy "will work — if we don't neglect it or negate it," Democratic Governor Steve Beshear said in his State of the Commonwealth address Jan. 7.

A proposal for extra funding beyond the actuarially required contributions may come up in the legislative session that started this week, Thielen said.

"We need some additional funding over and above" that payment, he said.

Political Risk

The risk is that a future legislature rolls back the steps passed in 2013 and uses the money for other expenses, Thielen said.

"Politics has a way of being sporadic," he said. "If we have a down year, that has a significant impact on our unfunded liabilities."

The system's precarious balance worries workers who depend on it for income later in life, said Jim Carroll, a retiree and co-founder of Kentucky Government Retirees, which advocates for state workers.

"The reform is doing nothing to help the state pension plan because we have such a deep hole," Carroll, 62, a former public information officer for the state, said in a phone interview. "We're deeply concerned about the financial status of the plan."

Bloomberg Muni Credit

By Darrell Preston

Jan 8, 2015 5:00 PM PT

To contact the reporter on this story: Darrell Preston in Dallas at dpreston@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, William Selway

Teachers Hired Across U.S. as Local Government Funding Picks Up.

State and local governments last year filled more jobs in education and other areas than they have since 2008, which helped offset deep cuts to schools during the recession.

States added 21,000 jobs, including 13,700 in education, while local governments increased payrolls by 87,000, with 43,900 in schools, according to a report today from the U.S. Bureau of Labor Statistics.

Governments have been increasing spending since the 18-month recession that ended in 2009, according to a report last month by the National Association of State Budget Officers. While not all jobs lost have been replaced and budgets remain tight, an improving fiscal picture is allowing hiring, said Brian Sigritz, director of state fiscal studies for the Washington group.

“We’re not necessarily seeing states get back to the job levels where they were before the downturn, but the total situation for states definitely has improved,” Sigritz said.

More than half the 108,000 state and local government jobs added during 2014 were in education, according to federal data.

Spending has risen especially in elementary and secondary education, which suffered deeper cuts during the recession than in previous economic downturns because politicians traditionally had been reluctant to cut school funding, Sigritz said.

Government Gigs

The cuts to education were deep. More than 60 percent of the 47 states analyzed by the Center on Budget and Policy Priorities are still providing less per-student general aid in the current school year than they did in 2007-08, the Washington-based group said in an October report.

Thirty-nine states boosted funding for elementary and secondary education by a net $11.1 billion during fiscal 2015, according to the group’s report. Forty also increased spending for higher education by a net $4.4 billion, the group said.

By the end of fiscal 2015, state general-fund spending is expected to be 9.4 percent above the prerecession peak without adjusting for inflation, according to the report.

At the municipal level, more U.S. cities are increasing rather than decreasing their workforces for the first time since 2008, according to an annual survey by the National League of Cities released in October.

The hiring has been driven by increased property taxes as well as sales- and income-tax collections, the group said.

Thirty percent of cities and towns expanded their workforces in 2014, compared with 18 percent that reduced them, the report said. In 2013, only 20 percent of municipalities added workers as 32 percent cut jobs, the group said.

Eighty percent of city finance officers said their municipalities were better able to meet fiscal needs, the highest percentage in the 29 years the survey has been conducted, the league said.

Cities have not reached full recovery, and revenue projections for 2015 show slow growth as well as increases in service costs, long-term infrastructure needs and pension obligations, the league said.

Bloomberg

By Mark Niquette

Jan 9, 2015 10:10 AM PT

To contact the reporter on this story: Mark Niquette in Columbus at mniquette@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net
William Selway

Indiana Fertilizer Planning Bond Deal by April as Plant Advances.

A $1.3 billion municipal-bond sale for a fertilizer plant in Indiana may come to market by April, two years after the state expressed concern that the product from the Pakistani company backing the project was linked to explosives.

Midwest Fertilizer Co. plans to build and run a fertilizer manufacturing facility in Posey County, in southwest Indiana. The company, majority-owned by Lahore, Pakistan-based Fatima Group, said it plans to break ground this quarter and start operating in 2018.

By April, Midwest Fertilizer also plans to offer bonds for the $2.6 billion project, said its president, Mike Chorlton. The county's economic development agency has about $1.3 billion of notes out for the project that must be redeemed by April 2.

"We're definitely planning to move forward on a long-term deal," Chorlton said in a telephone interview yesterday. "We're trying to get it done before April 2."

He declined to disclose other details about the borrowing plan.

If the securities are rated speculative grade, it would be the second-largest junk deal ever in the $3.6 trillion municipal market, data compiled by Bloomberg show. It would eclipse a $1.2 billion offering for a fertilizer facility in Iowa, ranked three steps below investment grade.

Yield Appeal

High-yield muni funds logged the market's biggest returns in 2014 as investors sought riskier debt with interest rates approaching generational lows. Junk-rated Puerto Rico issued $3.5 billion in general obligations last year, a record speculative-grade muni deal.

Posey County stepped in to help finance the fertilizer plant after Governor Mike Pence pulled his support for the project in May 2013. The Pentagon had raised concern that the Fatima Group's products were ingredients in bombs known as improvised explosive devices that were used against U.S. soldiers in Afghanistan.

The state reopened discussions about incentives last year after getting assurances from the U.S. Defense Department that a formula being developed by Fatima Group was "more inert and less-detonable to limit its usefulness to extremists and terrorists," Pence said in an April statement.

Because of the support offered by Posey County, Midwest Fertilizer withdrew its request for about $4 million in state incentives, Chorlton said.

Bloomberg

By Brian Chappatta and Mark Niquette

Jan 9, 2015 6:53 AM PT

To contact the reporters on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net; Mark Niquette in Columbus at mniquette@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Mark Schoifet

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2014 Fact Sheet on State and Municipal Bankruptcy, Bonds and Pensions.

The 2014 Fact Sheet on State and Municipal Bankruptcy, Bonds and Pensions is now available!

This fact sheet was developed by a group of government organizations, including NASACT.

Cities Urge Senate to Pass Terrorism Risk Insurance Extension.

Washington, D.C. – Following today's vote by the U.S. House of Representatives to extend the Terrorism Risk Insurance program for an additional six years, National League of Cities CEO & Executive Director Clarence E. Anthony issued the following statement:

"We applaud the House for passing a six-year extension to the Terrorism Risk Insurance Act (TRIA) with broad, bipartisan support. Terrorism risk insurance enables city governments to continue to provide critical services to residents in the event of an attack by protecting against loss or liability that could affect a municipality's personnel, property and finances. TRIA's public-private risk sharing mechanism ensures that risk insurance coverage remains available and affordable to local governments. Since TRIA expired at the end of December, it is crucial that the Senate pass TRIA as soon as possible to ensure America's cities have affordable access to risk insurance."

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans.

JANUARY 7, 2015

Judge Approves $26 Million Revel Tax Settlement.

A bankruptcy judge on Tuesday approved a $26 million tax settlement between Atlantic City, N.J., and the closed Revel Casino Hotel.

The settlement, which saves the boardwalk resort more than $7 million on unpaid property taxes and penalties that exceed $33 million, comes after the city failed to attract any bids for a tax lien against

Revel at a sale earlier this month.

Following a hearing Tuesday morning, Judge Gloria M. Burns of the U.S. Bankruptcy Court in Camden, N.J., said she would also sign an order increasing an interim bankruptcy financing package allowing Revel to fund the settlement, which calls for payment no later than Wednesday.

The financing package will include an additional $21 million from Wells Fargo NA, $19 million of which will be combined with $7 million in cash on hand to fund the $26 million settlement. The remaining $2 million in financing is intended to provide enough cash to allow Revel to pay its operating expenses until Jan. 8, according to court papers.

No objections to the settlement or the increased financing were filed, though some creditors have made it clear they intend to challenge a final order on the financing package at a hearing expected to be held in early January.

At Tuesday's hearing, John Cunningham, a lawyer for Revel, said he hoped negotiations would produce more settlements on a number of key sticking points Revel faces, including a dispute with the bondholders behind its custom-built power plant. "This is the first settlement in what we hope will be many settlements coming down the road," Mr. Cunningham said. "We still have a long way to go, but we needed to start somewhere."

ACR Energy Partners, which operates the power plant, has warned that it, too, may be forced to file for bankruptcy protection as a result of Revel's troubles. ACR, which issued $120 million of municipal bonds in 2011 to cover 75% of the power plant's construction cost, missed a $6.9 million bond payment earlier this month, according to a notice filed by trustees for the debt. A lawyer for ACR wasn't immediately available for comment Tuesday.

Atlantic City relies heavily on its casinos for tax revenue, with the industry providing over 60% of the city's total property tax revenue, according to court papers.

Four Atlantic City casinos, including the $2.4 billion Revel, have shut down this year, throwing thousands out of work and weakening the city's tax base.

Revel, which filed its second Chapter 11 case in as many years in June, shut down in September after it was initially unable to find a buyer. After a $110 million deal with Canadian private-equity firm Brookfield Capital Partners LP fell through, Revel is hoping to sell to Florida real-estate developer Glenn Straub. However, Mr. Straub is requesting a price reduction to $87 million from $95.4 million.

THE WALL STREET JOURNAL

By TOM CORRIGAN

Updated Dec. 30, 2014 4:00 p.m. ET

—Stephanie Gleason contributed to this article.

Illinois Faces Big Revenue Hit in 2015.

Expiration of Tax Increase Comes as State Grapples With Budget Crunch, Unpaid Bills and Pension

Woes

As fiscal prospects rebound for most states, Illinois has continued to struggle—and things are about to get worse.

Thanks to the expiration of a four-year tax increase put in place because of fallout from the 2007-09 recession, the state with the nation's most dire fiscal outlook will see income-tax rates fall by 25% in coming days even as it faces a budget shortfall, a deeply underfunded retirement system and billions of dollars in unpaid bills.

Blurring the picture is how Illinois will respond following November's elections. Before losing his re-election bid, Gov. Pat Quinn failed to get fellow Democrats in the legislature to make the higher taxes permanent, saying the money was needed to address the financial challenges that have left Illinois with the lowest credit rating among U.S. states.

Now, Republican Gov.-elect Bruce Rauner must work with Democrats, who kept control of the state House and Senate, to address the state's fiscal problems. "I'm the dog who caught the car," said Mr. Rauner in a recent speech.

State forecasters have projected that tax revenues will decline because of the falling rates by $2.1 billion in the current fiscal year and an additional $2.7 billion in the new fiscal year starting July 1. The state spends around $36 billion annually on services such as schools and health care, pension costs, and other operating expenses.

Illinois's budget challenges come as other states see their fiscal positions continue to stabilize and reserves build after weathering the deep recession at the end of last decade that fueled sizable drops in tax revenue. Illinois will need a projected $760 million to make through the fiscal year ending June 30 and, along with states like New Jersey and Connecticut, has one of the most deeply underfunded employee pension systems in the nation.

"Illinois is an outlier obviously in many respects," said Nick Samuels, a vice president at Moody's Investors Service, which has a negative outlook assigned to the state. The negative outlook corresponds with the significant fiscal challenge Illinois faces, and Moody's analysts said they will be watching closely to see what steps Mr. Rauner takes in the coming months.

In the bond market, Illinois has been helped by a strong demand for state government debt. Still, Matt Fabian, managing director at Municipal Market Advisors in Concord, Mass., expects investors will watch closely as Illinois's tax rate drops and state officials respond.

"There are a lot of institutional investors who expect Illinois will be downgraded immediately if the tax cuts expire and the budget deficit isn't accounted for," he said.

The governor-elect, who takes office Jan. 12, has talked broadly about stimulating economic growth by holding down taxes and curbing government spending but has provided few details. During his campaign, Mr. Rauner talked about having the income tax at 3% for individuals by the end of his first term, but he hasn't spelled out what rates he favors over the next four years to get there.

The individual income tax rate in Illinois is currently 5% and will fall to 3.75% on Jan. 1. It was at 3% before Mr. Quinn and lawmakers approved the temporary increase. Illinois doesn't have tax brackets; residents pay the same rate on all of their income.

Mr. Rauner also has discussed broadening the state's sales tax. Illinois's sales tax is largely applied to just goods and not services. A spokesman for Mr. Rauner said he will provide more details on his budget plans after being sworn into office.

Illinois Senate President John Cullerton said if Mr. Quinn had been reelected, the state likely would have stuck with the higher rate. At 5%, he sees Illinois as competitive with its Midwest neighbors, noting nearby states such Iowa and Wisconsin have top rates that are higher. But Mr. Cullerton added voters made a choice in November and now it's up to Mr. Rauner to propose a new plan.

"The guy said 'I'm going to lower your taxes and spend more money on education.' So he got elected and gets to tell us his budget," Mr. Cullerton said.

THE WALL STREET JOURNAL

By MARK PETERS

Dec. 30, 2014 2:28 p.m. ET

— Aaron Kuriloff contributed to this article.

Bondholder Sues Bankrupt San Bernardino for Favoring Calpers.

(Reuters) – A corporation that holds $50 million of San Bernardino's pension bonds sued the city on Wednesday for giving preferential treatment to California's public pension system as San Bernardino navigates a third year in bankruptcy.

Luxembourg-based Erste Europäische Pfandbrief-und Kommunalkreditbank AG (EEPK), which filed the lawsuit in federal bankruptcy court in Riverside, California, is suing San Bernardino for agreeing to pay in full its debt to the California Public Employees' Retirement System (Calpers), while not yet treating the bondholder equally.

Ambac Assurance Corp., which insures a portion of the pension obligation bond debt, joined EEPK in suing San Bernardino. Both claim equal status with Calpers as creditors. They did not sue Calpers, America's biggest public pension fund with assets of $300 billion.

The lawsuit signals a newly aggressive stance by San Bernardino's capital market creditors after the city made public last year an agreement with Calpers to pay the fund in full when it produces a bankruptcy exit plan. The city has been ordered to produce a bankruptcy blueprint by May.

EEPK's suit speaks to the wider fight between Wall Street and pension funds over how they are treated in municipal bankruptcies.

In two other recent municipal bankruptcies, in Detroit Michigan, and Stockton, California, pensioners have fared much better than capital market creditors, although the judges in both cases said that debt to pension funds is not necessarily inviolate in a Chapter 9 bankruptcy.

The deal with Calpers alarmed San Bernardino's other creditors, who fear they will be forced to bear the brunt of the city's debt restructuring if Calpers is left untouched. They also worry about precedent that could be set if Calpers is left whole.

San Bernardino, a city of 205,000, 65 miles east of Los Angeles, declared bankruptcy in July 2012 with a $45 million deficit. It is one of a handful of municipal bankruptcies that has been closely watched by the $3.6 trillion U.S. municipal bond market.

Bondholders and public employees want to understand how distressed cities handle their debts to Wall Street, compared with other creditors such as Calpers.

EEPK and Ambac said in their filing: "The bondholder pension obligation portion must be treated in all respects equivalently to the Calpers pension obligation portion."

A Calpers spokesman said the fund was still reviewing the filing. Gary Saenz, San Bernardino's city attorney, said Calpers must be treated differently, because stable pensions were vital for the city.

By REUTERS
JAN. 8, 2015, 6:57 P.M. E.S.T.

(Reporting by Tim Reid; editing by Gunna Dickson)

New Jersey to Bail Out Atlantic City With Short-Term Loan.

(Reuters) – Atlantic City, New Jersey's struggling gambling hub, will get a short-term $40 million loan from the state rather than try to borrow the money in the capital markets this year, a city official said on Tuesday.

Even the city's originally planned $40 million note sale, now squashed, was itself a scaled back version of a larger bond issuance that was delayed amid uncertainty over the city's next financial steps.

The city must repay the loan by March 31 at a 0.75 percent interest rate, according to the loan agreement, signed on Dec. 18 by Mayor Don Guardian and the state.

Atlantic City still hopes to issue at least $140 million of bonds in the first quarter of 2015, revenue director Michael Stinson told Reuters. That will help pay down property tax appeals won by casinos.

The delayed bond sale and other financial uncertainties prompted Moody's Investors Service to warn this month that it could downgrade the city's Ba1 credit rating further into junk territory.

By next spring, officials hope that more pieces of Atlantic City's financial puzzle will be solved, which would make borrowing from investors at lower rates more feasible.

By then, lawmakers could have finalized a package of legislation that aims to prop up Atlantic City and stabilize its revenue stream from casinos.

Early next year, Governor Chris Christie will also present his proposed state budget, which itself could be strained by rising public pension costs and revenue growth that has lagged the nation.

Atlantic City is also due to receive money from a settlement with Wells Fargo, the bankruptcy lender to Revel Casino Hotel, regarding nearly $32 million in unpaid taxes owed by Revel.

Stinson would say only that the agreement covers a "significant" portion of the total bill. The Philadelphia Inquirer, citing the mayor, reported on Tuesday that Wells Fargo would pay $26 million. The city council and Revel's bankruptcy judge must approve the deal.

Tax collectors in the city had hoped to auction off Revel's tax lien earlier this month, but they got no bidders. They did sell about $22 million of tax debt associated with the bankrupt Trump Taj Mahal and Trump Plaza casinos.

New Jersey's "constructive" approach to its distressed municipalities could be sending positive signals to investors, Municipal Market Advisors said in a commentary on Tuesday.

By REUTERS
DEC. 23, 2014, 4:34 P.M. E.S.T.

(Reporting by Hilary Russ; editing by Gunna Dickson)

MSRB Publishes 2014 Annual Report and Audited Financial Statements.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today published its 2014 Annual Report, which highlights important advances in municipal advisor regulation, enhancements to market structure and ongoing efforts to maximize regulatory efficiency. The MSRB, created by Congress in 1975, is the principal regulator of the municipal securities market.

In recognition of the MSRB's 40th anniversary in 2015, this year's annual report provides a history of key milestones in the regulation of the municipal securities market. The report also includes financial highlights for the organization for the fiscal year that ended September 30, 2014 and a link to access full audited financial statements on the MSRB's website.

A review of the MSRB's 2014 initiatives included in the report:

- Implementation of a comprehensive regulatory framework for municipal advisors, including the advancement of core rules of conduct and a professional qualification program
- A focus on enhancing market structure, particularly in the area of price transparency and fairness
- Recent and planned enhancements to the display of trade data on the MSRB's Electronic Municipal Market Access (EMMA®) website, the official repository for information on virtually all municipal bonds
- Ongoing efforts to enhance regulatory efficiency and changes to consolidate and streamline key rules
- Development of the online MSRB Education Center to house multimedia resources for investors, state and local governments, and others interested in learning about the municipal market
- Financial highlights on the MSRB's sources of funding and allocation of resources

Read the report.

The 2015 Frederic L. Ballard, Jr. Memorial Scholarship Program - Now Accepting Applications.

NABL is pleased to announce that it is once again offering up to five scholarships to law school students to attend the 2015 Fundamentals of Municipal Bond Law Seminar. Now in its fourth year, the scholarship program was renamed in honor of Frederic L. "Rick" Ballard, Jr. by the NABL Board of Directors in September 2014. This year's seminar is being held April 22-24, 2015 at the Hyatt Grand Cypress in Orlando, Florida.

Qualified candidates must be currently enrolled in the Doctor of Jurisprudence Program or a Masters of Law (LL.M.) Program at an accredited law school located within the United States of America. Each scholarship will include a waiver of the enrollment fee and travel expenses to the 2015 Fundamentals of Municipal Law Seminar. Click here for more details and the application. Completed applications are due no later than March 6, 2015. If you have any specific questions about this scholarship, please contact Linda Wyman at (202) 503-3300.

Puerto Rico May Allow Higher Yields on Bond Sale to Lure Buyers.

Puerto Rico lawmakers plan to alter a bill so the Government Development Bank can offer higher interest rates on a $2.9 billion petroleum-tax-backed bond sale to increase demand for the debt.

Governor Alejandro Garcia Padilla is set by mid-January to sign legislation authorizing the sale, Assembly Representative Rafael "Tatito" Hernandez said today in a phone interview. Immediately afterward, the legislature will ease limits on the bonds' coupon and a provision that links a petroleum-tax increase to broader tax-law changes, Hernandez said.

"The language of the bill has some ties between the tax reform and the date when the revenue starts and that isn't supposed to be that way," said Hernandez, who chairs the House Treasury Committee. "So we're going to change that."

The $2.9 billion borrowing, which will have the additional security of the commonwealth's general-obligation pledge, would be the first bond sale for the junk-rated commonwealth since it sold $3.5 billion of general obligations in March, the largest speculative-grade offering ever in the $3.6 trillion municipal-bond market. Proceeds will repay $2.2 billion the Highways & Transportation Authority owes to the GDB. That amount accounts for about 21 percent of the bank's loan portfolio.

Petroleum Tax

The measure increases the island's petroleum tax to $15.50 per barrel, from $9.25, with the new revenue backing the planned $2.9 billion sale. The higher petroleum fee is set to begin March 15. The plan is to remove language that makes that start date dependent on lawmakers approving broader changes to Puerto Rico's tax system, Hernandez said.

The bill also limits the average coupon on the new securities to 8.5 percent and sets a floor on the price of 93 cents on the dollar, according to Hernandez. Lawmakers are discussing how to relax those guidelines and give the GDB more flexibility in structuring the deal to ensure there are enough buyers, Hernandez said. He declined to give more details on potential changes to the deal's structure.

"Our goal is to fix it to get about $2.9 billion," Hernandez said. "So if we want to do that, we need to have the language that can help us get to that number."

An 8.5 percent coupon and 7-cent discount would generate a yield of about 9.19 percent for debt maturing in January 2045, according to data compiled by Bloomberg.

General obligations sold in March, with an 8 percent coupon and maturing in July 2035, traded today at an average yield of about 9.4 percent, or about 87 cents on the dollar, Bloomberg data show.

Luring Buyers

Lawmakers want the GDB, which works on the island's debt sales, to offer the securities to all types of buyers, not just hedge funds and alternative investors that bought most of the bonds sold in March, Hernandez said.

"There's going to be an obligation that the GDB has to go to all markets to make the sale, not just one group," Hernandez said.

Puerto Rico's next legislative session begins Jan. 12. Hernandez said he is already in discussions with House and Senate leaders regarding the changes.

Bloomberg

By Michelle Kaske

Jan 8, 2015 12:51 PM PT

To contact the reporter on this story: Michelle Kaske in New York at mkaske@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net William Selway, Mark Schoifet

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Finra to Probe Broker Conflicts When Exchanges Offer Rebates.

The brokerage industry's self-regulator will spend 2015 looking into whether deals between brokers and exchanges are taking money out of investors' pockets, regulators said in a letter outlining the year's oversight priorities.

The Financial Industry Regulatory Authority will also review whether customers get fair prices on electronic bond-trading platforms and how brokers market financial products that are sensitive to interest-rate changes such as alternative mutual funds, structured retail products and bank-loan mutual funds, it said.

The letter lays out some of this year's biggest concerns for Finra, which is funded by the brokerage industry that it polices. The group, which levied about $60 million in fines last year, has faced repeated criticism from other regulators and investors that it isn't tough enough on Wall Street misconduct.

In recent brokerage inspections, Finra found that some firms don't have active "best-execution committees" or other supervisors in place to ensure that clients get the best price as securities rules require, according to the letter.

"We certainly expect to see tightening up and much greater focus from firms," Finra Chief Executive Officer Richard Ketchum said in an interview. "There is a high likelihood you'll see enforcement actions as well."

Regulators and lawmakers have said that brokers face a conflict of interest when exchanges offer them rebates and other incentives to draw their business. Brokers have more than 40 exchanges and private trading venues to choose from when filling their clients' orders.

The Securities and Exchange Commission, which oversees Finra, has already been looking into the issue. Senator Carl Levin in a June hearing grilled TD Ameritrade Holding Corp. (AMTD) executives over the firm’s practice of selling retail orders to be filled by market makers.

Bond Trading

Finra also said that it will launch a pilot program to probe whether brokers who use electronic bond-trading platforms are getting the best prices for customers. Unlike stock exchanges, bond-trading venues generally don’t make prices available to the public. That leaves investors with little means to verify whether they’re receiving the best price or paying a significant markup over what a dealer paid.

The venues have grown in popularity as more trading moves to computer platforms. About 16 percent of investment-grade corporate bond trading happens on such systems, according to Greenwich Associates. Regulators such as Finra and the SEC have largely allowed them to develop free from stringent oversight.

“We’re at a significant flex moment with respect to the handling of fixed-income orders,” Ketchum said. “We do think it deserves more attention.”

Last year, the SEC and Finra began a campaign to force more transparency of bond prices and markups on sales to retail customers. Such a move could generate opposition from banks, which derive a significant portion of their income from bond trading and sales. It’s historically been more profitable to trade bonds than stocks because the debt markets are less transparent, making it easier for brokers to take a bigger fee for each exchange.

Alternative Funds

Finra will also examine brokers’ sales of alternative mutual funds, structured retail products and bank-loan mutual funds, Finra said. The regulator will be looking for cases in which brokers may have pushed investors into large, concentrated positions in products that are highly sensitive to interest-rate changes.

Alternative mutual funds are among the fastest-growing segments of the $15 trillion fund industry. Finra said it has found some brokers aren’t adequately reviewing new alternative mutual funds, which mimic riskier hedge-fund strategies, before selling them.

“It’s important for customers to understand they are dealing with higher fees and a level of complexity,” Ketchum said. “They have to really understand the risk-return involved in the products.”

Bloomberg

By Dave Michaels Jan 6, 2015 12:22 PM PT

To contact the reporter on this story: Dave Michaels in Washington at dmichaels5@bloomberg.net

To contact the editors responsible for this story: Joshua Gallu at jgallu@bloomberg.net Gregory Mott

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FINRA Lays Out Exam Priorities.

WASHINGTON – The Financial Industry Regulatory Authority’s exam priorities for 2015 include making sure that both municipal advisors are complying with registration and other requirements and broker-dealers are meeting minimum denomination restrictions on bonds.

FINRA laid out its areas of focus in its 2015 regulatory and examination priorities letter, which it released Tuesday. Those areas include municipal advisor regulation, which FINRA will enforce with respect to dealer-affiliated MAs. FINRA only oversees MAs affiliated with dealers that are its members. The Securities and Exchange Commission oversees all MAs, including non-dealer MAs.

As of July 1 last year, any firm that provides state or local governments with advice related to muni bond issuance or the investment of muni proceeds must register as an MA with both the SEC and the Municipal Securities Rulemaking Board.

"FINRA has observed through onsite examination and regulatory coordinator outreach that some firms do not realize that the activities in which they engage subject them to municipal advisor registration requirements," FINRA said in its priorities letter.

"In 2015, FINRA examiners will focus on current SEC and MSRB municipal advisor requirements, reviewing for proper application of exclusions and exemptions, and potential unregistered activity," the letter continued. "Examiners will adjust their reviews to include new rules as they become effective."

Another priority cited in the letter, minimum denomination requirements, were highlighted last year when some firms sold a highly-anticipated $3.5 billion issuance of Puerto Rico general obligation bonds at amounts less than the specified $100,000 minimum.

MSRB Rule G-15 on uniform practice requirements prohibits broker-dealers from executing trades in sizes below the minimum denomination set by the issuer, except under very limited circumstances. The SEC sanctioned 13 firms for 66 illegal trades in November.

"In 2015, FINRA will focus on firms that sell municipal bonds in less than the minimum denomination, in violation of MSRB Rule G-15," the authority wrote. "Issuers often set high minimum denominations for lower-rated bonds that may make the investments inappropriate for retail investors. Investors who buy the bonds in smaller denominations may find limited liquidity, and thus poor pricing, when they choose to sell the bonds."

The letter also addresses some other priorities, such as best execution and fair pricing. The MSRB recently adopted a best execution standard for the muni market, requiring dealers to use "reasonable diligence" to ensure that customers get the most favorable price possible for a customer under the market conditions.

"In 2015, FINRA will increase its emphasis on reviewing firms' pricing practices, including whether firms have the supervision and controls in place to ensure they are using reasonable diligence and employing their market expertise to achieve best execution for their customers and avoiding excessive mark-ups (and mark-downs)," FINRA wrote.

FINRA urged firms to review their business practices with the authority's concerns in mind.

"Serving the interests of the investing public and entities raising capital in a fair manner should be a guiding principle as firms pursue their business in 2015," FINRA concluded.

THE BOND BUYER

BY KYLE GLAZIER

JAN 6, 2015 2:45pm ET

Munis Face 2015 Headwind as Record Market Contraction Set to End.

After the biggest annual gain since 2011, municipal debt faces a headwind in 2015 as the $3.6 trillion market is projected to expand for the first time in five years.

An era of austerity that swept through local government may be subsiding more than five years after the recession. Bond sales will swell 15 percent to $354 billion this year, which would exceed the amount flowing back to investors from debt payments and refinancings by $46 billion, according to Michael Zezas, chief muni strategist in New York at Morgan Stanley.

That would halt an unprecedented four-year market contraction and ease the scarcity that helped munis outperform Treasuries and corporate debt in 2014. Bank of America Merrill Lynch, Janney Montgomery Scott, Loop Capital Markets and Morgan Stanley project that returns in 2015 will fall from last year's 9.8 percent gain.

Positive net supply "removes something that was a clear support for the market," Zezas said in a telephone interview. "It's hard to forecast the demand side of the equation getting more supportive than it already is."

Ownership Sway

Individuals own the majority of the municipal market either through specific bonds or mutual funds, giving them outsize sway over the asset class's performance. Last year, they poured $21 billion into muni funds, according to Lipper US Fund Flows data, and state and local debt returned the most since an 11.2 percent gain in 2011. In 2013, they yanked about $63 billion amid a 2.9 percent loss, the worst since 2008.

Throughout both periods, new issuance failed to catch up to the wave of cash bondholders got back from refinancing and debt payments. That dynamic, known as net negative supply, creates demand for munis, assuming investors want to roll the money back into state and local debt.

From 2011 through 2014, bondholders got more money back from their debt than the amount of new deals from states and cities, causing the market to shrink by about 4 percent as of Sept. 30, according to Federal Reserve data.

Munis' advance last year compared with 7.5 percent for investment-grade corporate bonds and 6 percent for Treasuries, according to Bank of America data.

In his 2015 outlook, published last month, Zezas estimated munis will earn 1.14 percent.

2015 Maturities

In 2015, the amount of maturing debt is set to drop to $176 billion from $282 billion, curbing that source of payment to investors, data compiled by Bloomberg show.

States and cities have hesitated to borrow since the 18-month recession ended in June 2009, avoiding the added cost of paying back bondholders. The decline in principal payments in 2015 is a reprieve for municipal budgets because they require more cash than interest does.

The easing debt expenses, combined with strengthening budgets and interest rates close to generational lows may spur lawmakers to borrow before yields rise, said Chris Mier, chief municipal strategist at Loop Capital in Chicago.

"You could see a modest increase in volume from issuers that assume the era of very low rates might be coming to an end and therefore it's time to begin some new infrastructure projects," Mier said via telephone.

Project Demand

The median forecast for 10-year Treasury yields at year-end is about 3 percent, almost 1 percentage point higher than now, according to a Bloomberg survey of 74 analysts.

Benchmark 10-year muni yields fell below 2 percent today for the first time since October, Bloomberg data show. They ended last year at 2.11 percent.

In a sign of the pent-up demand among lawmakers for new projects, U.S. states and localities asked voters in November to approve $44 billion of bonds for schools, water systems, hospitals and roads, more than twice what they sought in 2010.

Voters approved more than $37 billion of the measures, according to Ipreo, a New York-based financial-market data provider.

"If the muni market does not grow, then this country is in trouble," said Phil Fischer, head of muni research at Bank of America in New York. "You don't just add paint to a bridge — if you don't replace the metal, it will fall down."

Bloomberg

By Brian Chappatta

Jan 6, 2015 8:32 AM PT

To contact the reporter on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Alan Goldstein

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Dynamic Scoring Could Make Tax Reform Easier.

WASHINGTON – New House rules on dynamic scoring could make tax reform easier to do, said municipal and tax experts who differed on whether such scoring would benefit or hurt municipal bonds.

Dynamic scoring is when the macroeconomic activity that would or wouldn't occur if legislation went into effect is taken into consideration for revenue estimates. The House rules package adopted Tuesday require the Congressional Budget Office and the Joint Committee on Taxation, when possible, to take the macroeconomic effects of "major legislation" into consideration in cost estimates.

"Major legislation" is defined as a bill that causes a budgetary effect of at least 0.25% of the projected gross domestic product in any fiscal year covered by the budget resolution. The House Budget Committee chairman and the top House member on JCT can also designate bills to be major legislation.

Ken Kies, managing director of the Federal Policy Group and a former JCT chief of staff, said that dynamic scoring may slightly improve the chances for tax reform “at the margin.” The dynamic scoring models assume that lowering tax rates improves economic growth. As a result, dynamic scoring could make tax-reform plans less costly. Still, he warned that dynamic scoring doesn’t make tax reform easy.

Tax experts said that JCT would probably do macroeconomic analyses for whole bills but continue to produce revenue estimates for specific provisions of the bill using static scoring.

Kies said that when JCT does an overall dynamic analysis of a bill, he would expect a favorable treatment of bonds to be a plus. Tax-exempt bonds make capital cheaper and more readily available, he said.

Mike Nicholas, chief executive officer of the Bond Dealers of America, said “we think that tax legislation scored dynamically benefits the municipal market.”

Michael Decker, Securities Industry and Financial Markets Association managing director and co-head of municipal securities, said he hopes dynamic scoring would lead to “more realistic estimates of revenue effects.”

In theory, dynamic scoring “provides some flexibility to the tax-writers” and could make tax reform easier, said Chris Mauro, director of municipal bond research at RBC Capital Markets. However, munis are most likely to be hurt by comprehensive tax reform, and in order for that to be accomplished, there needs to be cooperation between both parties, both chambers of Congress and the president. That cooperation doesn’t exist right now, Mauro said.

Congress is likely to focus on corporate tax reform this year, since they won’t have time to do comprehensive tax reform before the 2016 presidential election gets into full swing, said Frank Shafroth director of the Center for State and Local Government Leadership at George Mason University. Dynamic scoring could show that cuts to corporate tax rates will produce revenue because the lower rates will lead to corporations stimulating the economy, he said.

“Moving from static to dynamic scoring will positively impact tax reform,” he said. While it’s unclear to what extent any tax reform will get done, “if anyone can do it, it’s Paul Ryan,” the new Republican chairman of the House Ways and Means Committee, Shafroth said.

Under dynamic scoring, Congress does not need to cut as many tax preferences in order to pay for lowering rates. However, Shafroth thinks that tax-exempt bonds are still likely to be on the menu of preferences to cut, since the White House hasn’t supported them. President Obama’s last few budget proposals have included capping the value of the muni exemption at 28%.

Howard Gleckman, a resident fellow at the Urban Institute, also said that tax preferences for bonds could still be cut even with dynamic scoring. JCT did dynamic scoring for former House Ways and Means Committee Chairman Dave Camp’s tax reform proposal, and it found that by using this method, Camp’s bill would have raised an additional $50 billion to $700 billion over 10 years. The low end of that range is essentially revenue neutral, meaning that a lot of tax expenditures would still have to be cut, he said.

If dynamic scoring makes it easier for tax reform to be enacted, “it will increase pressure on tax-exempt bonds," Gleckman said. "Any cut in tax rates makes munis less attractive to investors. And tax-exempts are always a potential target if Congress is looking to curb tax preferences."

The House rules package that included dynamic scoring passed Tuesday, hours after the 114th Congress began, by a vote of 234 to 172. The vote was partisan, with most Republicans favoring the measure and Democrats primarily opposing it. House Democrats accused Republicans of supporting dynamic scoring so that they can use "voodoo economics" to cut taxes for the wealthy.

"They are changing House rules to be able to cook the books to implement their long-held, discredited notion that tax cuts pay for themselves," said Sander Levin, the top Democrat on the House Ways and Means Committee.

John Buckley, former chief tax counsel for the Democrats on the House Ways and Means Committee, said Democrats in Congress won't support tax reform under "dubious" economic scoring and that Republicans don't have enough support for tax reform within their own caucus to do it without some Democratic votes.

Dynamic scoring "turns tax reform, regrettably, into a partisan issue," he said.

House Republicans, on the other hand, argue that dynamic scoring provides more accurate estimates.

"This change will give members of Congress and the American people an accurate idea of the real-world effects of proposed legislation designed to grow the economy and create jobs," House Rules Committee Chairman Pete Sessions, R-Texas, said in a statement.

The House rules do not apply in the Senate, though Senate Finance Committee Chairman Orrin Hatch, R-Utah, supports using dynamic scoring for major reforms, a spokeswoman for the senator said.

THE BOND BUYER

BY NAOMI JAGODA

JAN 8, 2015 3:15pm ET

IRS Announces Simplified Voluntary Closing Agreement Program.

Announcement 2015-2 provides a simplified Voluntary Closing Agreement Program (VCAP) process for issuers of qualified 501(c)(3) bonds. Issuers can request a closing agreement in situations in which the borrower of the proceeds of the bonds received Prospective Reinstatement, as defined in the Announcement, after its tax-exempt status was automatically revoked under section 6033(j)(1) of the Internal Revenue Code.

An issuer of 501(c)(3) bonds can apply for a closing agreement under the announcement if the organization's status had not been previously revoked since the issue date of the bonds. The bonds in question must not be under examination by the IRS. Issuers need to submit the closing agreement within 12 months of the date of the reinstatement letter.

The closing agreement amount for each bond issue covered by the agreement will equal $500 for each calendar month or portion thereof in the period starting with the month that includes the Revocation Date and ending in the month that includes the effective date of the reinstatement of the exempt status of the Organization.

IRS Chief Counsel Office Hit Hard by Budget Cuts.

The Internal Revenue Service is facing budget cuts that may cause the agency to make drastic changes to the Office of Chief Counsel. The total number of lawyers in the office, the time it can spend speaking with the public, and its ability to issue guidance and private rulings have all already been affected.

In 2014, the number of public letter rulings issued by the office dropped by 10 percent from the previous year. Speaking to press at an event earlier this week held by Buchanan Ingersoll & Rooney PC, IRS Deputy Chief Counsel Erik Corwin told Bloomberg reporters that part of that was by design, telling press that the rulings “are less efficient than published guidance.” The agency may consider shaping its annual guidance plan to reflect the cuts. NABL President Tony Martini has written to the Chief Counsel’s office urging continued attendance by staff of the Chief Counsel’s office at NABL conferences. President Martini’s letter is available here.

House Bill Would It More Difficult for Municipalities to File Chapter 9.

Rep. John Conyers (D-MI) has introduced legislation that would require municipalities to negotiate “in good faith” with creditors before being allowed to file for Chapter 9, clarifying the term to have the same meaning as it does with respect to the National Labor Relations Act. If enacted, a municipality would have to show “clear and convincing evidence” that it met requirements to file under the new law.

The legislation would also require the permission of beneficiaries before any readjustment plans could cut municipal employee or pension benefits.

Continuing Disclosure After MCDC: Complimentary Webinar

Complimentary Web Seminar sponsored by the Bond Buyer, Orrick, Herrington & Sutcliffe LLP, and BLX Group LLC

February 5, 2015
12 pm ET/9 am PT

Click Here to Register

The SEC’s Municipal Continuing Disclose Compliance Initiative has shone a spotlight on continuing disclosure. It signals aggressive enforcement by the SEC and raises the stakes for compliance by Issuers, Borrowers and Underwriters.

Topics to be addressed in the webinar include:

- What have we learned about continuing disclosure from MCDC?
- What should new official statements say about continuing disclosure compliance?
- What should be considered in drafting new Continuing Disclosure Agreements?
- What policies and procedures should issuers, borrowers and underwriters employ?
- What tools and services are available to assist or monitor compliance?

This webinar will provide practical guidance from the experts in the Public Finance Group at Orrick, Herrington & Sutcliffe LLP and BLX Group LLC that were deeply involved in advising clients about MCDC:

Elaine Greenberg, Partner, Washington, DC
Alison Radecki, Partner, NY
Eileen Heitzler, Partner, NY
Robert Feyer, Senior Counsel, SF
Jeff Higgins, BLX Group

SIFMA, ICI Urge SEC Not to Approve MSRB Test Proposal.

WASHINGTON – Dealers want the Securities and Exchange Commission to direct the Municipal Securities Rulemaking Board to use a single qualifications exam for all muni professionals, while the Investment Company Institute wants separate municipal advisor exams tailored to the type of MA work being done.

The Securities Industry and Financial Markets Association as well as ICI made their arguments in recent written comments to the SEC, which is considering whether to approve the MSRB's proposal to create baseline standards of professional qualification for MAs and require them to pass a test.

The proposal, which the MSRB released last March and filed with the SEC on Dec. 1, would establish two classifications of municipal advisor professionals, representative and principal. It would require firms to designate at least one principal to oversee the firm's MA activities. It also would require each MA representative and principal to take and pass a qualifications test that the MSRB is currently developing.

SIFMA believes that dealer representatives who have already taken and passed the necessary Financial Industry Regulatory Authority exams to become muni securities dealers are already qualified to be MAs, wrote Leslie Norwood, managing director, associate general counsel, and co-head of municipals at SIFMA.

"Persons currently qualified to perform municipal securities activities should also be qualified to perform municipal advisor activities, if they so choose," Norwood told the commission. "The Series 52 qualification examination should be sufficient for municipal securities representatives and municipal advisor representatives alike."

Dealers voiced that position when the MSRB floated its proposal last year, but the version sent to the SEC did not differ significantly from the initial proposal.

"The MSRB summarily dismissed the vast majority of the comments received on this point, including SIFMA's," Norwood wrote.

If the MSRB does move forward with separate tests for MAs, Norwood continued, qualified dealer representatives should be grandfathered in.

The ICI told the SEC that managers of municipal fund securities should have their own test.

“We are concerned that, by using one examination, the MSRB will be unable to tailor the examination to the type of advice the representative will render, a result that is not in the interests of municipal advisers’ clients,” wrote Tamara Salmon, senior associate counsel at ICI. “We recommend instead that the MSRB utilize at least two examinations – one for representatives of a municipal advisor whose advisory activities are limited to municipal fund securities and one for representatives whose advice is limited to municipal securities other than municipal fund securities.”

Salmon said the knowledge required to perform different MA services can vary, and providing only one test could be contrary to the interests of an MA’s clients.

“For example, providing advice on municipal securities likely requires a representative to be knowledgeable about issues such as negotiated prices, debt limits and ratios, underwriting periods, agreements, par values, etc.,” Salmon wrote. “None of these topics would be relevant for a municipal advisor whose advisory business is limited to providing advice relating to a municipal fund security such as an interest in a 529 education savings plan.”

The SEC could require changes to the MSRB proposal, or could approve it as is.

THE BOND BUYER

BY KYLE GLAZIER

JAN 9, 2015 1:55pm ET

- Outlook 2015: Another Year of the Muni Advisor?
- MSRB to Begin Accepting Municipal Asset-backed Securities Disclosures on EMMA.
- Do Credit Ratings Matter Anymore?
- Municipal Bond Maturities to Decline 38% After Market Contracts.
- Municipal Defaulters Decline Amid Improving Economy: Muni Credit.
- Expect More Tax Guidance in 2015.
- Bond Tax-Break Threat Recedes With Federal Deficit: Muni Credit.
- States Will Have Greater New Capacity to Issue PABs in 2015.
- *O’Connor v. City of Philadelphia Bd. of Ethics* – Supreme Court of Pennsylvania holds that law firm’s forgiveness of mayoral candidate’s campaign committee’s debt did not constitute a “contribution” to candidate’s political campaign.
- And finally, the latest entry in BCB’s Department of You Poor, Poor Bastard is brought to us by *St. Joseph Catholic Orphan Society v. Edwards*, in which counsel for real party in interest prepared an appellate brief on behalf of his client for submission to the Supreme Court of Kentucky, which promptly refused to accept it due to the fact that he had missed the filing deadline by a single day. The court went on to chastise the poor, poor bastard in its opinion for whining about mistranscribing the deadline in his calendar and then dragging his mother into the debacle by arguing that he had been distracted by her impending surgery, which the court characterized as a routine, previously-scheduled, procedure. As much as I admire those wingtips, can’t say that I’d

like to find myself standing in them at the moment.

MUNICIPAL ORDINANCE - ILLINOIS

City of Chicago v. Alexander

Appellate Court of Illinois, First District, Second Division - December 23, 2014 - N.E.3d - 2014 IL App (1st) 122858

Chicago Park District Code prohibits persons from remaining in Chicago parks from 11 p.m. to 6 a.m. Defendants were arrested when they failed to vacate Grant Park after being advised of the terms of the ordinance and after numerous warnings that they were in violation of the ordinance.

The circuit court dismissed the charges, finding the ordinance was facially unconstitutional and unconstitutional as applied to defendants as it violated principals of equal protection. The City of Chicago appealed.

The appeals court reversed, rejecting defendants' facial and as-applied challenges to the park district ordinance. The court similarly rejected defendants' arguments that the selective enforcement of the ordinance violated the equal protection clause of the fourteenth amendment.

MUNICIPAL ORDINANCE - INDIANA

Gul v. City of Bloomington

Court of Appeals of Indiana - December 22, 2014 - N.E.3d - 2014 WL 7243326

Alexander Gul believes that modern day lawn maintenance practices are harmful to the environment. As a result, he refused to mow his lawn to comply with an ordinance requiring that the height of grass in one's yard may not exceed eight inches.

He appealed the trial court's order granting summary judgment in favor of the City of Bloomington on Gul's complaint against Bloomington appealing an administrative conclusion that Gul had violated the grass height ordinance.

Gul argued that the ordinance at issue (1) violated his freedom of conscience under the Indiana Constitution; (2) violated his freedom of expression under the United States and Indiana Constitutions; (3) was facially invalid because it conflicted with two Indiana Code provisions; and (4) was void for vagueness under the federal Due Process clause.

The Court of Appeals held that:

- Article 1, Section 3 of the Indiana Constitution (freedom of conscience) was intended to apply to religious, rather than non-religious, matters of conscience;
- Even if the freedom of conscience provision includes non-religious matters of conscience, it protects only the right to hold one's own opinions, and does not protect the right to act on one's own opinions in contravention of the law;
- The decision to refrain from mowing one's yard does not constitute expression that is protected by the First Amendment to the United States Constitution;
- The city's determination that Gul had abused his right to expression was rational, and thus not a violation of Article 1, Section 9 (freedom of expression) of the Indiana Constitution;

- The ordinance did not mandate use of an administrative proceeding, and thus there was no violation of Indiana Code section 36–1–6–9; and
- The ordinance was not unconstitutionally vague as a result of its failure to define “grass.”

“After cutting through Gul’s arguments, we affirm.” Ugh.

SCHOOLS - IOWA

Northeast Community School Dist. v. Easton Valley Community School Dist.

Supreme Court of Iowa - December 19, 2014 - N.W.2d - 2014 WL 7202772

After first and second school districts entered into whole grade sharing agreement, and after second district merged with third school district to form reorganized school district, first district brought declaratory judgment action against reorganized district, alleging that reorganized district was bound by whole grade sharing agreement. The District Court entered summary judgment for reorganized district. First district appealed.

The Supreme Court of Iowa held that:

- First school district was not a “school district affected” by reorganization of second and third school districts into reorganized school district, and
- Reorganized district was bound by whole grade sharing agreement between first and second districts.

First school district was not a “school district affected” by reorganization of second school district and third school district into reorganized school district, and thus was not required to participate in negotiations of assets and liabilities following reorganization under statute governing reorganization of school districts, where reorganization petition did not name first district as a party.

Whole grade sharing agreement between first and second school districts was binding on reorganized school district, which came into existence when second and third school districts merged, despite argument that voters had determined that reorganization was the best way to educate children, since fact that reorganized district came about as result of merger met requirement for exception to general principle that, after a corporation purchases the assets of another corporation, the purchasing corporation assumes no liability for the transferring corporation’s debts and liabilities.

LABOR - KANSAS

Wing v. City of Edwardsville

Court of Appeals of Kansas - December 19, 2014 - P.3d - 2014 WL 7202822

Fire department employees requested a temporary injunction against city ordering the city to comply with its collective bargaining obligations under the Public Employer-Employee Relations Act. The District Court ordered a temporary injunction. City appealed.

The Court of Appeals held that:

- Employees were substantially likely to prevail on the merits of their claim;

- Damages would not provide an adequate legal remedy to employees whose right to collectively bargain with city was violated;
- Substantial evidence existed to support finding of probable irreparable harm to employees from city's refusal to bargain with employees;
- Substantial evidence existed to support finding that the threatened injury to employees from city's refusal to bargain with employees outweighed the damage an injunction would cause to the city;
- Substantial evidence existed to support finding that the injunction was not against the public interest;
- Trial court's order granting preliminary injunction was sufficiently specific and detailed; and
- The city had reasonable notice of the temporary injunction.

TORTS - KANSAS

[Whaley v. Sharp]()

Supreme Court of Kansas - December 24, 2014 - P.3d - 2014 WL 7331586

Coexecutor of municipal hospital patient's estate filed suit against physician for wrongful death and survival, based on claim that physician misdiagnosed patient's condition and negligently treated her. The District Court entered summary judgment for physician based on coexecutor's noncompliance with written 120-day notice of claim requirement under Kansas Tort Claims Act. Coexecutor appealed. The Court of Appeals affirmed. Coexecutor petitioned for review.

The Supreme Court of Kansas held that written 120-day notice of claim, as prerequisite to suit against municipality, did not apply to suit against municipal employees; overruling *King v. Pimentel*, 20 Kan.App.2d 579, 890 P.2d 1217.

NON-PROFITS - KENTUCKY

[St. Joseph Catholic Orphan Society v. Edwards]()

Supreme Court of Kentucky - December 18, 2014 - S.W.3d - 2014 WL 7240055

After being removed from their seats on St. Joseph Catholic Orphan Society's Board of Trustees, plaintiffs filed suit challenging the validity of the Board's resolution effectuating their removal and seeking reappointment of the ousted members to St. Joseph's Board of Trustees.

St. Joseph sought dismissal of the suit, arguing that the trial court was without subject-matter jurisdiction because of the application of the ecclesiastical-abstention doctrine. The trial court denied St. Joseph's motion to dismiss because it found the ecclesiastical-abstention doctrine inapplicable. St. Joseph appealed. The Court of Appeals held that ecclesiastical abstention did not apply because the underlying case could be adjudicated on the basis of neutral principles of law. St. Joseph appealed.

The Supreme Court of Kentucky held that:

- The ecclesiastical-abstention doctrine does not divest state courts of subject-matter jurisdiction to hear cases they are otherwise authorized to adjudicate;
- As such, the issuance of a writ of mandamus is no longer the appropriate remedy;
- The ecclesiastical-abstention doctrine is to be applied as an affirmative defense akin to the ministerial exception, including the right to an interlocutory appeal following a trial court's denial

of its application;

- The underlying action in this case presented a question of ecclesiastical governance, thus the trial court erred in denying St. Joseph’s motion to dismiss on the basis of ecclesiastical abstention.

INVERSE CONDEMNATION - LOUISIANA

St. Charles Land Co. II, L.L.C. v. City of New Orleans ex rel. New Orleans Aviation Bd.

Court of Appeal of Louisiana, Fifth Circuit - December 23, 2014 - So.3d - 14-101 (La.App. 5 Cir. 12/23/14)

The issue in this inverse condemnation case concerned the amount of compensation due Landowners as a result of the taking of their land by the New Orleans Aviation Board (NOAB). On appeal, Landowners challenged the trial court’s judgment finding the amount of just compensation owed by NOAB for taking the subject property to be $30,740.00.

The trial court heard testimony from the Landowner’s appraisers, both of whom valued the property at approximately $1.5 million. One of NOAB’s appraisers valued the property at approximately $25,000 and the other at approximately $500,000.

The biggest discrepancy between the testimonies was NOAB’s appraisers valued the property as “wet,” or undeveloped and outside levee protection, and Landowner’s appraisers both valued the property as “high and dry,” or cleared and filled and within the protection of a levee system.

In its reasons for judgment, the trial court found the subject property was unimproved wetlands and canal bottom that was outside any hurricane protection system at the time of the taking. It noted the Landowners had presented no competent evidence that the 8.08 acres would have been included in the Army Corps of Engineers’ planned hurricane protection system for St. Charles Parish. Conversely, the trial court found NOAB demonstrated that it anticipated providing and ultimately provided hurricane protection for the runway extension, which included the 8.08 acres, at its own expense.

The trial court also concluded that had the 8.08 acres not been included in the runway extension project, the property would not have qualified for a permit to allow development of the wetlands. The trial court further determined the Landowners were not entitled to benefit from any increase in value to the property resulting from the proposed runway project or from any improvements made by NOAB.

The trial court concluded the property should be valued in its condition at the time of the taking, which it determined to be unimproved, unprotected wetlands and canal bottom.

The appeals court found that the trial court committed manifest error in valuing the property at issue as unimproved wetlands and canal bottom outside the levee protection system, or “wet.”

The first step in valuing appropriated land is to determine the highest and best use of the property. the current use of the property is presumed to be the highest and best use. However, the landowner may overcome this presumption by proving a different highest and best use based on a potential future use and, in this case, the Landowners had shown that the future use of the property was “high and dry.”

Because it found that the trial court was manifestly erroneous in valuing the appropriated property as “wet,” the appeals court conducted a *de novo* review of the record to determine the amount of just compensation owed by NOAB.

The appeals court valued the property at $497,580.00, agreeing with the appraiser who was instructed by NOAB to value the property as “high and dry.” With this assumption that the property was “high and dry,” that appraiser determined the highest and best use of the subject property was light industrial or commercial property. He explained that according to the Department of Transportation and Development and airport regulations, the land must be appraised without giving any consideration to the existence of the airport. After considering several comparable sales, he concluded that the value of the 8.08 acres as “high and dry” was $563,000.00.

The appeals court also increased the award of attorneys fees to 25% of the compensation owed to the Landowners.

PENSIONS - MICHIGAN

Irla v. Public School Employees Retirement System

Court of Appeals of Michigan - December 23, 2014 - Not Reported in N.W.2d - 2014 WL 7338900

Michael Irla worked for the Lamphere School District as a psychologist for more than 30 years. During that time, he earned a pension and was entitled to participate in a medical benefit plan for retirees. In June 2010, he applied for his retirement benefits and retired effective July 1, 2010. After retiring, Irla applied for part-time work as a school psychologist with Therapy Solutions Unlimited. Therapy Solutions placed Irla as a school psychologist with several schools in the Lamphere district over the course of the 2010 to 2011 school year.

Just a few weeks before Irla’s retirement, on May 19, 2010, the governor signed 2010 PA 75, which took immediate effect. That act added MCL 38.1361(8). Under that statute, a retiree will forfeit his or her retirement allowance and health care benefit during any period that he or she performs core services for a reporting unit through a third-party or as an independent contractor.

Irla was ordered to repay $34,000 in pension and insurance payments that were paid on his behalf during the period within which he performed core services for a reporting unit.

In April 2013, Irla sued the Public School Employees Retirement System for declaratory and injunctive relief. He alleged that the Legislature did not have the authority to enact MCL 38.1361(8) because that forfeiture provision impaired or diminished his accrued pension benefit in violation of Const 1963, art 9, § 24. In a second count, Irla alleged that the statute violated Michigan’s due process clause, Const 1963, art 1, § 17, by arbitrarily and unnecessarily interfering with his right to pursue his profession.

The Court of Appeals ruled that the trial court correctly determined that MCL 38.1361(8) does not violate Const 1963, art 9, § 24, or Const 1963, art 1, § 17.

LAND USE ORDINANCE - MINNESOTA

Helga Tp. v. Crosby

Court of Appeals of Minnesota - December 15, 2014 - Not Reported in N.W.2d - 2014 WL

7011268

Douglas Crosby contracted with Reierson Construction to excavate and haul more than 1,000 cubic yards of rock and top soil from his property in order to prepare his land for livestock grazing. Helga Township informed Crosby that the township land-use ordinance required him to obtain an interim use permit (IUP) for these activities. When Crosby refused to comply, the township brought this enforcement action against him in District Court. The Township sought a declaratory judgment that excavation and removal of mineral materials without an IUP violates the township's land-use ordinance, and also sought to permanently enjoin Crosby and Reierson from excavating and removing mineral materials and top soil without an IUP.

The District Court granted the Township's motion for summary judgment. Crosby appealed, arguing that his activities are properly characterized as an accessory use to his agricultural pursuits, and should therefore be considered a permitted use under the ordinance.

The Court of Appeals affirmed, noting that a landowner must still comply with any applicable performance standards even when the landowner's activities fall under a permitted use of the ordinance. In other words, the performance standards are read into the permitted uses when the landowner's activity is covered by a performance standard, regardless of the landowner's purpose for engaging in the activity. Crosby engaged in excavation and removal of mineral material and top soil from his land, and regardless of his ultimate purpose for doing so, the ordinance required that he obtain an IUP.

SCHOOLS - MISSISSIPPI

Bell v. Itawamba County School Bd.

United States Court of Appeals, Fifth Circuit - December 12, 2014 - F.3d - 2014 WL 7014371

Public high school student and his mother brought action against school board, superintendent, and principal alleging his suspension and transfer for posting on the Internet a video of him singing a song that alleged that two coaches at school had had improper contact with female students violated student's free speech rights and mother's parenting rights. The District Court granted summary judgment for defendants. Plaintiffs appealed.

The Court of Appeals held that:

- School officials could not reasonably forecast substantial disruption from, and no actual disruption occurred due to, student's posting video, and
- Speech was not a true threat.

School officials may prohibit student speech and expression under the First Amendment upon showing facts which might reasonably have led school authorities to forecast that the proscribed speech would cause substantial disruption of or material interference with school activities, but school officials must be able to show that their actions were caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.

Assuming public school could prohibit student's off-campus speech upon forecasting that it would cause substantial disruption of or material interference with school activities, school officials could not reasonably forecast substantial disruption from, and no actual disruption occurred due to, high school student's posting on Internet video of him singing song that alleged that two coaches at school had had improper contact with female students, and therefore, suspension and transfer of student violated his First Amendment speech rights. Song was composed, recorded, and posted to Internet entirely off campus, school computers blocked social networking site, school policy prohibited possession of phones, and there was no commotion, boisterous conduct, interruption of classes, or any lack of order, discipline and decorum at school, as result of student's posting his song.

Public high school student's speech, contained in video posted on Internet of him singing song that alleged that two coaches at school had had improper contact with female students, was not a true threat that was not protected by the First Amendment. Student recorded rap song to draw attention to alleged misconduct but also to attract attention of record labels and potential fans, song was broadcast publicly and not conveyed privately or directly to coaches, and purported threats in song were conditional in nature.

LABOR - NEW JERSEY

In re Township of Edison, Intern. Ass'n of Firefighters, Local 1197

Superior Court of New Jersey, Appellate Division - December 23, 2014 - Not Reported in A.3d - 2014 WL 7261765

The Township of Edison appealed from a decision of the Public Employment Relations Commission (PERC) denying the township's petition to restrain binding arbitration of a grievance. It was filed by Local 1197 of the International Association of Firefighters (IAFF) regarding compensation of certain firefighters who were also trained and licensed emergency medical technicians (firefighter/EMTs).

Local 1197's grievance arose from the township's January 2011 decision to remove from service an ambulance utilized by the Division of Fire and staffed by firefighter/EMTs, and to eliminate a so-called rotation of thirty-six firefighters, trained as emergency medical technicians, who received pay enhancements under the 2010–2013 collective negotiations agreement (CNA) between the local and the township.

In this case, the township decided to reallocate to civilian employees and volunteers a service previously provided by firefighter/EMTs who staffed the Fire Division's ambulance. However, the local contended that firefighter/EMTs continue to provide emergency medical services as first responders, regardless of whether fire suppression activities are involved. Although the ambulance had been removed, Local 1197 argued that firefighter/EMTs continue to perform the same work, yet the township has withheld the pay differential.

The township argued that the arbitration would infringe upon its managerial prerogative.

The appeals court agreed that the disposition of these disputes were for the arbitrator, affirming the PERC's decision.

INVERSE CONDEMNATION - OHIO

Sommer v. Ohio Dept. of Transp.

Court of Appeals of Ohio, Tenth District, Franklin County - December 23, 2014 - Slip Copy - 2014 -Ohio- 5663

The construction of new west-bound lanes of a bridge project by the Ohio Department of Transportation (ODOT) "required the driving of steel beams, called piles, down 180–200 feet to bedrock" to support the new bridge.

Homeowners filed a complaint against ODOT, alleging that the work on the bridge project resulted in "extreme noise, pounding and vibrations * * * separate and distinct from that experienced by other affected properties," and causing appellants' home to be uninhabitable. The complaint alleged causes of action for inverse condemnation, as well as public and private nuisance.

The Court of Claims of Ohio granted summary judgment in favor of ODOT and homeowners appealed. Homeowners contended that the Court of Claims erroneously interpreted Ohio law to require a physical invasion of their property or a total denial of access, and that genuine issues of material fact remained as to whether ODOT substantially interfered with the use and enjoyment of their property.

The Court of Appeals affirmed, finding that the evidence submitted by homeowners on summary judgment did not create a genuine issue of material fact as to whether the actions of ODOT constituted a substantial interference with appellants' dominion and control of their property giving rise to a compensable takings claim.

EMPLOYMENT - OHIO

Lee v. Cardington

Supreme Court of Ohio - December 17, 2014 - N.E.3d - 2014 -Ohio- 5458

Former employee brought action against village, alleging violations of the whistleblower statute and wrongful termination in violation of public policy due to complaints of criminal conduct which violated environmental protection laws. The Common Pleas Court entered summary judgment for village, and employee appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Village sought review.

The Supreme Court of Ohio held that former employee failed to strictly comply with whistleblower statute as required for him to state a claim for wrongful termination.

Although employee submitted a supervisor's report which identified equipment failures that resulted from discharge by village's largest employer, an automotive-parts manufacturer, the report did not qualify as a report that sufficiently identified and described any crimes involving the village, as the statute required. The report did not reveal that village was knowingly placing glycol into the water supply, and report was written too late, as it was filed after years of discussing the equipment failures with Environmental Protection Agency (EPA) officials.

CAMPAIGN FINANCE - PENNSYLVANIA

O'Connor v. City of Philadelphia Bd. of Ethics

Supreme Court of Pennsylvania - December 15, 2014 - A.3d - 2014 WL 7101300

Creditor law firm brought declaratory judgment action against city and city ethics board, seeking declaration that post-election debt forgiveness to mayoral candidate's campaign committee was not a "contribution" to candidate's campaign under municipal campaign finance law. The Court of Common Pleas dismissed action based on lack of standing, and the Commonwealth Court affirmed. Firm appealed.

The Supreme Court of Pennsylvania held that law firm's forgiveness of mayoral candidate's campaign committee's debt did not constitute a "contribution" to candidate's political campaign.

Debt incurred in favor of law firm by political campaign committee, for legal fees to defend mayoral candidate in ballot challenge litigation, was not debt incurred for use in advocating or influencing the election of the candidate, and therefore firm's post-election forgiveness of such debt did not constitute a "contribution" to candidate's political campaign, as would be subject to contribution limitation of city's campaign finance law, where firm did not agree to represent candidate in the ballot litigation pro bono or at a discounted rate in an effort to promote him as candidate, and there was no evidence that committee, at time it retained firm, anticipated that firm would forgive debt once election was over.

INVERSE CONDEMNATION - TEXAS

City of Houston v. Carlson

Supreme Court of Texas - December 19, 2014 - S.W.3d - 2014 WL 7204431

Former condominium unit owners filed suit against city for inverse condemnation. The County Court granted city's plea to jurisdiction, and owners appealed. The Court of Appeals reversed and remanded. City's petition for review was granted.

The Supreme Court of Texas held that owners failed to allege regulatory taking, as required to state claim for inverse condemnation.

Condominium unit owners' allegations that city did not specify alleged building code violations and that punishment, namely, order to vacate property within 31 days, was excessive, that safety regulations were misapplied vis-a-vis their property, and that city's procedure failed to afford them constitutionally adequate notice or hearing, did not allege regulatory taking of their units, as required to state claim for inverse condemnation.

TAX - OREGON

Evergreen Aviation and Space Museum v. Department of Revenue, State

Oregon Tax Court, Regular Division, Property Tax - December 19, 2014 - 2014 WL 7213197

Plaintiffs ("Taxpayer") own and lease property in Yamhill County that is operated generally as a museum relating to air and space equipment, activity and exploration and related scientific educational activity. The County and Defendant Department of Revenue ("Department") acknowledged that much of the property is exempt from taxation as being related to scientific activity.

However, the Department asserted that some of the property for which Taxpayer claimed exemption did not qualify for exemption, which Taxpayer disputed.

The Oregon Tax Court held that:

- An analysis of the time used for exemption-related movies as compared with time used for nonexemption-related movies and rentals to third parties would be the better analysis than a relative revenue test for purposes of determining whether any portion of the museum's theater was exempt;
- The case would be continued for the purpose of allowing the parties to consider whether they could agree on a conclusion as to partial exemption for the museum's theater;
- The museum's kitchen and cafe were exempt, as the food service activity that existed at the museum implemented the objectives of Taxpayer in a substantial way;
- The concession stand was not exempt;
- The gift shop was not exempt, as the sale of items related to the purpose of the museum were a small fraction of the total sales of the shop and thus the gift shop did not meet the substantial factor test;
- The land adjacent to the museum not used for the purposes of the museum was nonexempt, notwithstanding Taxpayer's argument that it was used to create a "campus atmosphere"; and
- An allocation was required and should be done on the basis of the ratio of space occupied by the for-profit entity and otherwise found to be nonexempt (such as the space in the theatre allocated to nonexempt use by reason of display of nonexempt movies) as compared with the total space in the museum and theatre properties for the parking area.

SEC Finds Flaws in Credit Rating Agencies.

Nationally recognized statistical rating organizations are lacking in their management of conflicts of interest, as well as information technology and cybersecurity issues, reports the Securities and Exchange Commission.

The SEC issued its annual staff report on the findings of examinations of credit rating agencies registered as nationally recognized statistical rating organizations (NRSROs) and submitted a separate report on NRSROs to Congress.

There is much more to compliance examination survival than knowing all of the rules. It helps to understand why the rules were put in place—and to recognize that examiners are not the enemy. "These reports provide the most current and comprehensive picture of the credit rating industry," said SEC Chairwoman Mary Jo White. "The SEC's enhanced oversight of NRSROs, informed by risk assessment, regular examinations and policy considerations, provides increasingly robust and effective oversight of the industry, as reflected by overall improvements in compliance, documentation, and board oversight."

The 2014 exams, which focused on NRSROs' activities for 2013, includes several recommendations from the SEC staff. While the SEC has not determined whether any finding "constitutes a material regulatory deficiency," it is possible the commission may do so in the future.

The 10 credit rating agencies registered as NRSROs as of Dec. 1, 2014 – A.M. Best Co. Inc. (AMB); DBRS Inc. (DBRS); Egan-Jones Ratings Co. (EJR); Fitch Ratings Inc. (Fitch); HR Ratings de México, S.A. de C.V. (HR); Japan Credit Rating Agency Ltd. (JCR); Kroll Bond Rating Agency, Inc. (KBRA); Moody's Investors Service Inc. (Moody's); Morningstar Credit Ratings LLC (Morningstar); and Standard & Poor's Ratings Services (S&P) – generally remain nameless in specific statements made in the SEC's report.

One area that drew concern from the SEC was NRSROs' management of conflicts of interest related to the rating business operations.

The SEC found that all seven of the smaller NRSROs had "weaknesses in policies and procedures concerning certain conflicts of interest or did not sufficiently disclose certain conflicts of interest."

Of the 10 agencies, one larger and six smaller NRSROs were found by the SEC to have weaknesses in their policies and procedures and controls governing employee securities ownership.

"It is a conflict of interest if an NRSRO allows its personnel to directly own securities or money market instruments or have direct ownership interests in issuers or obligors subject to a credit rating determined by that NRSRO," states the SEC report.

For example, at one of the smaller NRSROs, the SEC says an analyst participated in determining or approving the ratings of two issuers in which that analyst owned securities.

The SEC staff recommended that this NRSRO enhance its securities ownership policies and procedures, including establishing policies and procedures for the review of a prior rating where a conflict of interest is discovered and for securities divestiture – as this NRSRO did not have policies and procedures in place.

The SEC also found that all three of the larger NRSROs and two of the smaller NRSROs did not have sufficient policies and procedures or controls related to IT or cybersecurity.

The report states, "IT and cybersecurity are increasingly significant components of an NRSRO's internal control structure … They also often affect an NRSRO's capacity to publish accurate ratings in a timely fashion."

The staff recommended that the two smaller NRSROs establish or enhance written IT and cybersecurity policies and procedures and internal controls, and enhance their IT testing and responses to IT-related tests.

In addition, the SEC also found that all three of the larger NRSROs had weaknesses in their IT policies and procedures concerning personnel's access to information that is confidential or otherwise restricted. The Staff recommended that all three of the larger NRSROs enhance their internal controls governing access to IT networks, systems, applications, and file shares.

The SEC also found improvements in several areas. Since the SEC's last report, NRSROs have enhanced their compliance resources, monitoring, and culture, as well as improving its board of directors or governing committee oversight.

The SEC also found that NRSRO's document retention in general had gotten better, as did these agencies' documentation and resources for criteria and model validation.

ThinkAdvisor

By Emily Zulz
Staff Reporter
@think_emilyz

December 31, 2014

Outlook 2015: Another Year of the Muni Advisor?

WASHINGTON — This year will bring more municipal advisor and secondary market transparency regulation, while a newly Republican-controlled Senate could lead Congress to scrutinize and possibly ease existing laws and rules.

“We expect 2015 to be again the year of municipal advisor regulation, said Leslie Norwood, managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association. The Municipal Securities Rulemaking Board is still working on several rules governing MAs, including the crucial G-42 which spells out the core duties of non-solicitor advisors.

Dave Sanchez, a former Securities and Exchange Commission muni office lawyer who now runs his own firm in California, said MA regulation will be a major theme of the year as some market participants continue to adjust to the more than year-old SEC registration rule, which took effect July 1.

“On the regulatory front there will probably be a continued focus on implementing the municipal advisor regime,” Sanchez said. “It is clear to me that market participants are still legitimately struggling with how all of the various exemptions and exclusions work together and that the market needs more time to understand the rule. And that is fine.”

The final registration rule and subsequent MSRB proposals have caused some large issuer officials to complain that they feel directly regulated because they are essentially required to produce proof of exemptions to the rule that underwriters can rely on before providing advice. Federal law prohibits the SEC and the MSRB from requiring issuers to send them any documents prior to a bond offering.

SIFMA president and chief executive officer Kenneth Bentsen said earlier this month that SIFMA continues to be dissatisfied with the rule and believes it misinterpreted congressional intent in the Dodd-Frank Act provision authorizing creation of the MA regulatory regime. But most issuers and many individual underwriting firms have begun to make peace with it and operate more comfortably within the rule’s structure.

“I think many of the largest issuers increasingly understand that the important protections the rule provides for small and medium sized municipal entities are worth any small inconveniences they may endure in the way they do business,” Sanchez continued. “The rule is designed to put municipal issuers in control of their financing programs. And I do think that broker-dealers will continue to appreciate that the SEC provided important exclusions and exemptions for them that went beyond the narrow statutory exclusions articulated by Congress.”

MA Standards of Conduct

Leo Karwejna, chief compliance officer and managing director at Public Financial Management, said both the MSRB and the SEC will have the opportunity to fill in some of the remaining blanks on the MA regime. The MSRB has proposed its Rule G-42 on the standards of conduct for non-solicitor municipal advisors, but has not sent it up to the SEC yet. It is not clear how similar the proposal the SEC receives will be to the very controversial one the MSRB floated earlier this year.

“That will introduce much of the practical detail that is necessary,” Karwejna said.

He added that while most of the misunderstandings and apprehension about the SEC's MA rule are "under our belt" now, 2015 will be an important year for advisors and underwriters to continue to make sure that smaller and less frequent issuers understand the new regulatory regime. SEC muni office officials said this month they have no "concrete plans" to release further MA guidance, but could do so if they see a need. Karwejna said the chance could present itself in the coming year.

"I think there is ample opportunity for them to provide more guidance," he said.

Ernie Lanza, a shareholder at Greenberg Traurig in Washington who left the role of MSRB deputy executive director earlier this year, said he would be surprised if the SEC did not issue some more guidance in the coming year. Lanza said the board's development of a pilot qualification exam for MAs would also be a major development to watch in the coming year. He also said the MSRB could propose another core duties rule focusing on MAs who solicit business on behalf of other firms.

"They haven't yet hit the solicitors," Lanza said.

MSRB executive director Lynnette Kelly said the board remains very focused on MA rulemaking, but is also prioritizing secondary market initiatives. The board recently proposed, in conjunction with the Financial Industry Regulatory Authority, a rule that would require dealers acting as principals to disclose to customers on their confirmations a "reference price" of the same security traded that same day as well as the difference between that price and the customer's price.

Secondary market transparency and retail investor protection were major themes of the SEC's 2012 Report on the Municipal Securities Market, which recommended markup disclosure and other steps the SEC and MSRB could take to improve the market.

Mike Nicholas, chief executive officer of the Bond Dealers of America, said he expects the regulatory agenda to move more and more into secondary market issues in the common year.

"I think it's going to pivot," he said. The principal transactions proposal and implementation of the recently-adopted best execution rule, which would require muni dealers to seek the most favorable price possible when executing transactions for most investors, are top priorities for his group going forward.

"These are tough issues that will be focused on in 2015," Nicholas said.

Wildcard

A wildcard in the calculus for 2015's regulation outlook is the 114th Congress that will begin meeting on Jan. 6. Republicans seized control of the Senate and widened their lead in the House to historic levels, meaning that for the first time in years a single party may be able to move legislation through both chambers without much help from across the aisle. Sources said Republican leaders like incoming Senate Finance Committee chairman Sen. Orrin Hatch, R-Utah and Senate Banking Committee chairman Sen. Richard Shelby, R-Ala., could be interested in joining the House to roll back some Dodd-Frank provisions.

"I don't know that the Republicans have a clear sense of what they want to do," said a House staffer who asked not to be identified. "You're going to have a more conservative Congress."

Bentsen said earlier this year that SIFMA would like to see Congress reexamine the MA rule to allow more freedom for investment bankers to contact issuers without having to become MAs and lose their ability to underwrite the resulting bonds. Michael Decker, a managing director and co-head of municipal securities at SIFMA, said Congress could use legislation previously introduced by Rep.

Steve Stivers, R- Ohio, as the starting point. Stivers' bill would have defined MAs more narrowly by applying the fiduciary duty to advisors working for compensation and including an exception for dealers seeking to be underwriters.

"I think you can make a strong case for Congress taking another look at that issue," Decker said.

But the staffer said that the exemptions included in the final SEC rule, such as a broad exclusion that underwriters could rely on when giving advice to issuers who have their own MA, makes the idea of revisiting the MA rule a tough sell. Most larger, frequent issuers have their own MAs, so dealer groups would essentially be asking Congress to give them more leeway to pitch deals to less sophisticated issuers who might need more protection.

"If the issue is pitching, that's going to be hard," the staffer said.

Sanchez said Congress would be hasty if it does reopen that issue.

"I believe that any legislative change to the municipal advisor regime is premature and will only serve to prolong uncertainty in the market while potentially undermining valuable issuer protections that are supported by responsible broker-dealers and municipal advisors," he said.

Kelly said the MSRB will also have some educational priorities in 2015, such as ensuring that dealers understand and take seriously the requirement to sell securities only to retail investors during issuer-specified retail-only periods. The board is also concerned about the lack of transparency surrounding bank loans and private placements and will continue to encourage issuers to voluntarily disclose them. The board is also going to be continuing to review its current rulebook to find ways to harmonize its rules with FINRA's.

Lanza said it's also possible that the beginning of the 2016 presidential election cycle next year could spur a challenge to the MSRB's pay-to-play rule, which aims to prevent muni firms from peddling influence with donations to public officials who can influence the award of negotiated bond business. The SEC's investment advisor rule was the target of a lawsuit challenging its constitutionality earlier this year, but the suit was dismissed by a federal court in D.C. after the court determined it was not the proper venue to hear the case. That case is on appeal and observers say it could have implications for the MSRB's rule.

"It should be an interesting year," Lanza said.

THE BOND BUYER

BY KYLE GLAZIER

JAN 2, 2015 11:07am ET

MSRB Board of Directors Seeks Applicants.

The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the $3.6 trillion municipal securities market, is accepting applications for its Board of Directors. To be considered for a position on the MSRB Board of Directors, submit an application no later than February 20, 2015.

The MSRB will host an educational webinar for potential applicants on Tuesday, January 13, 2015 at 12:30 p.m. ET. Register for the webinar.

NABL MCDC Initiative Observations Survey - Complete by Friday

The Securities and Exchange Commission announced its Municipalities Continuing Disclosure Cooperation (MCDC) Initiative on March 10, 2014. Under the terms of the Initiative, the SEC asked underwriters and issuers/obligated persons to self-report potential violations of securities laws regarding misstatements in offering documents regarding prior compliance with continuing disclosure undertakings.

This survey is intended to gather information regarding NABL members' participation in the MCDC Initiative, observations regarding the process and time invested as part of the MCDC Initiative. Please respond to each question based on your observations and best estimates. This survey is being done on an anonymous basis. NABL will compile the results and share a summary of the responses with members at a later date. We may also publish general observations and the summary results, but this will be done strictly without attribution to any individual member.

Please complete the survey no later than Friday, January 9.

MSRB to Begin Accepting Municipal Asset-backed Securities Disclosures on EMMA.

The Municipal Securities Rulemaking Board (MSRB) today announced that its Electronic Municipal Market Access (EMMA®) service would begin collecting and disseminating disclosures related to municipal asset-backed securities required under the Securities and Exchange Commission's (SEC) Rule 15Ga-1 on January 9, 2015.

Read the regulatory notice.

Read the SEC's Rule 15Ga-1.

View the full press release.

Off-Key BABs: IRS Hits Wrong Note in Reissuance Analysis - Mintz Levin

The IRS recently published a December 9, 2014 Chief Counsel Advice Memorandum to the effect that the defeasance of taxable Build America Bonds (BABs) causes a tax reissuance of the bonds, with the consequence that the municipal issuer ceases to be eligible for federal government interest subsidies for the period from the defeasance date to the redemption date. (A "reissuance" means that from a tax perspective existing bonds are deemed exchanged for new bonds issued on the reissuance date.) The BABs subsidy was available for bonds issued in 2009 and 2010; bonds issued or deemed issued in 2014 are ineligible.

This internal counsel advice is not particularly consequential in the specific context to which it applies. As noted in a Bond Buyer article on the advice memorandum, defeasance escrows for taxable bonds tend to be established for short periods, usually the thirty day period between the date a redemption notice is mailed and the redemption date. Accordingly, any loss of BABs subsidy to the issuer resulting from a purported reissuance is minor. Similarly, though a reissuance of taxable bonds may accelerate realization of gain or loss by a bondholder, if the reissuance occurs 30 days before the redemption date, it is unlikely to change the tax year in which such gain or loss occurs.

The larger point is that the advice memorandum reflects a troubling approach by the IRS to the interpretation of its rules. A legal defeasance of taxable bonds generally causes a reissuance (which is why taxable bond indentures provide for “covenant defeasance”, which permits the creation of a defeasance escrow that economically defeases the bonds while the issuer retains theoretical liability for any escrow shortfall.) However, the reissuance regulations provide an exception for municipal bonds. The reissuance exception applies to “tax-exempt bonds”, which IRS Regulation 1.1001-3(f)(5)(iii) defines as “a state or local bond that satisfies the requirements of § 103(a).” Section 103(a) of the Internal Revenue Code sets forth the requirements that must be satisfied by tax-exempt municipal bonds.

BABs are required to meet the requirements of Section 103(a) in order to be eligible for the federal subsidy. This is because the BABs subsidy, which is paid by the Treasury to the issuer and offsets the issuer’s interest cost, is merely an alternative mechanism for lowering the interest costs to a municipal issuer of issuing bonds that satisfy the criteria for a federal subsidy. Instead of exempting the bondholder from income tax on the bond interest, thereby lowering the rate the issuer must pay to attract bond purchasers, the BABs mechanism pays a subsidy directly to the issuer, which some believe to be a more cost-effective form of federal subsidy. But in order to be eligible for either form of subsidy – tax-exemption of interest, or direct subsidy payments to the issuer by the federal government – the applicable bonds must comply with the same Section 103(a) requirements.

So why does the IRS advice memorandum conclude that the reissuance exception for defeasance of bonds that satisfy the requirements of Section 103(a) is inapplicable to BABs? The memorandum acknowledges that the legislation creating BABs was enacted subsequent to the promulgation of the relevant reissuance exception, and that the regulatory exception was not revised at that time to exclude BABs from the exception. But the memorandum asserts that the concerns that gave rise to the reissuance exception for such defeasances focused on preserving the tax-exemption of interest to bondholders, and that taxable BABs do not present the same concerns for bondholders. Respected bond counsel dispute the advice memorandum’s characterization of the regulatory history of the reissuance exception.

But the more troubling feature of the IRS analysis is that BABs satisfy the literal requirements of the reissuance exception for defeasance. Regulatory history and speculation as to whether the rulemakers would or wouldn’t have included BABs if they had focused on the question should only be relevant if there is ambiguity in the regulation. In this instance, there is none.

Issuers should be entitled to rely on the plain meaning of IRS regulations in structuring their bond issues and/or refinancing their bond issues. If circumstances change and the IRS does not wish a rule that literally applies to such changed circumstances to be applicable, the burden should be on the IRS to change the rule, versus expecting issuers and practitioners to pre-clear with the IRS whether some unwritten carveout to the rule exists in the minds of individuals at the IRS. A more famous (and tonally adept) Babs once sang “If You Could Read My Mind,” but that is no way to run a tax system.

By Len Weiser-Varon

Mintz Levin

December 30th, 2014

Cheap Gas Should Boost Airport, Toll Road Bonds – Wells Fargo.

With oil sliding below $50 a barrel today, Wells Fargo looks at the infrastructure implications of low energy prices and says the ongoing drop in gasoline prices will boost coffers for a variety of municipal bond sectors like airports and toll roads. From Randy Gerardes, senior muni analyst at Wells Fargo Securities:

"We expect persistent lower gasoline prices to have a greater positive effect on airport traffic than automobile traffic. Therefore, we expect modest growth in vehicle miles traveled (VMT) in 2015. However, the increased discretionary income associated with lower fuel prices should offer an accommodative environment for toll operators to increase toll rates, which should support stronger toll revenue growth. We continue to be bullish on airports, specifically large international gateway airports with significant cargo operations. Speaking of cargo, we see the potential for the greatest cargo growth at East Coast and Midwestern ports with strong intermodal connections and infrastructure that can accommodate larger ships. Turning to energy, we expect electricity rates to become increasingly correlated to natural gas prices as electric utilities continue to deemphasize coal-fired generation. Finally, lower primary market issuance will likely drive cash toward higher-yielding infrastructure sectors, such as toll roads, which we saw in 2014."

Here's more from Wells on commodity prices and their impact on electricity rates and utilities:

"In 2015, we expect electric utilities to continue to move toward natural gas fired generation in response to environmental regulation. Consequently, we believe natural gas prices will be a bigger driver of electricity rates. Furthermore, we think environmental regulations will be the biggest driver of issuance for generation particularly in light of slowing load growth. In our view, the U.S. natural gas and oil markets are as interconnected as ever. Prices and behavior in one market can have an effect on the other. To date, the price of natural gas has not followed the slide in oil prices. However, low crude oil prices reduces returns for drillers and, in turn, may lead to reduction in drilling assets deployed and ultimately a slowing of U.S. crude production. While lower crude prices may make natural gas drilling more attractive in the short term, we believe producers seek a balance whereby oil production supports gas production and vice versa. The result, in our view, is upward pressure on natural gas prices. As producers curtail production of crude oil, this should, in turn, slow the growth in natural gas production as well."

Barron's

By Michael Aneiro

January 5, 2015, 1:58 P.M. ET

Kentucky to Build State-of-the-Art Broadband Under a P3.

Kentucky will leverage private sector financing to develop a fiber backbone to bring high-speed

Internet service to residents across the commonwealth.

The state will partner with Macquarie Capital to build a 3,000-mile network of major fiber lines throughout the state, Gov. Steve Beshear (D) and Rep. Hal Rogers (R) announced Tuesday. The project is estimated to cost between $250 million to $350 million and will be supported by $30 million in state bonds and $15 to $20 million in federal grants.

“We are on an aggressive timeline and believe that the Macquarie team’s technical capabilities and history of innovative solutions are the best fit for this important project,” said Beshear. “This partnership puts us on the path to propel the commonwealth forward in education, economic development, health care, public safety and much more.”

When complete, the network will connect all 120 counties in the state. The push for reliable, accessible high-speed broadband is one recommendation that emerged from SOAR, the “Shaping Our Appalachian Region” initiative.

“This new Super I-Way is the cornerstone of SOAR’s mission to diversify the economy in eastern Kentucky with improvements in business recruitment, fast-tracking telemedicine in the mountains, and adding high tech advancements in education,” Rogers told the Harland Daily.

Under the P3, the fiber Internet will be built by Macquarie, but the state will oversee the main broadband lines. Internet and cell phone providers will lease the lines to complete the connection to homes and cell phone networks. Cost to consumers will be lowered by eliminating the need for service providers to build duplicate infrastructure.

Macquarie will begin work immediately on phase one to design the overall statewide system and determine the project’s scale. The design and cost estimates are due by the end of February 2015 with construction of the first segments expected to begin in the summer and completed by April 2016.

“We believe that this project will be the centerpiece of Kentucky’s long-term economic infrastructure, demonstrating the core principles of value for money and risk transfer to the private sector that will translate into a successful long-term partnership with the commonwealth,” said Nick Hann, senior managing director at Macquarie Capital.

NCPPP

By Editor

January 6, 2015

IRS Webinar: Gaming and Tax-Exempt Organizations.

Thursday, January 22 at 2 p.m. ET

Learn about:

- Gaming’s impact on tax-exempt status
- Gaming and unrelated business income
- Maintaining records

- Reporting requirements
- Workers conducting gaming activities
- Reporting winnings and withholding income tax
- Gaming Excise taxes
- IRS resources

Register for this event.

IRS TEB Voluntary Closing Agreement Program: Relief From Violation of Qualified Ownership and Use Requirements for Qualified 501(c)(3) Bonds.

Announcement 2015-2 provides a simplified VCAP process for issuers of qualified 501(c)(3) bonds, as defined in the Announcement, to request a closing agreement in situations in which the borrower of the proceeds of the bonds received Prospective Reinstatement, as defined in the Announcement, after its tax-exempt status was automatically revoked under section 6033(j)(1) of the Internal Revenue Code (the “Code”).

States Will Have Greater New Capacity to Issue PABs in 2015.

WASHINGTON — States on the whole will see a slight increase in their new capacity to issue private-activity bonds in 2015.

The 50 states, the District of Columbia and Puerto Rico will have a total of about $35.23 billion of new capacity in 2015, up 0.97% from roughly $34.89 billion in 2014. The increase is based on the latest population figures released last week by the U.S. Census Bureau and a revised PAB cap formula published by the Internal Revenue Service in October.

Private-activity bonds are issued by public entities to provide low-cost financing for the projects of nonprofit organizations or companies that serve a public purpose. Most types of PABs – including certain types of exempt-facility bonds, mortgage-revenue bonds, industrial development bonds, student-loan bonds and first-time farmer bonds – are subject to state volume caps.

States receive annual PAB volume caps and also can carry over any unused cap for up to three years. Volume caps for 2015 are the greater of $100 per capita or $301.52 million, according to the IRS. For 2014, the per capita rate was the same, and the minimum amount was $296.83 million. States use the minimum cap rather than the per capita amount when they have small populations.

Between July 1, 2013 and July 1, 2014, the population of the 50 states and D.C. increased by 0.75% to 318.86 million in 2014, according to the latest Census Bureau estimates. The U.S. population as of July 1, 2013 was 316.50 million, up from the estimate released last year of 316.13 million. The 2014 state volume caps are based on the 2013 population estimates that were released last December.

Nearly all states will see increases in their new capacity to issue PABs in 2015, but none will see an increase of more than 2%. Texas, the nation’s second most populous state, will see the greatest increase in new volume cap, with a 1.92% gain. Florida, which overtook New York to become the third most populous state in 2014, will see a 1.74% rise in new cap, the second greatest increase.

California, the most populous state, will have its new capacity increase by 1.23% to $3.88 billion in 2015.

Nineteen states and D.C. used the minimum amount in 2014 and will use it again in 2015. These jurisdictions will see a 1.58% increase in new cap. Mississippi, whose population falls in between the 2014 and 2015 minimum caps, will use the minimum amount in 2015 but did not do so in 2014.

Illinois and Puerto Rico both saw population declines and will have a smaller amount of new capacity to issue PABs in 2015 than in 2014. Illinois' cap will decrease 0.01% to $1.29 billion, while Puerto Rico's cap will fall by 1.84% to $354.84 million. Five other states also saw population declines in 2014, according to the Census Bureau, but they will not see declines in new cap, in most cases because they use the minimum amount.

States rarely issue the maximum amount of PABs that they can issue under their caps in any year. In 2013, states only used about 10% of their total capacity, according to a survey by the Council of Development Finance Agencies.

The PAB volume cap figures for 2015 do not include American Samoa, Guam, the Northern Mariana Islands and the U.S. Virgin Islands because they are not included in the Census Bureau's population estimates.

THE BOND BUYER

BY NAOMI JAGODA

DEC 30, 2014 2:09pm ET

IRS EO Update: e-News for Charities & Nonprofits - December 31, 2014

1. IRS issues final regulations on new requirements for tax-exempt hospitals

The IRS and Department of Treasury have issued final regulations that provide guidance regarding the requirements for charitable hospital organizations added by the Affordable Care Act.

Each Section 501(c)(3) hospital organization is required to meet four general requirements on a facility-by-facility basis:

- establish written financial assistance and emergency medical care policies,
- limit amounts charged for emergency or other medically necessary care to individuals eligible for assistance under the hospital's financial assistance policy,
- make reasonable efforts to determine whether an individual is eligible for assistance under the hospital's financial assistance
- policy before engaging in extraordinary collection actions against the individual, and
  conduct a community health needs assessment (CHNA) and adopt an implementation strategy at least once every three years.

(The first three requirements listed above are effective for tax years beginning after March 23, 2010 and the CHNA requirements are effective for tax years beginning after March 23, 2012.)

The ACA also added new section 4959, which imposes an excise tax for failure to meet the CHNA requirements, and added reporting requirements under section 6033(b) related to sections 501(r) and 4959.

These final regulations provide guidance on the requirements described in section 501(r), the entities that must meet these requirements, and the reporting obligations relating to these requirements under section 6033. In addition, the final regulations provide guidance on the consequences for failing to satisfy the section 501(r) requirements.

2. Register for IRS webinar: Gaming and Tax-Exempt Organizations

Thursday, January 22 at 2 p.m. ET

Learn about:

- Gaming's impact on tax-exempt status
- Gaming and unrelated business income
- Maintaining records
- Reporting requirements
- Workers conducting gaming activities
- Reporting winnings and withholding income tax
- Gaming Excise taxes
- IRS resources

Register for this event.

3. Register for EO workshops

Register for our upcoming workshops for small and medium-sized 501(c)(3) organizations on:

Jan. 9 – Salt Lake City, UT

Hosted by University of Utah & the Utah Nonprofits Association

4. IRS EO phone forum and webinar Q&As posted

Review answers to questions posed by attendees of recent IRS Exempt Organizations phone forums and webinars. Submit questions to tege.eo.ceo@irs.gov.

Municipal Bond Maturities to Decline 38% After Market Contracts.

State and local government costs to repay maturing debt will fall 38 percent in 2015 after a year when the municipal bond market contracted.

Maturities are poised to drop to $175.98 billion from $281.87 billion in 2014, according to data compiled by Bloomberg. Issuers from California, New York, Texas, New Jersey, Massachusetts and Florida owe 50 percent of this year's amount.

The combination of last year's maturing debt and $226.54 billion of early redemptions exceeded new securities sales of $361.62 billion, Bloomberg data show. The municipal bond market shrank 4 percent in 2014 to a total of $3.5 trillion.

Lower costs for debt coming due lessens fiscal stress on cities and counties emerging from the sluggish growth that followed the financial crisis. The shrinking market, together with the improving U.S. economy, help explain last year's 9.8 percent return for municipal bonds, according to a Bank of America Merrill Lynch index. By comparison, investment grade corporate bonds earned 7.5 percent and Treasuries returned 6 percent.

Most Due

In the coming year, issuers from California have the most debt due, with $23.3 billion, followed by New York at $22.1 billion, Texas with $16.3 billion and New Jersey's $11.5 billion. Massachusetts and Florida both have $7.3 billion maturing. New York City, with $2.59 billion, and Los Angeles, at $1.59 billion, are the local governments with the largest repayments.

Municipal bond sales in the U.S. are set to increase in the next month while the amount of redemptions and maturing debt falls.

States and localities plan to sell $8.6 billion of bonds over the next 30 days, Bloomberg data shows. A week ago, the calendar showed $6.4 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.

New York State Dormitory Authority plans to sell $1 billion of bonds, Texas A&M University has scheduled $377 million, Miami-Dade County will offer $372 million and Broward County, Florida, School Board will bring $273 million to market.

Illinois Debt

Municipalities have announced $12.1 billion of redemptions and an additional $8.5 billion of debt matures in the next 30 days, compared with the $26.1 billion total that was scheduled a week ago.

Issuers from Illinois have the most debt coming due with $2.27 billion, followed by New York at $1.01 billion and Indiana with $801 million. The state of Illinois has the biggest amount of securities maturing, with $944 million.

The municipal market contracted by $4.1 billion last month. Sales of $46.1 billion compared with redemptions and maturing debt that totaled $50.2 billion.

Investors added $329 million to mutual funds that target municipal securities in the week ended Dec. 24, compared with $950 million in the previous period and the one-year average of $439 million, according to Investment Company Institute data compiled by Bloomberg.

Michigan Yields

State and local debt maturing in 10 years now yields 97.3 percent of Treasuries, Bloomberg data show. Since 2000, the gap has averaged 93.7 percent.

Bonds of Michigan and California had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data show. Yields on Michigan's notes narrowed 23 basis points to 2.32 percent while California's declined 13 basis points to 2.30 percent.

Puerto Rico and New Jersey handed investors the worst results. The yield gap on Puerto Rico notes widened 52 basis points to 9.49 percent and New Jersey's rose 10 basis points to 2.62 percent.

Bloomberg

By Ken Kohn

Jan 5, 2015 4:23 AM PT

To contact the reporter on this story: Ken Kohn in New York at kkohn@bloomberg.net

To contact the editors responsible for this story: Ken Kohn at kkohn@bloomberg.net Stacie Sherman, Alan Goldstein

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Muni Bonds: Calm Ahead for 2015?

At times over the past few years, municipal bonds seemed to stray from their traditional role as staid income generators and morph into momentum investments, with performance driven by herds of investors alternately piling into munis or abandoning them, based on a variety of largely external forces.

Heading into 2015, the market hopes that fundamentals will re-emerge as the main performance drivers. For that to happen, munis must stare down two key risks: that rising rates cause greater volatility, and that Congress meddles with muni bonds' longstanding tax-exempt status.

THE MUNI MARKET SAILED through 2014, posting an 8.9% return, per S&P Dow Jones Indices, aided by the tail wind of an unexpected decline in interest rates. Longer-dated munis led the way, gaining 15.5%, while a popular exchange-traded fund, iShares National AMT-Free Muni Bond (ticker: MUB), gained 6.2%. That strong showing marked a rebound from an awful 2013, in which munis lost 2.6% and the same ETF fell by 3.3% after rates rose.

In its latest fixed-income strategy report, U.S. Trust attributes much of the market's 2014 performance to technical factors, namely robust demand and an unusually low supply of new bonds. Many bonds issued in recent years were simply used to refinance older higher-rate debt, while the overall supply of muni bonds shrank as maturing debt exceeded new supply.

U.S. Trust says that more new bonds are now being issued, and that supply "will continue to pick up as improving fiscal conditions at the state and local government levels allow for greater issuance of municipal bonds to satisfy pent-up infrastructure needs." U.S. Trust adds that muni-bond demand could fall this year for a few reasons, including rising Treasury rates, "as well as renewed discussions of federal tax reform and increasing credit risks from certain large issuers with lagging economies, structurally unbalanced budgets, and growing unfunded pension obligations."

Tax reform and pension underfunding are seemingly perennial low-level threats to the muni market. So far, there are few signs that the incoming Republican Congress will pick on munis as a possible source of new tax revenue. As for pension obligations, a five-year stock market bull run has helped make that seem like less of an imminent crisis, and problems remain isolated for now.

The constant through the past several years has been a low default rate, despite a handful of high-profile problems like Detroit's bankruptcy filing and Puerto Rico's continuing struggles. In fact, every year since 2010 has shown a decline in muni defaults, according to Matt Fabian of Municipal Market Analytics, who says "there may be still fewer defaults ahead for 2015, although we expect defaults are approaching a minimum or baseline level that will persist, regardless of economic conditions."

SHORTER-DATED BOND YIELDS have been rising amid expectations that the Fed will lift its policy rate this year. JPMorgan forecasts "strong but volatile" muni performance, as the yield curve flattens further, meaning short-dated yields rise more than long-dated ones. JPMorgan sees the best total return this year once again coming from longer-dated muni bonds, specifically those maturing in 21 to 25 years.

Shorter-dated bonds could see further price declines if short-term rates continue to rise. If yields do climb, however, they should become more tempting to investors who use laddering strategies that buy individual bonds of varying, staggered maturities.

"The pricing of earlier maturities has put significant incremental yield (and valuation) into bond prices inside of 10 years, and in particular inside of five years," MMA's Fabian wrote in late December. "This is perhaps the best opportunity in years for retail holders looking to repopulate [the] front end [of] income ladders."

BARRON'S

By MICHAEL ANEIRO

January 3, 2015

Brookings: A Guide to Public Private Partnerships - Recommendations for Public Leaders Considering PPPs.

A new report from the Brooking Institution's Metropolitan Policy Program presents nine recommendations for public leaders considering infrastructure public private partnerships (PPPs). The report, "Private Capital, Public Good: Drivers of Successful Infrastructure Public Private Partnerships", by Senior Policy and Research Assistant Patrick Sabol and Senior Fellow and Director of Metropolitan Infrastructure Initiative Robert Puentes, is intended to serve as a guide to executing PPPs in the public interest.

"PPPs are neither a solution to all America's infrastructure challenges nor are they a corporate takeover of public assets," says Sabol. "Instead, a well-executed PPP is simply a tool for procuring or managing infrastructure."

This paper addresses gaps in public knowledge of the PP funding model by explaining

- Basic PPP structure
- How to properly weight risks and rewards
- The purpose and rational behind these arrangements

Through extensive background research and direct interviews with leaders in the public and private sector, the paper presents nine recommendations for public leaders considering PPPs:

1. Create a strong legal framework at the state level. PPPs require a sound legal basis to ensure that
the public sector has the authority to pursue a deal and allows the private sector to mitigate unnecessary political risk.

2. Prioritize projects based on quantifiable. Not every infrastructure project is suitable for a PPP, so
it is essential for policymakers to base their procurement decisions on robust economic and financial analysis.

3. Pick politically smart projects. A successful PPP requires a pragmatic understanding of what is
feasible in a constantly evolving political environment.

4. Understand what the private sector needs. Strong partnerships are based on finding the right
alignment of interests, which is why it is essential to understand what makes a project appealing to private investors.

5. Find the right revenue stream. PPPs are not free money; they require localities to find durable and
resilient revenue sources that will pay for the investment over the long-term.

6. Create a clear and transparent process. Routinization and standardization will create a market for
PPPs that provides the public sector with a clear roadmap for success.

7. Build an empowered team. Assembling a professional and empowered public sector team is essential to executing a successful deal.

8. Actively engage with stakeholders. PPPs are inherently complex deals that require significant public engagement to ensure that the deal is in the interest of the community and executed at the highest standards possible.

9. Monitor and learn from the partnership. PPPs involve decades od dedicated attention that requires thoughtful monitoring, flexibility in the face of a changing world, and a willingness to learn from mistakes.

The full paper is available here.

Municipal Market Advisors Alters Name to Highlight Independence.

The research firm Municipal Market Advisors Inc. changed its name to Municipal Market Analytics Inc., in an effort to highlight its independence, according to a memo from president and founder Tom Doe.

Leadership, staff and contact information will remain the same at the Concord, Massachusetts-based firm, Doe said in the memo dated today. The company prepares market outlook pieces for bond buyers and municipal officials, and tallies first-time defaulters in the $3.6 trillion market.

“We wanted to establish that there was no confusion regarding our role as an independent research firm, where there had been, especially with the new regulations concerning municipal advisers” from the U.S. Securities and Exchange Commission, Doe said today in an interview.

With the 2010 Dodd-Frank law, Congress ushered in the first rules for municipal advisers, which took full effect last year. The main effect is firms that render advice need to act in client's best interests.

MMA doesn't advise issuers on specific transactions, Doe's memo said. Its consulting and bank-credit services won't change, he said.

Bloomberg News

By Brian Chappatta and Michelle Kaske

Jan 2, 2015 7:54 AM PT

To contact the reporters on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net; Michelle Kaske in New York at mkaske@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Stacie Sherman

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Bond Tax-Break Threat Recedes With Federal Deficit: Muni Credit.

One thing is unlikely to change as Republicans take control of Congress: the century-old tax break for investors in the $3.6 trillion municipal-bond market, which has been threatened by proposals advanced in Washington during the past four years.

With the U.S. budget deficit shrinking and President Barack Obama in office through 2016, analysts at banks including JPMorgan Chase & Co. and Citigroup Inc. see little chance of a broad tax-code overhaul that could reduce the subsidies given to state and local government bonds.

The prospect of taxing muni-bond interest has been raised since 2010 as Obama and congressional Republicans looked to lower the deficit or pay for cuts to income-tax rates. Such a change would reduce the value of munis, which command higher prices than other securities because the interest has been exempt from the federal income tax since its creation in 1913.

"As for the risk of a near-term tax reform, it's very minimal," said Mikhail Foux, a municipal-market analyst with Citigroup in New York. "We're unlikely to see anything before the next presidential election."

Obama said during a press conference last month that he wants to reach an agreement with the new Congress to revamp the tax code. While Republicans will control both the House of Representatives and the Senate, they still don't have enough power to override a veto by the Democratic president.

Veering Away

Representative Paul Ryan of Wisconsin, the next chairman of the tax-writing House Ways and Means Committee, has said that focusing on business taxes may represent the best chance for success, given how far apart Obama and Republicans are over how to approach taxes on individuals.

That approach lessens the odds that Congress may alter the status of municipal bonds, most of which are held by individuals seeking tax-free income, said Dustin McDonald, Washington lobbyist for the Government Finance Officers Association, which represents local officials.

“That would require a lot of support from those parties that they’ve had trouble corralling,” he said. “You’re going to have to gore a lot of oxen to do that.”

The tax break, forecast to cost the Treasury about $47 billion this year in foregone revenue, has been targeted along with dozens of other provisions in overhauls that failed to advance during the past four years.

In 2010, Obama’s deficit-cutting commission proposed taxing munis to lower rates and increase revenue. Obama and Republican Representative Dave Camp, the departing head of Ways and Means, later endorsed taxing some interest income received by the highest-earning households.

Reaping Gains

The failure of the plans was welcomed by investors and state and local government officials, who said that changing the tax status of municipal bonds would depress prices because buyers would demand higher yields to offset the cost. On Dec. 31, benchmark 10-year munis yielded 2.11 percent, about 0.07 percentage points less than Treasury bonds, a reflection of the tax advantages.

Josh Gonze, who helps oversee $10 billion in municipal bonds for Thornburg Investment Management in Santa Fe, New Mexico, said he foresees scant risk that tax status of the state and local debt will be changed.

“It’s not on our radar screen,” he said. “This is something that has been discussed for the past 50 years. I don’t think there’s anything that’s happened that’s going to bring this to the forefront.”

Street Yawns

The perspective is widely shared on Wall Street. Since the elections last month, municipal analysts at brokers and banks including UBS AG, Janney Montgomery Scott LLC and Macquarie Group Ltd. have said the divide between Congress and the White House makes change unlikely.

“It’s definitely a good thing for the muni market,” said Foux, the Citigroup analyst. “For the most part, it’s priced in. I think most investors dismiss the risk.”

Governors, legislators and local officials have lobbied Congress to prevent any such change. More than 100 House Democrats and Republicans in 2013 signed a letter supporting the break. At a hearing on the issue in the Ways and Means Committee that year, lawmakers from both parties said taxing munis would push costs onto local governments and taxpayers.

The improving economy has eased the pressure on Congress to reduce the federal budget deficit, said Susan Collet, the president of H Street Capitol Strategies, who lobbied Congress on the issue for the Bond Dealers of America. In the year ended in September, the deficit shrank to $483.4 billion, about a third of the record $1.4 trillion hit in 2009.

“The immediate pressures that Congress would have to feel to put something that controversial on the table aren’t present,” she said. “It’s gone away for a while.”

(An earlier version of this story was corrected to reflect that the income tax code, not munis, dates from 1913.)

Bloomberg Muni Credit

By William Selway Jan 2, 2015 7:23 AM PT

To contact the reporter on this story: William Selway in Washington at wselway@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Stacie Sherman, Mark Schoifet

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Costs of Detroit's Bankruptcy Reach About $178 Million.

Legions of lawyers, consultants and other advisers have been paid nearly $178 million for their work on Detroit's historic bankruptcy, a number that comes in under budget but still makes it the most expensive municipal restructuring in U.S. history.

The city of Detroit detailed the fees and expenses paid to dozens of advisers in a filing made Tuesday in U.S. Bankruptcy Court in Detroit. The city recently exited bankruptcy protection after cutting about $7 billion of $18 billion in long-term obligations and promising to reinvest more than $1.4 billion in essential city services.

As the bankruptcy advisers and a court-appointed emergency financial manager leave the city, a new set of overseers will soon enter the scene. As part of its restructuring, a financial oversight commission will have direct control over the city's budget for at least three years and indirect oversight for at least 10 years after that.

The law firm Jones Day led the way in the fees disclosed Tuesday with a $57.9 million bill. Detroit hired the firm in the months leading up to its July 2013 bankruptcy filing and chose one of its former partners, Kevyn Orr, to be emergency manager. Mr. Orr resigned in mid-December after almost 21 months in office.

Jones Day is among 10 firms advising Detroit that must have their fees scrutinized by a court-appointed fee examiner. That group includes restructuring firm Conway MacKenzie, with a $17.3 million bill, investment bank Miller Buckfire & Co. at $22.8 million, and financial adviser Ernst & Young at $20.2 million.

A total of $164.9 million in fees have been paid out of Detroit's general fund, the filing shows, to advisers of the city, others that advised a committee of Detroit retirees, counsel to the fee examiner, and experts hired by U.S. Bankruptcy Court Judge Steven Rhodes. Mediators that helped negotiate key deals in the Chapter 9 case billed $980,000, which doesn't include the work of U.S. District Judge Gerald Rosen, who worked on the mediations for free.

The general fund tally comes in under a $177 million budget allotted as part of the bankruptcy-exit plan, according to the filing, and was decreased by a $5.3 million contribution made by the state of Michigan.

Other advisers were paid from an enterprise fund, the filing shows, and two city unions paid a total of about $12 million directly to law firm Clark Hill and investment bank Greenhill & Co.

Judge Rhodes still has the final say on whether the fees will stand. In a Dec. 15 court order, the judge said that once he reviews the city's disclosures, he will "determine what further process is appropriate to determine the reasonableness of fees."

THE WALL STREET JOURNAL

By SARA RANDAZZO

Dec. 31, 2014 2:52 p.m. ET

Write to Sara Randazzo at sara.randazzo@wsj.com

Do Credit Ratings Matter Anymore?

Jan. 01–Chicago's finances aren't in great shape. And they've been getting worse in recent years. The city's pension debt has ballooned to eight times its operating revenue. Between 2002 and 2012, Chicago tripled its debt load. During that time, the city's population — its tax base — fell. As a result of all those factors, the credit market has reacted harshly. Fitch Ratings has downgraded the city's debt rating two notches, to A-, just since 2010. Meanwhile, Moody's Investors Service downgraded Chicago three notches over that time, to Baa1. That's just three steps away from junk bond status.

But then there's Standard & Poor's. Over the same period of time in which the other two ratings agencies have been gutting Chicago's score, S&P has kept its rating for Chicago locked at A+. These aren't minor differences. In fact, Chicago's three credit ratings are now spread across four of the 10 possible rating levels for investment grade bonds.

So what gives? How could three agencies look at the same set of numbers and come up with such disparate results? And how could two groups see a financial decline when a third sees economic stability? "We're talking about very dramatic differences," says Matt Fabian, managing director of Municipal Market Advisors (MMA). "When the rating agencies are so divergent, what guidance are investors left with?"

It wasn't very long ago that most governments could just buy a top-grade AAA rating no matter what their actual financial health was. Thanks to the bond insurance business, a government issuing bonds could just pay for an insurer to wrap the bonds with a AAA rating. Lower-rated bonds mean governments have to pay higher interest rates to investors. So in most cases it was still a better deal to pay a little extra for bond insurance upfront rather than higher interest rates down the road. The system worked — as long as the insurance companies could offer a AAA rating. But as those companies became more aggressive with their own investments, they too became victims of the financial market collapse in 2008. Those companies were downgraded, and a business that had once insured nearly half of all municipal bonds dropped practically out of existence. It changed everything.

Without the cloak of bond insurance, governments had to rely on their credit quality alone for the first time in decades. It was an unfamiliar practice, and not just for those issuing the bonds. Municipal market investors were, for the first time, required to look under the hood. What they found was often confusing. For one thing, the muni bond market is vastly different from the corporate market. And governments vary significantly from one another in terms of their level of disclosures and financial savviness. Complicating things further was the fact that credit ratings themselves increasingly began to vary. More and more, two different agencies would issue two different ratings for the same bond.

As a result, credit ratings — which were once essentially the only thing that mattered to investors — are today just one of the myriad things investors look at. A rating is an important starting point, but it doesn't have to dictate the kind of reception a government will actually get in the municipal market. Investors want to look at a whole host of factors to assess a city's fiscal health, and government finance officials are today much more likely to work directly with investors. Against that backdrop, the ratings agencies' wildly divergent opinions on the overall health of the municipal market has led to increased skepticism about their own credibility.

In other words, if investors don't care about ratings as much as they used to, and if ratings agencies can't even agree on which way the muni market is trending, then what purpose do they serve?

Since the market crash, credit rating agencies' image as a whole has suffered greatly. They were blamed for helping to precipitate the crisis in the first place, by giving overly generous ratings to mortgage-backed securities that later turned sour. In February 2013, the Department of Justice even sued Standard & Poor's for $5 billion, claiming that it knowingly issued unduly high ratings. (S&P says the lawsuit is simply a retaliation for the agency's high-profile downgrade of the nation's credit rating in 2011.)

When it comes to the municipal market, some observers see credit rating agencies in the middle of an alarming shift. Increasingly, two agencies will issue a different rating for the same municipal credit. In fact, today about 40 percent of municipalities that have ratings from different agencies have what's called a split rating, according to data from MMA. From the agencies' perspective, the variance is simply a result of their different approaches. And those differences help inform the market, says Bob Kurtter, Moody's managing director of U.S. public finance. "For the most part we see things similarly, and in some cases we don't," he says. "Investors are looking for a range in opinions and, for the most part, I think that's a good thing."

But to those on the outside looking in, the divergence is sending a different message to investors, says MMA's Fabian. "It does undermine the agencies' credibility," he says. "In theory, independent views should generally align with one another. So when they don't, it underscores a degree of subjectivity."

Exactly which agency's creditability has suffered more is, well, subjective. Last summer, municipal credit analyst Tom Kozlik released a scathing report that called into question the revamped ratings methodology that S&P had been applying over the prior year to reassess its local government ratings. The new criteria score municipalities in seven categories: management, economy, budgetary flexibility, institutional framework (governance), budgetary performance, liquidity and debt/liabilities. As a result of the new criteria, S&P has issued about 10 times as many upgrades as it has downgrades over the past year (although most of its ratings did stay the same). S&P acknowledges that the number of upgrades was higher than its analysts initially expected. But the agency attributes that to the unexpectedly positive results from the qualitative portion of its analyses of governments. In other words, the more subjective measures — particularly government management — were looking pretty good.

Meanwhile, Moody's — which has done a smaller revamp of its criteria, applying stricter standards to governments' pension liabilities — has been issuing about twice as many downgrades as upgrades.

All of this has led governments to pick and choose the agency they think will give them the best rating, according to Kozlik's report. More governments today are issuing just one rating when they go to market, he says — and their rating of choice is S&P. All three agencies have lost market share since their business boomed following the collapse of bond insurers, but S&P has held on to a greater share than either Moody's or Fitch. Even larger issuers, which traditionally have always needed to obtain more than one rating on new bond issues, are finding that they can get by with just one. Last year, Cook County, Ill., issued $90 million in sales tax bonds and only used an S&P rating. "Years ago we would have done all three agencies," says county Chief Financial Officer Ivan

Samstein. “But we thought that we could go with just one rating, and we chose to use S&P.”

So who’s getting it right? S&P’s sunnier outlook or the more negative viewpoint of Moody’s and Fitch? Unsurprisingly, that depends on whom you ask. Samstein says the mere fact that he was able to sell $90 billion in bonds with just one rating, from S&P, means the muni market as a whole is more in line with S&P’s more optimistic assumptions. And CFOs also have a duty to get the best price for taxpayers — after all, he says, a lower rating would have increased the county’s borrowing costs. Still, adds Samstein, who previously worked as a public finance credit analyst at Moody’s: “Most of the market knows, if you’re a sophisticated institutional investor, you shouldn’t really trust the ratings by themselves.”

Governments these days are selling their product to a much more knowledgeable investor. After the collapse of the bond insurance industry, financial firms had to get smart — quickly — about municipal bonds. Analyst desks began opening up or expanding at major financial firms across the country. The Securities and Exchange Commission even established a new Office of Municipal Securities to keep watch over the market. It’s no longer a cut-and-dried picture, says Washington, D.C., CFO Jeff DeWitt. The difference now, he says, is that cities and states must market themselves to investors. “The bonds aren’t going to get sold as well if you don’t get involved.”

In fact the District of Columbia is looking to join the growing number of major municipalities that hold investor conferences, a convenient way for issuers in a particular region to connect directly with potential buyers. States like California and Massachusetts have well-established investor relations programs dating back several years. Last March, Massachusetts began selling bonds directly to investors, opening up a two-week period each month in which people can buy general obligation bonds directly from the state. The goal with MassDirect and all these types of programs is to create more competition for bonds, thus lowering the overall borrowing cost for governments.

The blossoming relationship between governments and investors means, among other things, that bond ratings don’t carry the same weight as they used to. Of course, no CFO can schmooze his way out of an unfavorable financial status. A bad credit is a bad credit. But in the growing number of cases where municipalities receive two different ratings, finance officers can explain to investors why they believe the higher rating is more accurate and what the lower rating might not be taking into account.

A government’s credit rating will always matter. An upgrade or a downgrade on a credit, especially a general obligation bond, still makes headlines. And ratings give everyone a rough idea of what kind of borrowing costs to expect.

But government finance officers are increasingly finding that a credit rating doesn’t have to keep them from getting the deal they want — if they’re willing to work for it. “Before 2007, I rarely talked to an investor,” says DeWitt. “They’d call occasionally to ask a few questions. But after 2007, I talk to them all the time.”

Liz Farmer | Governing

lfarmer@governing.com — @LizFarmerTweets

Municipal Defaulters Decline Amid Improving Economy: Muni Credit.

Municipal issuers are defaulting at the slowest pace since at least 2010 as a strengthening economy boosts local-government finances.

With the U.S. economy expanding the most in more than a decade, improved balance sheets for cities and counties are easing concerns of widespread failures and supporting an unprecedented rally in their debt.

Fifty-seven issuers defaulted for the first time this year as of Dec. 30, compared with 69 in 2013 and 140 in 2010, according to Municipal Market Advisors, a Concord, Massachusetts-based research firm. The number will probably remain in a similar range in 2015 as cost-cutting municipalities in the $3.6 trillion municipal market have proven resilient, said Chad Farrington, head of muni research in Boston at Columbia Management Investment Advisers.

“For the vast majority of the credits, even a slow recovery is good enough,” said Farrington, whose company oversees about $30 billion in local debt. “It’s impressive how well they weathered the downturn. We’re not seeing major cracks on the horizon.”

Outliers include Detroit, which emerged from a record $18 billion bankruptcy this year, and Puerto Rico, whose electric utility is expected to restructure its debt, Farrington said. Most defaults are occurring in bonds issued for projects sensitive to the housing bust and recession, such as land deals and retirement homes, he said.

Hitting Bottom

The municipal market may be nearing a “baseline level of defaults” as issuers skip payments thanks to intrinsically flawed projects rather than the economy, said Matt Fabian, a managing director at Municipal Market Advisors.

The U.S. gross domestic product grew at a 5 percent annual rate from July through September, the biggest advance since the third quarter of 2003, according to revised figures from the Commerce Department released Dec. 23.

Banking analyst Meredith Whitney’s prediction in December 2010 of “hundreds of billions of dollars” of municipal failures created angst in the market that has dissipated, said Neil Klein, a senior managing director and principal at Carret Asset Management LLC in New York.

Breathing Out

“In 2013, we were still worried about what Meredith Whitney said. In 2014, it started to fall back to the wayside,” said Klein, who helps manage about $750 million of local securities. “Municipalities are standing on their own and trying to do the best they can, fiscally speaking.”

Detroit filed its bankruptcy in July 2013. Investors pulled a record $63 billion from muni mutual funds that year.

Since Detroit, no city, town, village or county has filed for protection, said James Spiotto, a bankruptcy specialist and managing director at Chicago’s Chapman Strategic Advisors LLC, which advises on financial restructuring.

This year, individuals have poured about $21 billion back into muni mutual funds, Lipper US Fund Flows data show. With the influx came an unprecedented rally, with munis posting gains each month for the first time since at least 1989, according to Bank of America Merrill Lynch data. The year’s 9.7 percent return is the most since 2011.

Choosing Wisely

Municipal issuers also took advantage of rates close to generational lows to refinance and improve their balance sheets, Klein said. They slowed borrowing for capital expenses except for "only the most important projects," Klein said. As a result, the U.S. municipal-bond market shrank by $30.3 billion during the third quarter, cutting debt to the least in five years, according to the Federal Reserve Board.

While the U.S. economy has improved, municipalities still must adjust costs to account for lower revenue, Janney Capital Markets said in a Dec. 16 report.

The analysts recommended that investors pick "high quality municipal issuers that understand the new financial reality and have made or are making budget adjustments."

Tax receipts collected by state and local governments as a percentage of gross domestic product won't return to the high reached in 2007 until 2058, projected the U.S. Government Accountability Office.

Localities "would need to make substantial policy changes to avoid fiscal imbalances," said the office's Dec. 17 report.

Pathetic Debt

Most issuers skipping debt payments for the first time this year weren't governments, but agencies and districts. They were "tiny, unrated, and unloved" credits, Fabian said.

About 82 percent of the defaulters carried no ratings at the time of sale, he said.

Summit Park District, which runs recreational facilities for a village near Chicago and receives funding through property taxes, fees and grants, defaulted on $2.1 million of unrated general-obligation debt certificates due Dec. 1.

It fell short of principal and interest payments because "due to construction and project delays, the grants were not received in full," the district said in a Dec. 11 posting on the Municipal Securities Rulemaking Board's website.

Ross Bruni, the district's executive director, said in an e-mail that additional debt was issued to pay the balance, about $541,000, according to the notice. A state payment will retire that, he said.

About 20,000 municipal credits carry grades by the ratings companies, and only about 40 are listed as defaulted in the MMA database, Fabian said.

"The data implies that as an investor, if you are only worried about default risk, you can buy anything rated," he said.

(An earlier version of this story didn't include that the GAO projection of tax receipts was as a percentage of gross domestic product.)

Bloomberg Muni Credit

By Romy Varghese Dec 31, 2014

To contact the reporter on this story: Romy Varghese in Philadelphia at rvarghese8@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Pete Young

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Charter Schools Find Smarter Way to Borrow.

An extended rally in municipal bonds is helping Gloria Bonilla-Santiago grow the Camden, N.J., charter-school network she founded in 1997.

Although charter schools are among the riskiest municipal borrowers, and the city of Camden struggles with poverty and crime, Dr. Bonilla-Santiago was able to raise $10 million in a September bond sale. The money will enable her LEAP Academy University Charter School to expand its campus into the Wilson Building, a 12-story downtown landmark, adding a new cafeteria, fitness center, science labs and a health clinic.

“It’s a big responsibility, but there was an opportunity in the market to be able to sell bonds at a good rate,” Dr. Bonilla-Santiago said.

The school is paying a rate of 6.3% on longer-term debt. Comparable borrowing costs in 2009 were about 7.6%, according to the Local Initiatives Support Corp., which advises charter schools on finances.

Bonds issued by U.S. cities and states have rallied this year, posting their longest string of monthly gains in more than two decades while outpacing gains in corporate and U.S. Treasury debt. Municipal bonds have returned 8.71% through Dec. 26, according to Barclays PLC. Total return includes price increases and interest payments.

The rally in the $3.6 trillion market is pushing down borrowing costs for scores of municipalities, including issuers of lower-rated debt. Puerto Rico, which is rated below investment grade due to its heavy debt burden, sold $3.5 billion of bonds in March. In October, the operator of a struggling toll road in California issued $1.4 billion.

Investors’ rising appetite for muni bonds is a boost for charters, which are typically nonprofit, publicly funded and run independently from local school districts. Charter schools, which educate about 2.6 million students in the U.S., issued about $1.64 billion of debt this year through Oct. 5, more than the record volumes from all of last year and the year before, according to a report by Charter School Advisors and the LISC.

The ramp-up in charter schools’ debt sales comes as mainstay municipal issuers cut back amid postrecession belt-tightening by public officials. They are attracting yield-hungry investors who have pushed into riskier debt in search of better returns amid low interest rates.

Investors consider charter-school bonds to be riskier than conventional school-district debt because charter schools’ primary funding is per-student payments from the state rather than local property taxes. That makes it hard for charters to finance buildings or renovations without tapping outside sources like donors or the bond market.

Charter-school bonds are the seventh-most likely sector to miss debt payments, out of 33, according to data from Municipal Market Advisors, a research firm based in Concord, Mass. About 1.37% of outstanding charter bonds, including both rated and unrated debt, have defaulted. That compares with an average of .03% for all rated bonds over the past five years, according to a report by

Moody’s Investors Service. Charter schools have issued more than $10 billion in bonds since 1998.

John Miller, co-head of fixed income at Nuveen Asset Management LLC, said he has been “pretty aggressive” about adding charter-school bonds, and now holds about $1.4 billion, the majority of which are in the Nuveen High Yield Municipal Bond Fund, which has returned more than 18% this year. Safely investing in the sector requires analysis and legwork, even visiting the schools, he said. That means the market doesn’t necessarily price the bonds efficiently, creating an opportunity to find bargains.

“I’ve heard people say ‘I can’t get my arms around the idiosyncratic risk here,’” Mr. Miller said. “But there are returns to be had for actually doing that.”

Other factors are driving charter-school bond sales.

Life School, near Dallas, was stuck paying relatively high rates until this year, when Texas agreed to guarantee its bonds—and those of other investment-grade charters—through the $37.7 billion Permanent School Fund, the nation’s largest education endowment. Created with a $2 million grant in 1854, the fund backs about $55.2 billion of Texas school debt with money from investments such as state land, providing districts with the equivalent of a triple-A rating and access to lower-cost borrowing.

Scott Fuller, Life School’s chief of staff, said that guarantee saved about $13 million on building a new high school in Waxahachie.

“To put $13 million back into the classroom for us—it’s a game changer,” he said.

Six Texas charter-school operators have now accessed the guarantee to back about $273 million in debt, according to the Texas Charter Schools Association.

“Finding and providing facilities is always challenge No. 1 throughout the state, so being included in the Permanent School Fund and having the full faith and credit of the state of Texas and the triple-A rating to back those bonds has been a huge boon to charter schools,” said David Dunn, executive director of the group.

Meanwhile, the growth of charters poses an increasing risk for public school systems in cities such as Philadelphia, Cleveland and St. Louis that compete with them for students and state money, according to a report by Moody’s.

Students’ flight to charters has helped reduce the Philadelphia district’s underlying credit rating to junk, which is defined as below BBB- or the equivalent, though investors are protected by a state program that can withhold district funds for bondholders, Moody’s said.

In Camden, workers are renovating the Wilson Building, which is scheduled to open this summer.

The school hasn’t always had an easy path financially, according to Dr. Bonilla-Santiago, who is also a professor at Rutgers University. LEAP lost its tax-exempt status in 2010 after the school got bad advice on its paperwork-filing requirements, she said. The Internal Revenue Service restored the exemption after an appeal. The recent bond sale was rated BB- by Standard & Poor’s Ratings Services.

The process of accessing the bond market, such as receiving a credit rating, helped the school improve its financial management, Dr. Bonilla-Santiago said. And as LEAP has grown, its buildings and students have helped breathe new life in the neighborhood around Camden’s Cooper Street, she said.

"The school has to be run like a business," she said. "It has to be accountable. You have to have yearly audits. You have to build credit and you have to have the right kind of reputation. And that takes time."

THE WALL STREET JOURNAL

By AARON KURILOFF

Dec. 28, 2014 9:40 p.m. ET

Write to Aaron Kuriloff at AARON.KURILOFF@wsj.com

- MSRB Reminds Dealers of the January 1, 2015 Effective Date of Amendments to MSRB Rule G-3 on Firm Element Continuing Education.
- A New Prosecutorial Frontier – SEC Seeks Bans on Municipal Officials: Burr & Forman.
- Environmental Risks Becoming Part of Bond Assessments.
- Public Finance Predictions for 2015.
- Expect More Tax Guidance in 2015.
- IRS Chief Counsel: BABs Defeasance Causes Reissuance.
- Congress Extends QZABs, New Markets Tax Credits; Continuing Effect of Sequestration: McGuire Woods
- Pension Time Bomb Ticks as Disclosure Rules Toughen: Muni Credit.
- Municipal Bond Interest Paid By a Bond Insurer After an Issuer's Bankruptcy Discharge Can Remain Tax-Exempt: Mintz Levin.
- *Town of Black Mountain v. Lexon Ins. Co.* – Appeals court holds that county was entitled to assign subdivision performance bonds to town in connection with town's annexation of the land covered by the bonds.
- *City of New Orleans v. AMBAC Assurance Corp.* – In suit brought by city against bond underwriters in connection with failed interest rate swap that resulted in refinancing of variable rate muni bonds, appeals court holds that city was prohibited from introducing new alleged misrepresentations at trial that should have been pled in the original complaint.
- And finally, after scoring a totally killer deal from a gypsy on some magic beans, Daniel Meints finds some loose change in his ashtray which he uses to purchase an occult totem (aka a No Trespassing sign) that, shockingly, fails to ward off the evil spirits (aka city code enforcement officers) that had been bedeviling his property. Still waiting on the beans. Be sprouting any day now.

MUNICIPAL CHARTER - CONNECTICUT

DeMayo v. Quinn

Supreme Court of Connecticut - December 23, 2014 - A.3d - 315 Conn. 37

Registered voters petitioned for a writ of quo warranto based on their allegation that attorney's appointment to the office of city corporation counsel violated city charter. The Superior Court granted the writ, finding attorney failed to demonstrate he was entitled to hold the office of corporation counsel, and declared the office vacant. Attorney appealed.

The Supreme Court of Connecticut held that attorney who lacked the recommendation of the current mayor was not eligible to hold the appointed office of corporation counsel.

Attorney who lacked the recommendation of the current mayor was not eligible to hold the appointed office of city corporation counsel; the city charter required the recommendation of the mayor for appointment of the city's corporation counsel, and as a specified mode of appointment, strict compliance was required.

EMPLOYMENT - CONNECTICUT

Town of Stratford v. American Federation of State, County and Municipal Employees, Council 15, Local 407

Supreme Court of Connecticut - December 23, 2014 - A.3d - 315 Conn. 49

Union filed a grievance on police officer's behalf, alleging that the town violated the parties' collective bargaining agreement by terminating officer without just cause. Arbitration panel sustained the grievance, and town filed an application to vacate the arbitration award. The Superior Court denied the town's application to vacate arbitration award, and town sought review. The Appellate Court reversed and remanded. Union appealed.

The Supreme Court of Connecticut held that officer's dishonesty with independent medical examiner regarding his epilepsy was not so egregious as to require nothing less than officer's termination.

BONDS - LOUISIANA

City of New Orleans v. AMBAC Assurance Corp.

United States District Court, E.D. Louisiana - December 12, 2014 - Slip Copy - 2014 WL 7140056

In 2000, the City of New Orleans issued $170 million of variable rate municipal bonds the principal amount of $170,660,000 to fund the City's firefighter pension fund.

Defendants (PaineWebber, Inc., later UBS, as successor-in-interest) served as underwriter for the bonds. To manage the variable interest rate risk associated with the bonds, the City entered into an interest rate swap agreement (the "Swap") with Defendants, whereby the City agreed to pay Defendants a fixed rate of interest, and Defendants paid the weekly variable rate. Unbeknownst to the City, Defendants then entered into a reciprocal swap ("Reciprocal Swap") with an AMBAC affiliate, AMBAC Financial Services, LLC ("AFS"), whereby Defendants agreed to pay AFS a fixed rate, and AFS assumed the risk of the variable rate. In the financial crisis of 2008, the bonds became unmarketable causing AMBAC to exercise its rights under the Reciprocal Swap, thereby triggering a provision of the Swap between Defendants and the City. As a result, the City was forced to refinance the bonds and terminate the Swap.

The City brought suit against AMBAC, AFS, and Defendants. All claims against AMBAC and AFS were subsequently dismissed. In October of 2011, the parties administratively closed the case pending potential settlement negotiations. After such talks proved ineffective, the City moved to reopen the case in November of 2013, and the Court granted the motion. The Court issued an updated scheduling order indicating that the time to amend pleadings, cross-claims, and counter-claims had passed.

During the additional discovery period, the City served on Defendants answers to interrogatories which included the following new allegations of misrepresentations: (1) UBS provided false information to the City, which allowed UBS to price the Swap at a considerably higher rate; (2) UBS provided false information regarding the savings that the synthetic fixed rate bonds would achieve; (3) UBS assured the City that its 10.7% rate of return was reasonable; and (4) UBS told the City that it was not entering into a novel deal, but the same kind of deal other municipalities had previously conducted.

Defendants moved for a Rule 16 Conference to define the scope of the Second Amended Complaint as it pertained to the “new allegations” of misrepresentation. During that conference, this Court directed the parties to file motions in limine to address the issues raised in their Rule 16 Motion. Specifically, the Court directed the City to indicate why these “new allegations” were being raised at such a late date when evidence of these assertions was available to the parties back in 2008.

The Court granted Defendants’ motion requesting that the Court to limit the City’s claims to the existing causes of action left in the original complaint (fraud in the inducement, negligent misrepresentation, and breach of the Swap agreement) and to prohibit introduction of evidence relating to these four alleged misrepresentation at trial.

The Court rejected City’s argument that it had no intention of raising the misrepresentations as substantive claims, instead, that the City intended to rely on the misrepresentations as evidence “that goes toward the fraud and breach of contract claims already pled.”

“Even if the Court were inclined to disregard the reasons stated above, the Court finds that the misrepresentations are not relevant of materiality to the City’s existing fraud and breach of contract claims under Rule 401 of the Federal Rules of Evidence, nor are they probative of intent under Rules 403 and 404 such that the Court should allow evidence of these assertions at trial. In particular, the misrepresentations are distinct acts that do no pertain to omissions regarding the structure and risks associated with the structure of the transaction or any alleged conflict of interest, and, thus, they are not relevant to proving any of the elements necessary to the City’s existing claims.”

FORECLOSURE - MASSACHUSETTS

Easthampton Sav. Bank v. City of Springfield

Supreme Judicial Court of Massachusetts, Suffolk - December 19, 2014 - N.E.3d - 2014 WL 7192460

Several banks brought action for declaratory and injunctive relief against city, challenging ordinances that required property “owners,” which was defined to include mortgagees that had initiated foreclosure proceedings, to maintain property during foreclosure and post a $10,000 cash bond per foreclosure to the city, and that required mortgagees to attempt a settlement before foreclosing. City removed case to federal court. The District Court granted summary judgment for city. Banks appealed. The Court of Appeals certified question.

The Supreme Judicial Court of Massachusetts held that:

- Portion of foreclosure ordinance establishing a program requiring mandatory mediation conflicted

with state foreclosure statute;
- Portion of ordinance requiring owners to register with the city did not conflict with foreclosure statute;
- Portion of ordinance requiring owners to register with the city conflicted with Oil and Hazardous Material Release Prevention Act;
- Portion of ordinance requiring owner to post a bond to ensure compliance with the ordinance, conflicted with state Sanitary Code; and
- Administrative fee was a lawful fee, rather than a tax.

PUBLIC RECORDS - MICHIGAN

Amberg v. City of Dearborn

Supreme Court of Michigan - December 16, 2014 - N.W.2d - 2014 WL 7151746

The Supreme Court of Michigan took of the issue of whether copies of video surveillance recordings created by third parties but received by defendants during the course of pending criminal misdemeanor proceedings constitute "public records" within the meaning of the Freedom of Information Act (FOIA), MCL 15.231 et seq., thus requiring their disclosure by defendants.

The court held that, contrary to the lower courts' opinions, the video surveillance recordings are public records within the meaning of FOIA.

MUNICIPAL ORDINANCE - NEBRASKA

City of Beatrice v. Meints

Supreme Court of Nebraska - December 5, 2014 - N.W.2d - 289 Neb. 558

Defendant was convicted in the Gage County Court of violating city ordinance prohibiting the prolonged parking of unregistered motor vehicles on private property. Defendant petitioned for further review.

The Supreme Court of Nebraska held that:

- Probable cause, standing alone, is not an exception to the search warrant requirement of the Fourth Amendment as applied to real property, but
- Police officer did not conduct a "search" of defendant's property, since property was an "open field."

PERFORMANCE BONDS - NORTH CAROLINA

Town of Black Mountain v. Lexon Ins. Co.

Court of Appeals of North Carolina - December 16, 2014 - S.E.2d - 2014 WL 7124838

The Town of Black Mountain, North Carolina and the County of Buncombe, North Carolina filed suit against Lexon Insurance Company and Bond Safeguard Insurance Company seeking to enforce a series of subdivision performance bonds. The bonds were entered into in connection with a subdivision to be constructed on County property and thus the County was the obligee. At around the same time, the Town annexed the property covered by the bonds from the County, which assigned the bonds to the Town. Defendants did not consent to the assignment.

Defendants first argued that neither the Town nor the County had standing to bring suit. Specifically, defendants contended that once the Town annexed the property covered by the bonds, the bonds were extinguished, leaving no rights for the County to assign. The court disagreed, finding nothing in the law or within the agreements themselves indicating that assignment of the bonds from the County to the Town was impermissible or without legal effect.

In addition, the court found that plaintiffs were engaged in a governmental function and were therefore exempt from the otherwise applicable statute of limitation.

SPECIAL ASSESSMENTS - MINNESOTA

DRB No. 24, LLC v. City of Minneapolis

United States Court of Appeals, Eighth Circuit - December 23, 2014 - F.3d - 2014 WL 7268743

Owner of vacant building brought putative class action in Minnesota state court against city, challenging city's special assessments of annual fees under registration program for vacant buildings. The District Court granted summary judgment to city. Owner appealed.

The Court of Appeals held that:

- City's notices of special assessments complied with requirement in city code of disclosing basis of costs;
- City code required notices of special assessment to disclose availability of deferments but not availability of waivers or suspensions; and
- Statutory deadline for appeal to state court applied to common-law claims challenging special assessments.

INVERSE CONDEMNATION - MISSOURI

Jacobson v. Metropolitan St. Louis Sewer Dist.

United States District Court, E.D. Missouri, Eastern Division - December 11, 2014 - Slip Copy - 2014 WL 7027881

An unrecorded storm water sewer was discovered on Plaintiff's property when a contractor hit and damaged it during the demolition of a house on neighboring property. When the Metropolitan St. Louis Sewer District (MSD) discovered the sewer, it disconnected the sewer and rerouted it away from the neighboring demolished property and directly through Plaintiffs' property.

Plaintiffs sued, alleging that MSD did not have an easement on Plaintiffs' property, and thus the existence of the sewer was a continuing trespass. Plaintiffs brought inverse condemnation, assault, slander, and negligence claims.

Upon review of Plaintiffs' petition, the Court finds that Plaintiffs have sufficiently stated a claim for inverse condemnation sounding in trespass.

LIABILITY - NEW YORK

Gammons v. City of New York

Court of Appeals of New York - December 18, 2014 - N.E.3d - 2014 N.Y. Slip Op. 08869

City police officer who was injured when she fell from a police flatbed truck while loading wooden police barriers onto it brought action against city and its police department, seeking to recover damages both under common law negligence theory and under statute creating cause of action for a police officer injured by another’s failure to comply with requirements of any statute, ordinance, rule, or order, predicated upon violation of Public Employee Safety and Health Act (PESHA), which set forth safety and health standards for public employees. The Supreme Court, Kings County, granted defendants’ motion for summary judgment as to officer’s common law negligence claim, but denied it as to statutory claim. Parties cross-appealed. The Supreme Court, Appellate Division affirmed. Defendants appealed.

The Court of Appeals held that:

- PESHA’s general duty clause was proper predicate for police officer’s statutory claim, and
- Defendants failed to establish their prima facie entitlement to judgment as a matter of law on the statutory claim.

ANNEXATION - OHIO

State ex rel. Cornell v. Greene Cty. Bd. Commrs.

Court of Appeals of Ohio, Second District, Greene County - December 19, 2014 - Slip Copy - 2014 -Ohio- 5584

A petition for mandamus was filed by landowner requesting that the court order the Greene County Board of County Commissioners to review and grant landowner’s petitions to annex property located in Beavercreek Township into the City of Beavercreek.

The Court of Appeals held that:

- Rather than exercise discretion, County Commissioners are required to approve annexation if a petition complies with the technical statutory requirements;
- Landowner’s filing of a second, corrected, annexation petition triggered the Commissioners’ clear legal duty to act on the petition within the statutory timeframe;
- The Commissioners had a clear legal duty to grant the petition, and landowner had a clear legal right to have it granted;
- As landowner was entitled to have the petition granted, and there was available no adequate remedy at law, the petition for writ of mandamus was granted.

HOSPITALS - OHIO

The CIT Group/Equipment Fin., Inc. v. Brown Cty.

Court of Appeals of Ohio, Twelfth District, Brown County - December 15, 2014 - Slip Copy - 2014 -Ohio- 5489

Two municipal lease agreements were entered into by CIT and Brown County General Hospital (the

Hospital). CIT is a company that leases medical equipment. The Hospital is a county hospital created by statute whereby a board of Hospital Trustees (Hospital Trustees) is appointed to govern the Hospital. The lease agreements were entered into by CIT and the Hospital in early 2008 regarding an MRI and related site improvements. Both leases were signed by the president and CEO of the Hospital, Michael C. Patterson, and authorized by the Hospital Trustees.

In 2007, the Hospital was facing financial troubles and to alleviate the budget crisis, the Hospital Trustees presented the Brown County Board of Commissioners (Board of Commissioners) with a request to issue $5 million in bonds. The Board of Commissioners approved the issuance of $5 million worth of revenue bonds. These revenue bonds were secured solely by the Hospital's revenues as opposed to the full faith and credit of the county.

On January 6, 2011, having defaulted on the leases and facing the insolvency, the Hospital was sold to Southwest Healthcare Services, LLC (Southwest).

On August 7, 2013, CIT filed suit against Southwest and Brown County, claiming that they were jointly and severally liable for default on the two leases. Motions for summary judgment were subsequently filed by CIT and Brown County. The trial court granted summary judgment in favor of CIT in regard to its claim against Southwest. Regarding CIT's claim against Brown County, the trial court granted summary judgment in favor of Brown County. The trial court found that as a matter of law, no principal/agent relationship existed between Brown County and the Hospital, either by statute or conduct. Further, the trial court found that the language in the previously-executed Forbearance and Assignment and Assumption Agreements was clear that CIT was to look to the Hospital exclusively for satisfaction of the leases. In turn, Southwest had assumed the Hospital's obligations. CIT appealed as to the grant of summary judgment in favor of Brown County.

The Court of Appeals affirmed, finding that Brown County was entitled to judgment as a matter of law because no agency relationship existed between Brown County and the Hospital Trustees. In addition, even if such a relationship did exist, the proper procedures were not satisfied in order to bind the county to the contracts.

MUNICIPAL ORDINANCE - OHIO

Walker v. Toledo

Supreme Court of Ohio - December 18, 2014 - N.E.3d - 2014 -Ohio- 5461

Motorist, who paid civil penalty after his vehicle was photographed by automated red light enforcement system during a red light violation, brought putative class action against city and traffic enforcement camera company, alleging that penalty collected was unlawful, and seeking return of such money taken under the doctrine of unjust enrichment. The Court of Common Pleas dismissed complaint for failure to state a claim upon which relief could be granted. Motorist appealed. The Court of Appeals reversed and remanded. City and company sought review.

The Supreme Court of Ohio held that:

- Municipalities act within their constitutional home-rule powers when they establish automated systems for imposing civil liability on traffic-law violators through an administrative enforcement system;
- Constitutional provision and statute do not endow municipal courts with exclusive authority over traffic-ordinance violations;

- Statute that sets the jurisdiction of municipal courts does not confer exclusive jurisdiction over traffic-ordinance violations on municipal courts; and
- Municipalities have home-rule authority to establish presuit civil administrative proceedings.

LIABILITY - OKLAHOMA

Perry v. City of Norman

Supreme Court of Oklahoma - December 16, 2014 - P.3d - 2014 OK 119

Arrestee brought action against city to recover for excessive force by police officers. The District Court dismissed the action. Arrestee appealed, and Supreme Court retained the case.

The Supreme Court of Oklahoma held that arrestee had no claim against city since cause of action was available under Oklahoma Governmental Tort Claims Act (OGTCA).

EMPLOYMENT - RHODE ISLAND

Fabrizio v. City of Providence

Supreme Court of Rhode Island - December 19, 2014 - A.3d - 2014 WL 7229270

Firefighters brought action against mayor, fire chief, and city alleging a variety of state and federal claims stemming from requirement that firefighters serve as part of crew of fire engine in parade to celebrate pride and diversity of lesbian, gay, bisexual, and transgender community. The Superior Court denied mayor's and chief's motion for summary judgment. Mayor and chief petitioned for writ of certiorari, which was granted.

The Supreme Court of Rhode Island held that requirement that firefighters participate in LGBT parade did not violate firefighters' right to freedom of religion, speech, or association.

EASEMENTS - CONNECTICUT

Town of Granby v. Feins

Appellate Court of Connecticut - December 23, 2014 - A.3d - 154 Conn.App. 395

Town brought action against landowner, seeking declaratory judgment that land contained public right-of-way granting public access to nearby cemetery and permanent injunction preventing landowner's obstruction of right-of-way. The Superior Court entered judgment for town and granted injunction. Landowner appealed.

The Appellate Court held that:

- Previous landowner manifested intent to dedicate right-of-way, and
- Evidence supported conclusion that general public accepted dedication by its use of right-of-way over period of many years.

PUBLIC RECORDS - CALIFORNIA

Ardon v. City of Los Angeles

Court of Appeal, Second District, Division 6, California - December 10, 2014 - Cal.Rptr.3d - 2014 WL 6968719

City resident filed putative class action lawsuit against city, alleging that city's telephone users tax was an illegal tax and seeking a refund of the tax. The Superior Court granted city's motion to strike resident's class action allegations, and resident appealed. The Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal, and reversed and remanded. City moved to compel resident to return privileged documents city turned over to his counsel pursuant to a Public Records Act (PRA) request and to disqualify his counsel. The Superior Court denied the motion. City appealed.

The Court of Appeal held that:

- City's inadvertent production of documents under PRA waived any privilege that might have once existed as to them, and
- Attorney's use of PRA to obtain documents for litigation did not violate Rules of Professional Ethics.

City's inadvertent production of three documents covered by the attorney-client privilege as part of its response to city resident's Public Records Act request waived any attorney-client or work product privilege that might have once existed as to those documents, even though the resident was engaged in litigation against the city, and even if the documents were produced by "low level" employees not explicitly authorized to waive the privilege.

Attorney's use of Public Records Act to request documents relating to the adoption of a citywide tax ordinance which was the subject of the lawsuit in which the attorney represented a resident suing the city did not violate the Rules of Professional Ethics, even though attorney made the records request by contacting a city official while the city was represented by counsel, since the records request was within attorney's statutory and constitutional rights to petition her government regarding a matter of public importance.

Discord Brews Over SEC Campaign-Finance Rule.

Critics Say 'Pay-to-Play' Regulation Needs to Be Broadened to Include Super PACs; Others Call for Scrapping It

A Securities and Exchange Commission rule designed to limit conflicts of interest in state contracting is becoming less effective amid the rise of super PACs and should be broadened, groups that track campaign finance say.

The SEC's so-called pay-to-play rule, which applies to state officials including governors, could become a prominent factor in the 2016 presidential election given that four or more Republican governors who would be in office during the campaign have said they may run or are thought to be considering a candidacy.

The rule effectively prohibits certain employees of financial-services companies that do—or might do—business with state agencies from contributing to the officials who oversee those agencies. The rule, adopted in 2010, was intended to prevent political contributions from influencing state contracting decisions.

Critics say the SEC rule’s effectiveness could be blunted in 2016 by the rise of super PACs, which can raise money without contribution caps but can’t coordinate with or give to candidates’ campaigns, as well as politically active nonprofit groups. In particular, they point to the increasing number of super PACs that form to support only a single candidate. Critics argue that a contribution to a group that spends money on behalf of a single candidate is akin to giving to the candidate.

Others say the SEC rule should be eliminated, not expanded, with some noting that it creates an advantage for members of Congress, who aren’t subject to the rule, over governors in campaign fundraising. Some states have rules that are even more restrictive than the SEC’s.

Earlier this year, a federal judge dismissed a lawsuit brought by the state Republican parties of New York and Tennessee challenging the SEC rule on the grounds that it violated free-speech protections.

The SEC declined to comment. Its rule already covers contributions to certain PACs that coordinate with or donate to candidates, but doesn’t specifically address super PACs.

“The ability to game these regulations with a super PAC shows that our campaign finance system is more loophole than law these days. The SEC should look into whether there’s anything the agency can do to update these rules,’’ said Adam Smith, a spokesman for Every Voice, a group that aims to reduce the influence of money in politics.

Craig Holman, a lobbyist for the nonpartisan nonprofit group Public Citizen, which advocates for tighter campaign spending limits, said he might appeal to the SEC to tighten the rules on contributions to single-candidate super PACs from employees covered by the pay-to-play rule.

Several compliance lawyers said their financial-services-industry clients are often reluctant to allow employees to make political contributions even to super PACs, to avoid any possible problems.

Joseph Birkenstock, a campaign-finance lawyer with Sandler Reiff, said he asks clients to give him a full explanation of what strings are attached to a contribution before they give to super PACs, including whether their contribution will allow them new access to a candidate or official.

In 2012, GOP Gov. Rick Perry of Texas was hardest-hit by pay-to-play rules. Officials for his presidential campaign said the restrictions unduly burdened their fundraising but not that of other candidates in the race.

“Had those rules not been in effect for him, we likely would have raised more funds and therefore might have been able to stay in the race longer,” said Ray Sullivan, communications director for the Perry campaign in 2012.

Despite limits on his fundraising on Wall Street, Mr. Perry received a surge of outside support through a cluster of seven super PACs, according to the nonpartisan Center for Responsive Politics. Those super PACs, which only supported Mr. Perry, spent at least $4.3 million on his behalf—about a quarter of what the governor raised for his campaign until he dropped out in early 2012.

In the 2014 elections, 42% of groups that spent more than $100,000 and were allowed to raise money without contribution caps supported a single candidate, according to a report by Public Citizen.

GOP governors who may join the White House race in 2016 include Chris Christie of New Jersey, Bobby Jindal of Louisiana, Scott Walker of Wisconsin and John Kasich of Ohio, among others.

The cost of breaking pay-to-play rules is high: In 2012, Goldman Sachs Group Inc. paid a $12 million settlement after the SEC found an employee had violated the rules by working on the political campaign of a former Massachusetts treasurer while winning bond underwriting business in the state. The firm was also temporarily restricted from underwriting bonds in the state. Goldman didn't admit or deny the SEC's findings.

THE WALL STREET JOURNAL

By REBECCA BALLHAUS

Dec. 28, 2014 7:52 p.m. ET

Expect More Tax Guidance in 2015.

WASHINGTON — The Treasury Department and Internal Revenue Service next year will be working on further guidance on issue price, regulations finalizing other proposed arbitrage rules, and additional rulemaking projects.

The agencies came out with their 2014-2015 priority guidance plan in August. "We hope to work very actively and hard to accomplish as much as we possibly can on that guidance plan," Treasury associate tax legislative counsel John Cross told state and local finance officials earlier this month.

Cross, who rejoined Treasury in November after working at the Securities and Exchange Commission, discussed the items on the plan at the winter meeting of the Government Finance Officers Association's committee on governmental debt management. Market participants also spoke to The Bond Buyer about what guidance they would like or expect to see in 2015.

Treasury and the IRS plan to release guidance on the determination of issue price separately from rulemaking on other arbitrage-related issues so that one piece focuses "more quickly and discretely on [issue price]," Cross said.

Treasury and the IRS released proposed arbitrage regulations that addressed several topics, including the definition of issue price in September 2013. Market participants have warned the proposed issue price rules are unworkable. Cross said the IRS may propose new rules on issue price.

Leslie Norwood, managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association, — said she is hopeful there will be movement on issue price regulations with Cross back at Treasury. SIFMA was among the groups that sent the regulators comments criticizing the rules proposed in 2013.

Treasury and the IRS also hope to work on guidance that encompasses the non-issue price portions of the arbitrage regulations proposed in 2013 as well as a set of arbitrage rules proposed in 2007. The hope is to "wrap those all up with a bow and finalize those in a somewhat more substantial project," Cross said.

Jack Browning, a senior partner at Squire Patton Boggs, said that some of the non-issue price proposed arbitrage rules are "noncontroversial," so it would be helpful if they were finalized.

The National Association of Bond Lawyers has recently released comments on part of the non-issue price part of the 2013 proposed arbitrage rules. NABL president Tony Martini, a partner at Edwards

Wildman Palmer, said these comments will hopefully be helpful to Treasury and the IRS.

Also on the guidance plan are final allocation and accounting rules, which relate to facilities that are used for both governmental and private use, Cross said. Allocation and accounting rules were proposed in 2006.

Perry Israel, a lawyer with his own firm in Sacramento, Calif., said he would like to see the final regulations take into account comments on the proposed sent to the regulators, such as that when an issuer contributes both tax-exempt bond proceeds and other funds to a project, they should be able to allocate the private business use first to the other funds, and then to the bond proceeds without having to make a special election to do so. Under the proposed rules, an issuer can only allocate private business use this way if it makes a special election, Israel said.

The IRS is also working on guidance on the definition of a political subdivision, according to its priority list. Cross told state and local finance officers that the IRS chief counsel's office has a "strong interest" in looking into this topic.

In 2013, the IRS issued a technical advice memorandum that concluded the Village Center Community Development District in Florida was not a political subdivision that can issue tax-exempt bonds. NABL and other members of the municipal bond community have expressed concern about the ruling, Cross said.

Matthias Edrich, a shareholder at Greenberg Traurig and chair of the National Association of Bond Lawyers' tax law committee, said, "The tax committee looks forward to getting clarifying guidance from the Treasury Department regarding political subdivisions."

Dave Caprera, an attorney at Kutak Rock in Denver, said he thinks the political subdivision issue is the most important topic on the guidance plan because "it impacts the most transactions." The issue affects outstanding bonds issued by special districts as well as similar deals that haven't been done because bond lawyers are unable to give an opinion.

Israel, who represents the Village Center CDD in the dispute with the IRS, said it could take a while for Treasury and the IRS to develop political subdivision rules. He pointed out that there hasn't been activity on the audit of the district's bonds for many months.

The Treasury and the IRS also are working on a notice to provide a process for allocating unused volume cap of new clean renewable energy bonds. There was a $2.4 billion authorization of the bonds in 2009, and there is about $1.3 billion of unused volume cap, Cross said.

Finalizing proposed rules on public approval requirements for private-activity bonds is also on the list. Israel said he is "hopeful" that these final rules will be released this year. NABL is looking to see if there's something the group can do to speed up the process of finalizing these regulations, since there is "broad consensus" that they have many positive elements, Martini said.

In October, the IRS released interim guidance on accountable care organizations and management contracts to prevent them from causing private-activity bond problems. The notice invited the public to submit comments on the guidance to the agencies by Jan. 22.

Edrich said NABL plans to prepare three comment documents relating to the notice and the management contract issue. They will address the safe harbor in the notice for when ACOs don't result in private business use, the new safe harbor in the guidance for when management contracts don't result in private business use, and other management contract issues.

In addition to the notice on ACOs and management contracts, Treasury and the IRS also released final regulations on arbitrage rebate overpayments and guidance on temporary relief after a disaster in 2014. Martini said that the regulators are making "good, steady progress" on completing items on the guidance list.

Tax controversy lawyer Brad Waterman said he would like to see guidance about procedural questions related to Build America Bonds, such as those relating to the statute of limitations and litigation procedures that have never been addressed.

IRS Enforcement

Rebecca Harrigal, the director of the IRS tax-exempt bond office, said at the GFOA committee meeting that her office in fiscal 2015 will continue to evaluate its programs for "risks, inefficiencies and ineffectiveness." TEB will also target its resources toward the areas where there is the greatest risk of noncompliance with tax rules, she said.

TEB is looking at certain types of bonds early on in the process of using its revised market segment audit program. The bonds include: certain types of advance refunding bonds, bonds for which Form 8038-T's are filed, governmental bonds for environmental and transportation projects, Build America Bonds, private-activity bonds for non-hospital 501(c)(3) organizations, and PABs for solid waste and single-family and multifamily housing, she said.

Under the program, TEB has come up with hypotheses about where there might be the greatest risk of noncompliance that can be identified from data in information returns or readily available public sources. In order for the IRS to test its hypotheses, issuers that are frequently in the market in selected segments may see multiple audits, Harrigal said.

After the IRS has tested its hypotheses, it will look to see if the predictions were proven. If the hypothesis was validated, the IRS may: conduct more audits in that area; set up a special voluntary closing agreement program; or provide more education. The end goal is for market segments where there is a higher level of noncompliance will see a reduction in that level.

Israel said he would like to see the IRS continue to close market segment audits as quickly as reasonably possible.

In fiscal 2014, which ended Oct. 30, TEB spent a lot of time reworking the closing agreement process, for settlements resulting from audits and from the VCAPs. The office created a closing agreement team that looks at the consistency and enforceability of settlements. TEB also put into place "template closing agreements," so that the closing agreement process is more standardized and structured, Harrigal said.

"As you'd expect, with any new thing, there is a learning curve," Harrigal said. But toward the end of fiscal 2014, closing agreements, especially those that had been stuck in the VCAP process for a while, started to clear out faster.

TEB closed about 51 VCAP settlements in fiscal 2014, and from Oct. 1 through the beginning of December, it has closed about 23. "You can see there's a significant uptick in the amount of closing agreements we're actually processing and getting out," she said.

There were 25 closing agreements that stemmed from audits in fiscal 2014, a five-year high, Harrigal said.

TEB plans to continue to place an emphasis on completing settlements quickly. The office is also looking into further standardizing the closing agreement process. For example, TEB will to see if specific VCAP programs could have “fill-in-the-blank” closing agreements, Harrigal said.

TEB staff is monitoring trends in the market, and if they spot an issue, they will reach out to industry groups to figure out if the problem is big. If it is, TEB will try to figure out how to address it, whether through education or a VCAP initiative. Harrigal said she is also examining whether TEB can use industry director directives, a vehicle that other IRS offices use, to address messy issues.

The office is reworking the Internal Revenue Manual, which provides instructions to TEB staff, to make it clear what the office’s process and expectations are, Harrigal said.

Johnny Hutchinson, a senior associate at Squire Patton Boggs, said that people are “eagerly awaiting” the revisions to the IRM.

NABL’s tax committee is working on suggestions for additions to the IRM relating to exams and the use of technical advice requests for tax-advantaged bonds such as BABs. The committee is also working on providing comments about the IRM that pertain to VCAPs, Martini said.

TEB hopes to offer three more webcasts in 2015, provided that the office has the budget to do so, Harrigal said. The first, during which Harrigal will speak, will likely take place in January, she said. The IRS has not yet disclosed the topics.

The office also expects to release taxpayer publications on governmental bonds, 501(c)(3) bonds and private-activity bonds soon, Harrigal said she wants to do more of these publications. Additionally, TEB is working on customer satisfaction surveys that will be sent to bond counsel and issuers at the end of VCAPs and audits.

THE BOND BUYER

BY NAOMI JAGODA

DEC 26, 2014 9:07am ET

Market Close: 2014 - What's Not To Like?

A VERY GOOD YEAR

For many municipal market participations, this year turned out to be a good year in the end, although that’s not the way it looked in January.

“There was a lot to like about 2014,” says James Colby, senior municipal strategist and portfolio manager at Van Eck Global, summing up the way he views the year. “It was surprising in terms of the returns we have seen in the muni space.”

He said that at beginning of the year the municipal community – the sales people, traders and portfolio managers — didn’t expect to see anything more in the way of returns than the average coupon.

“What the Federal Reserve would do tempered our expectations – and then that didn’t happen.”

He says the weakened supply landscape was overtaken by basic demand. “All that reinvestment money found its way back into the asset class."

And he cites March as the turning point for the muni market.

"It was the inflection point. March was a strong signal for a move forward. The big Puerto Rico bond issue came to market then – and the deal was effectively placed. And those Puerto Rico bonds then traded up afterwards in a meaningful way."

Puerto Rico issued $3.5 billion of general obligation bonds on March 11. The junk-rated bonds were priced with an 8% coupon to yield 8.727% in 2035 and saw strong demand from investors.

Other things broke right for munis amid all the uncertainty about the Fed's intentions, he said.

"On the heels of a terrible 2013, when $60 billion in assets left the muni space in all categories and sectors. Even with 8% returns in 2014 we didn't recover all of those assets that left in 2013. This suggests that the rest may come back in 2015 if all goes well."

He sees no change in the supply/demand picture for 2015. "The same story is in place."

"The thing that could work against munis is the economy – the GDP," he asserts. "If the economy really is as strong as 5%, then expect equities and corporates to surge and if Treasury yields rise, then munis would underperform."

Oil could be a market factor in 2015. If crude prices stay in the $50-a-barrel range "more people will drive and they will feel better about things and that could cause a pickup in consumption and economic performance."

That has both good and bad consequences for munis.

"It's a two-edged sword – it's good news for some issuers like toll roads and airlines and industrial, but if rates rise sooner rather than later it would likely put a damper on overall muni performance," he says.

As for the rest of 2015, the scenario is still unclear.

"It's like a two-act play with an uncertain ending," Colby says. "My guess is that investors will take a cautious approach as to when and where they will place their bets in the muni space. But credit quality is a plus and it will remain strong."

A CHRISTMAS PRESENT FOR A.C.

Elsewhere, New Jersey is giving Atlantic City a $40 million short-term loan so the city won't have to sell notes in the municipal market, according to a published report.

The city had originally planned a $140 million bond sale for November, then scaled it back to a smaller note sale, which was delayed because of concerns about the city's finances in the wake of the casino closures.

The city must repay the 0.75% interest loan by March 31, according to an agreement signed by the city and the state, Reuters reported.

PRIMARY MARKET

No bond issues are scheduled for negotiated or competitive sale until after the start of the new year.

Looking ahead to January, Miami-Dade County, Fla., will put out for bid on Jan. 6 three separate competitive sales of general obligation bonds totaling about $372 million. Proceeds from the sales will be used for parks, public health and its “Building Better Communities” program.

SECONDARY MARKET

High-grade municipal bond prices were lower on Wednesday. The yield on the benchmark 10-year general obligation scale rose one basis point to 2.10% from to 2.09% on Tuesday, while the yield on 30-year GOs was up one basis point to 2.95% from 2.94% on Tuesday, according to the final read of Municipal Market Data’s triple-A scale.

Treasury prices were lower, with the two-year note yield rising to 0.74% on Wednesday from 0.73% on Tuesday. The 10-year yield increased to 2.27% from 2.25% while the 30-year rose to 2.85%, from 2.83% on Tuesday.

The 10-year muni-to-Treasury ratio was calculated at 92.5% on Tuesday versus 92.5% on Tuesday; the 30-year muni to Treasury ratio was at 104.2%, compared with 103.1% on Tuesday.

“Heavier than anticipated year-end new issue volume contributed to elevated municipal to Treasury ratios in recent weeks,” Alan Schankel, managing director at Janney Capital Markets, wrote in a research report. “A strong burst of new issuance in early December may be responsible for the higher municipal to Treasury ratios we’ve experienced in recent weeks.”

But the over the longer term, Janney sees ratios as heading down.

THE BOND BUYER

BY CHIP BARNETT

DEC 24, 2014 2:12pm ET

Credit Raters Said to Bend Own Rules in Annual SEC Report.

Debt raters failed to follow their own methodologies, let senior credit officers view market-share data and allowed a trade group to affect criteria changes, according to a U.S. Securities and Exchange Commission report.

The SEC’s Office of Credit Ratings didn’t name specific companies in its fourth annual examination released today, which looked at practices in 2013. The report refers to the raters as either larger firms, such as McGraw Hill Financial Inc., Standard & Poor’s, Moody’s Corp., Moody’s Investors Service and Fitch Ratings, or smaller ones, including DBRS Inc. The regulator also didn’t identify firms in prior reports.

One large company and four smaller firms didn’t follow their own methodologies in determining ratings, the SEC said in its report on Nationally Recognized Statistical Rating Organizations, or NRSROs.

After reviewing e-mails of one of the larger raters, the regulator determined that business and market-share conditions influenced the substance of its criteria. Employees on the business side of this rater worked in a concerted effort to change the criteria to appease an industry trade group, the

SEC said.

At one of the larger companies, the chief credit officer reviewed nonpublic information about its revenue, financial performance and market share even though its policies prohibit such employees from accessing this information.

“We continue to make significant investments to enhance our training, quality, criteria, compliance and risk management functions,” John Piecuch, spokesman for Standard & Poor’s, said in an e-mailed response to questions.

The SEC began filing its annual examination reports after Congress passed the Dodd-Frank financial reform law in 2010, instructing regulators to stop relying on ratings and increase oversight of the companies that issue them. The Financial Crisis Inquiry Commission blamed the firms for awarding top credit grades to risky mortgage bonds, helping ignite the worst recession since the Great Depression.

Bloomberg

By Matt Robinson December 24, 2014

To contact the reporter on this story: Matt Robinson in New York at mrobinson55@bloomberg.net

To contact the editors responsible for this story: Shannon D. Harrington at sharrington6@bloomberg.net Faris Khan, Mitchell Martin

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MSRB Reminds Dealers of the January 1, 2015 Effective Date of Amendments to MSRB Rule G-3 on Firm Element Continuing Education.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal securities dealers (dealers) that amendments to MSRB Rule G-3 regarding Firm Element Continuing Education become effective on January 1, 2015. Each municipal securities dealer must comply with the new requirements by December 31, 2015 and each year thereafter. The rule amendments require certain persons registered with dealers to participate in annual firm training on municipal securities matters. The new requirements are designed to prompt firms to deliver municipal securities training to those registered persons who are regularly engaged in or supervise municipal securities activities.

Read the approval notice.

Listen to a recording of a webinar about the rule changes.

IRS Chief Counsel: BABs Defeasance Causes Reissuance.

The IRS Chief Counsel’s office has issued an Advice Memorandum to the Office of Tax Exempt Bonds that concludes that the legal defeasance of taxable direct pay Build America Bonds resulted in an exchange of the BABs for modified instruments that differed materially from the original issue of BABs and therefore caused the defeased bonds to be reissued.

The Advice Memorandum is available here.

U.S. Stellar Municipal Bond Returns Set to Dim in 2015.

(Reuters) – U.S. municipal bonds' stellar 9 percent performance so far this year may not continue in 2015 as interest rates are set to rise and dampen returns, analysts and fund managers said.

Munis bounced back from a negative return in 2013, when investors fled the asset class partly on concerns about high-risk situations in Detroit and Puerto Rico. This year, high-yield funds and long-duration munis clocked among the highest returns.

For 2015, investors are anticipating higher interest rates, which could bring the rally to a halt. Bond prices typically move inversely to interest rates, and the U.S. Federal Reserve has signaled it will raise rates in 2015.

"An unanticipated jump in interest rates has the potential to reintroduce households, who are the biggest holders of municipals, to interest-rate risk," said Chris Mauro, head of U.S. municipals strategy at RBC Capital Markets. "This could cause a negative, herd response on the part of these investors, temporarily dislocating the municipal market."

The S&P Municipal Bond Index returned 9.25 percent as of Dec. 17. That beat both its Treasury Bond Index, which has returns of 3.83 percent, and its investment-grade corporate bond index, with returns of 7.28 percent. This year's returns for the S&P Muni index are on track to be the highest since 2011.

"We've had a very good year in the muni market," said Jeffrey Lipton, Managing Director, Municipal Research, at Oppenheimer & Co, pointing to positive flows into intermediate, long-term and high yield funds.

Interest rates on long-term bonds this year have taken the biggest plunge in a decade. According to Municipal Market Data, a unit of Thomson Reuters, the yield on top-rated debt maturing in 20 years and beyond has fallen the most since 2004 on its benchmark scale, meaning the prices spiked during that time.

That's unlikely to be repeated in 2015.

"We're expecting the on-paper returns will end the year (2015) looking somewhat boring but the path to get there will be anything but boring," said Morgan Stanley analyst Michael Zezas. "There is plenty of risk in the market that has the potential to create a fair amount of volatility along the way."

Municipal bond performance could remain positive at the beginning of the year, but overall in 2015 the range could be somewhere between a negative return of 2 percent to a positive return of 5 percent for 2015, said Richard Ciccarone, head of Iowa-based Merritt Research Services.

Constricting supply pushed up returns this year. The amount of outstanding debt, $3.63 trillion, is the smallest in five years.

Issuance so far this year through Wednesday is $312 billion, according to Thomson Reuters data, level with 2013's figure for the year as a whole. Many expect next year's supply to be higher, boosted by bond ballot measures in November's elections and continued demand to improve creaking infrastructure.

"We've gone through a period of time when America has been holding back," said Ciccarone.

"Physical structures can only take that for so long."

According to a survey of banks released earlier this month by the Securities Industry and Financial Markets Association, sales of all municipal bonds will likely rise to $357.5 billion in 2015 from $348.1 billion estimated this year.

Inflows into bond funds are also expected to continue. With two weeks remaining in the year, municipal bond funds have received total net inflows of $23.3 billion, compared to record net outflows of $64.2 billion in 2013, according to Lipper.

Thu Dec 18, 2014 1:34pm EST

(Reporting by Megan Davies, Lisa Lambert, Hilary Russ, Robin Respaut, Karen Pierog, Ed Krudy; writing by Lisa Lambert and Megan Davies; Editing by Cynthia Osterman)

An Overview of S&P's Updated Methodology For Rating U.S. Not-For-Profit Acute-Care Stand-Alone Hospitals.

Standard & Poor's Ratings Services today published its updated criteria for rating U.S. not-for-profit acute-care stand-alone hospitals. The update is part of our regular criteria review process, and its goal is to clarify and enhance certain parts of our methodology. This article addresses some of the questions investors and other market participants might have about our updated criteria.

For the full criteria article, see "U.S. Not-For-Profit Acute-Care Stand-Alone Hospitals — Methodology And Assumptions", and watch the related CreditMatters TV segment titled "U.S. Not-For-Profit Acute-Care Stand-Alone Hospital Revised Criteria Published", also dated Dec. 15, 2014.

Continue reading the Overview.

15-Dec-2014

S&P U.S. Not-For-Profit Acute-Care Stand-Alone Hospitals -- Methodology and Assumptions.

1. Standard & Poor's Ratings Services is updating its methodology for assigning stand-alone credit profiles (SACPs), group credit profiles (GCPs), issue credit ratings, and issuer credit ratings (ICRs) to U.S. not-for-profit acute-care stand-alone hospitals (hospitals). These updated criteria will be implemented under the rating framework established in Chart 1 where the final outcome can be a SACP, GCP, issue credit rating, or ICR. These criteria supersede only in part "Public Finance Criteria: Not-For-Profit Health Care" (June 14, 2007) because health care systems will continue to be rated under the existing criteria.

2. This update provides additional transparency and comparability to help market participants better understand our approach in assigning ratings to acute-care stand-alone health care providers, to enhance the forward-looking nature of these ratings, and to enable better comparisons between the sector's ratings and all other ratings. This article is related to our criteria article "Principles Of Credit Ratings", published on Feb. 16, 2011.

Continue reading.

15-Dec-2014

How S&P Intends to Implement Its U.S. Not-For-Profit Acute-Care Stand-Alone Hospital Criteria and Apply Them to Ratings.

Standard & Poor's Ratings Services today published its revised criteria for rating U.S. not-for-profit acute-care stand-alone hospitals (see "U.S. Not-For-Profit Acute-Care Stand-Alone Hospitals — Methodology and Assumptions"). The revised criteria is effective immediately. We plan to complete our review of the existing ratings covered by these criteria within 12 months. These criteria apply to hospitals with revenue bonds and hospitals with debt portfolios that include both tax-secured and revenue bonds. Ratings on hospitals with tax-secured bonds continue to be governed by our criteria "Tax-Secured Hospital Debt", published May 3, 2007, while the revenue bond rating is governed by these criteria. Multihospital health systems, as defined in the revised criteria, are not rated under these criteria but will continue to be rated under the applicable sections of our June 14, 2007, criteria "Not-For-Profit Health Care".

The criteria update is part of Standard & Poor's commitment to enhance the transparency, rigor, and specificity of its criteria across sectors and asset classes. Our objective is to provide market constituents with greater insight into how we rate stand-alone hospitals and to enhance the global comparability of our ratings through a clear, coherent, and globally consistent criteria framework.

We began communicating the process for updating our criteria when we published an advance notice of proposed criteria change on Nov. 13, 2013. We then published our proposed revised ratings framework on Dec. 5, 2013 (see "Request For Comment: U.S. Not-For-Profit Acute-Care Stand-Alone Hospitals — Methodology And Assumptions"). During the subsequent three-month comment period which ended in March 2014, we interacted with market participants through seminars, teleconferences, and one-on-one meetings. We used the sessions to increase participants' awareness and understanding of the proposed changes and to solicit, evaluate, and incorporate feedback as appropriate. We also solicited written comments through a criteria mailbox. We have summarized changes to the criteria, which were made based on market feedback as well as additional testing, in a report published today (see "RFC Process Summary: Rating Methodology And Assumptions For U.S. Not-For-Profit Acute-Care Stand-Alone Hospitals"). Summary information about the revised criteria is also available in an article released today: "Credit FAQ: An Overview Of Standard & Poor's Updated Methodology For Rating U.S. Not-For-Profit Acute-Care Stand-Alone Hospitals" on RatingsDirect, and a CreditMatters TV segment, "U.S. Not-For-Profit Acute-Care Stand-Alone Hospital Revised Criteria Published".

Continue reading.

15-Dec-2014

S&P Live Webcast and Q&A: U.S. Not-For-Profit Acute-Care Stand-Alone Hospitals Criteria.

Tuesday, January 6, 2015, at 2:00 PM EST

Please join Standard & Poor’s Ratings Services on Tuesday, January 6, 2015, at 2:00 p.m. Eastern Time for a live Webcast and Q&A on our recently published revised criteria for U.S. not-for-profit acute-care stand-alone hospitals.

Register for the complimentary Webcast.

NABL Files Amicus in Jefferson County Case.

NABL filed today an amicus brief with the 11th Circuit Court of Appeals in support of Jefferson County’s request that the court take an interlocutory appeal from a ruling of the District Court in Jefferson County v. Bennett, et al. Certain Jefferson County water and sewer ratepayers brought a case in the District Court to appeal the plan of adjustment confirmed by the Bankruptcy Court in Jefferson County’s bankruptcy case. Jefferson County sought to have the District Court dismiss the case as moot because the bankruptcy confirmation order had been substantially consummated when the county sold $1.8 billion of warrants on December 3, 2013. Although the doctrine of equitable mootness has been established in other chapters of the Bankruptcy Code, this is a case of first impression with respect to Chapter 9. The District Court denied Jefferson County’s motion to dismiss but did certify the question for an interlocutory appeal to the 11th Circuit.

NABL supports the 11th Circuit taking the interlocutory appeal because doing so would materially advance the disposition of the case and provide needed guidance to the municipal bond market regarding the finality of substantially consummated Chapter 9 plans of adjustment. NABL’s amicus brief is available here.

NABL, SIFMA: Ratepayers' JeffCo Appeal Undermines Market.

WASHINGTON – Municipal bond groups are seeking federal appeals court guidance in a ratepayer appeal of part of Jefferson County, Ala.’s Chapter 9 bankruptcy plan, saying the district court decision allowing a challenge of the plan threatens to undermine market stability.

The National Association of Bond Lawyers and Securities Industry and Financial Markets Association filed friend of the court briefs Thursday with the Eleventh Circuit Court of Appeals in Atlanta, Ga.,, asking it to provide guidance to municipal issuers by taking up the question of whether the ratepayers’ appeal of the bankruptcy plan is moot because the plan is largely consummated.

The issue before the court is whether bankruptcy courts confirming a Chapter 9 plan of adjustment, can be the final determiner of issues that involve certain rights of citizens and state powers over utilities rates if the plan is not stayed on appeal and implemented.

A federal district court judge ruled earlier this month that the county’s sewer ratepayers’ appeal of the bankruptcy court’s decision on the confirmation order wasn’t moot, even though the plan is largely implemented, but decided to allow the county to appeal to the Eleventh Circuit before the district court has fully considered the merits of the ratepayers’ case. At issue in the district court is the plan’s provision to grant sewer rate-setting powers to the bankruptcy court.

NABL’s brief, penned by Richard Carmody and Aaron McLeod of Adams and Reese in Birmingham, Ala., said the appeals court should hear the case because it raises serious questions for other municipalities that may contemplate Chapter 9 proceedings and could make a difference in the marketability of the new sewer warrants the county has issued to settle existing debts as part of the plan.

“Because no circuit court of appeals has ruled on the mootness of appeals from a substantially consummated Chapter 9 plan, resolution of these issues by the Eleventh Circuit would help settle the secondary market for the new sewer warrants,” NABL said.

NABL president Tony Martini of Edwards Wildman in Boston said NABL tried to be neutral on the merits of the appeal, but feels strongly the appeals court should hear it.

“We recognize that this is a very important question,” Martini said.

SIFMA’s brief, written by Jayna Lamar and Kasdin Miller of Maynard, Cooper & Gale in Birmingham as well as SIFMA attorneys Ira Hammerman, Kevin Carroll, and Leslie Norwood, told the Eleventh Circuit it should act now because the district court’s order allowing the ratepayers’ appeal threatens to undermine market stability.

“The disruption created by the order for all issuers must be resolved now,” SIFMA said. “The market cost of awaiting full district court proceedings is simply too high.”

THE BOND BUYER

BY KYLE GLAZIER
DEC 19, 2014 2:10pm ET

TAX - MICHIGAN

Rental Properties Owners Ass'n of Kent County v. Kent County Treasurer

Court of Appeals of Michigan - December 18, 2014 - N.W.2d - 2014 WL 7202844

Various individuals, companies, and associations involved in property ownership, rehabilitation, and development in Kent County (the 3830 G parties) sought to invalidate tax deeds executed by the Kent County Treasurer (the Treasurer) to Kent County (the County) and the city of Grand Rapids (the City) and from the County and the City to Kent County Land Bank Authority (KCLBA), claiming that their actions deprived the 3830 G parties of the opportunity to purchase the properties.

The Court of Appeals held that the Kent County Treasurer, and not Kent County, was the foreclosing governmental and thus, once Kent County purchased the tax-foreclosed properties from Kent County Treasurer pursuant to MCL 211.78m(1), there was no requirement that its later sale of those properties be by public auction.

Munis Approach Cheapest Level of 2014 Relative to Treasury Debt.

Prices in the $3.6 trillion municipal bond market are close to the cheapest relative to Treasuries this year as investors snap up U.S. government debt as a haven from financial turmoil.

Benchmark 10-year munis yield 2.1 percent, about the same rate as the start of the week, compared with 2.05 percent on similar-maturity Treasuries, data compiled by Bloomberg show. The ratio of the interest rates is a measure of relative value between the asset classes. At about 102 percent, it's close to the highest in a year, signaling that tax-free bonds have weakened relative to their federal counterparts.

Ten-year Treasury yields plunged 0.07 percentage point today as falling crude oil prices damp inflation and growing financial turmoil in Russia fuels demand for haven assets from Germany to Japan. Russia's ruble tumbled even as the central bank increased its key rate to 17 percent from 10.5 percent.

"Geopolitical events like we're seeing today don't always affect munis as strongly as they do Treasuries, and this would be a case in point," said David Manges, muni trading manager at BNY Mellon Capital Markets LLC in Pittsburgh. "Treasury riptides have their own dynamic."

Munis have earned 0.5 percent this month through Dec. 15, on pace for an unprecedented 12 straight months of gains in 2014, Bank of America Merrill Lynch data show.

Individuals added $695 million to muni mutual funds last week, the most in two months, Lipper US Fund Flows data show. The increased demand coincides with dwindling supply: States and cities have set $5.4 billion of sales for this week, down from $14 billion in the prior two periods, Bloomberg data show.

Bloomberg

By Brian Chappatta Dec 16, 2014 7:35 AM PT

To contact the reporter on this story: Brian Chappatta in New York at bchappatta1@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Schoifet, Mark Tannenbaum

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TAX - LOUISIANA

Mooring Tax Asset Group, L.L.C. v. James

Supreme Court of Louisiana - December 9, 2014 - So.3d - 2014-0109 (La. 12/9/14)

Tax sale purchaser of real property filed petition to quiet title to the property, which had been sold by the taxpayers to a third-party after the tax sale, and then sold by the third party to the current owner. Current owner filed reconventional demand seeking nullification of the tax sale. The District Court awarded summary judgment to current owner, finding the tax sale to be an absolute nullity due to insufficient notice to the taxpayers. The District Court allowed tax sale purchaser to submit proof of costs, but granted current owner's motion to contest costs. Tax sale purchaser appealed, and the Court of Appeal affirmed. Tax sale purchaser filed petition for writ of certiorari, which was granted.

The Supreme Court of Louisiana held that:

- Trial court could not give immediate effect to its judgment annulling the tax sale without providing for reimbursement of the taxes and costs paid by tax sale purchaser, and
- Current owner was the party responsible for reimbursing the taxes and costs paid by tax sale purchaser.

TAX - SOUTH DAKOTA

Deadwood Stage Run, LLC v. South Dakota Dept. of Revenue

Supreme Court of South Dakota - December 17, 2014 - N.W.2d - 2014 S.D. 90

Taxpayer brought action seeking declaratory judgment prospectively establishing assessed valuation of tax incremental district, which consisted of taxpayer's land, as the appropriate tax incremental base, rather than prior assessed valuation. The Circuit Court entered summary judgment in favor of Department of Revenue. Taxpayer appealed.

The Supreme Court of South Dakota held that Department was required to determine aggregate assessed value of the property by using the last previously certified valuation for any buildings or additions completed or removed and to adjust it for the value to the date the district was created.

Department of Revenue was statutorily required, in establishing assessed valuation of tax incremental district, to determine the aggregate assessed value of the taxable property in the district by using the last previously certified valuation for any buildings or additions completed or removed and to adjust it for the value to the date the district was created. The phrase "last previously certified" referred only to improvements in the land, and this reading harmonized the statute with other statutes.

TAX - NEW YORK

Trump Village Section 3, Inc. v. City of New York

Court of Appeals of New York - December 17, 2014 - N.E.3d - 2014 N.Y. Slip Op. 08788

Residential housing cooperative corporation brought action against a city for a declaratory judgment that a taxable transfer of the residential housing cooperative complex did not occur when the corporation amended its certificate of incorporation as a part of its voluntary dissolution, reconstitution, and termination of participation in the Mitchell-Lama affordable housing program. The Supreme Court, Kings County, granted summary judgment to the city. The housing cooperative corporation appealed.

The Supreme Court, Appellate Division reversed, and leave to appeal was granted on a certified question.

The Court of Appeals held that the corporation's termination of its participation in the Mitchell-Lama affordable housing program was not a taxable transfer of real property.

NJ Supreme Court Seeks Input for Prism Bonds Appeal.

WEST ORANGE — The "outstanding briefs" that caused the New Jersey Supreme Court to indefinitely postpone oral arguments last month in the lawsuit filed by five residents against West Orange have been discovered to be amicus curiae briefs, which the court requested from acting New Jersey Attorney General John Hoffman and invited from the New Jersey State Bar Association, the New Jersey League of Municipalities and the National Association of Bond Lawyers.

An amicus curiae, or a "friend of the court," is someone who advises the court on legal matters pertaining to a case without advocating for either the plaintiff or the defendant.

State Supreme Court Clerk Mark Neary sent a letter to Hoffman on Oct. 31 requesting that he submit a brief on the case and speak as amicus curiae on behalf of the Local Finance Board in the Department of Community Services.

According to the letter, a copy of which was provided to the West Orange Chronicle, Hoffman was given until Dec. 22 to submit a brief, with all parties involved allowed to submit briefs responding to it by Jan. 20.

Neary likewise sent a letter to the NJ State Bar Association, the League of Municipalities and the National Association of Bond Lawyers on the same day inviting them to provide briefs and appear before the court as amicus curiae. According to the letter, which was provided to the Chronicle, they were also asked to submit their briefs by Dec. 22, with all parties involved able to submit response briefs through Jan. 20.

Mayor Robert Parisi declined to comment on the matter at this time. Windale Simpson, one of the plaintiffs and spokesman for the group, was not able to be reached before press time Dec. 22.

Though the fact that the Supreme Court is willing to examine the case in depth should be encouraging to both sides hoping to be proven right in court, the delay is undoubtedly frustrating. The Supreme Court had originally agreed to take the case Jan. 24. After months with no word on a hearing date, in October the clerk's office told the Chronicle a date had been tentatively set for Nov. 10. That date was later scrapped due to what the clerk's office told the Chronicle were "outstanding briefs," now known to be the amicus curiae briefs.

Once it is eventually heard, the case will decide whether the township's ordinance granting $6.3 million in municipal bonds to Bloomfield real estate operator Prism Capital Partners is valid. It is being questioned because the town did not apply for approval to the Local Finance Board.

The matter was first brought before the municipal court by residents Rosary Morelli, Mark Meyerowitz, Althia Tweiten, Michael Scharfstein and Simpson on May 14, 2012, after they had twice failed to get a petition certified for a referendum on the project's bond issuance. They objected both to the bond and the township's granting a 30-year property tax abatement to Prism, which had been contracted by West Orange to construct the Edison Village mixed-use complex in the downtown redevelopment area.

The five plaintiffs lost that case, and their appeal as well, before successfully appealing to the state Supreme Court.

The bonds were issued to Prism as part of its 2006 redevelopment agreement with the township to build Edison Village, the 21-acre mixed-use project that will offer apartments, retail space and townhouses in the downtown district when completed.

Of course, the question of when the project will get off the ground has been a subject of controversy during the past six years without construction even beginning. The township maintains that the current lawsuit is causing the delays since the bonds are tied up in the litigation; however, critics argue that Prism's financial situation might be the real issue. Currently the real estate operator is approximately $1 million behind in property taxes owned to the township of West Orange. Jack Sayers, the West Orange business administrator, previously told the Chronicle that West Orange is utilizing "every legal remedy available" to get Prism to pay what it owes.

Essex News Daily

By: Sean Quinn – Staff Writer

Bankers Brought Rating Agencies ‘To Their Knees’ On Tobacco Bonds.

Wall Street pressed S&P, Moody’s and Fitch to assign more favorable credit ratings to their deals and bragged that the raters complied. Now many of the bonds are headed for default.

When the economy nosedived in 2008, it didn’t take long to find the crucial trigger. Wall Street banks had peddled billions of dollars in toxic securities after packing them with subprime mortgages that were sure to default.

Behind the bankers’ actions, however, stood a less-visible part of the finance industry that also came under fire. The big credit-rating firms – S&P, Moody’s and Fitch – routinely blessed the securities as safe investments. Two U.S. investigations found that raters compromised their independence under pressure from banks and the lure of profits, becoming, as the government’s official inquiry panel put it, “essential cogs in the wheel of financial destruction.”

Now there is evidence the raters also may have succumbed to pressure from the bankers in another area: The sale of billions of dollars in bonds by states and municipalities looking to quickly cash in on the massive 1998 legal settlement with Big Tobacco.

Continue reading.

by Cezary Podkul

ProPublica, Dec. 23, 2014, 1:53 p.m.

Municipal Issuer Brief - Important Issues in 2014

Read the Brief.

Municipal Market Advisors | Dec. 22

Congress Extends QZABs, New Markets Tax Credits; Continuing Effect of Sequestration: McGuire Woods

On Dec. 19, 2014, President Barack Obama enacted the Tax Increase Prevention Act of 2014 (the “Act”), commonly referred to as the tax extenders bill (H.R. 5771), which you may read here. Generally, the Act extends many programs that expired at the end of 2013. This Client Alert focuses on the extension of Qualified Zone Academy Bonds (QZABs), New Markets Tax Credits (NMTCs), and empowerment zone employment credits and on the enduring impact of sequestration on direct-pay bonds.

Qualified Zone Academy Bonds

The Act authorizes the Secretary of the Treasury to allocate an additional $400 million in QZABs for 2014. Prior to the Act, no additional allocations of QZABs were to be available to the states after Dec. 31, 2013. The 2014 round of QZABs allocations will expire if not issued on or before Dec. 31, 2016. QZABs issued under the 2014 allocations are eligible only for the tax credit and may not use the direct-pay option. This limitation also applies to QZABs issued under the 2013 allocations that expire at the end of 2015.[1]

As a reference, QZABs benefit a “qualified zone academy” (typically, a public school) that is designated as such by the “applicable local education agency,” which is oftentimes the governing local school board or district. As more fully described in Section 54A of the Internal Revenue Code of 1986, as amended, a holder of a QZAB receives a credit against federal income taxes.

New Markets Tax Credits

The Act also authorizes $3.5 billion in allocations for the New Markets Tax Credit program. This authorization is for 2014. Prior to the Act, the last round of allocation related to 2013. The 2014 allocations must be used by Dec. 31, 2019.

The New Markets Tax Credit program is designed to encourage investment in qualifying low-income communities. An investor receives a tax credit in return for equity investments in community development entities that use those invested funds for eligible purposes aimed at targeted populations and low-income areas. The credit is 39 percent, taken over seven years. Many states have programs similar to the federal New Markets Tax Credit program.

Empowerment Zones

Moreover, the Act extends the benefits of empowerment zone designation by providing that any existing empowerment zone will remain designated as such until Dec. 31, 2014. Previously, the designation of existing empowerment zones expired on Dec. 31, 2013.

The benefits of empowerment zone status include the empowerment zone employment credit, which provides employers a federal tax credit equal to 20 percent of qualified zone wages paid during a calendar year. Qualified zone wages are wages paid to an employee who lives in an empowerment zone and performs substantially all of his or her employment in that empowerment zone. Other tax benefits include increased deductions for equipment placed in service in empowerment zones and delayed recognition of any gains on the sale of qualifying empowerment zone assets.

Federal Sequestration and Direct-Pay Bonds

All direct-pay bonds, including QZABs, Build America Bonds, Qualified School Construction Bonds, New Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds and Recovery Zone Economic Development Bonds, remain subject to the ongoing effects of federal sequestration. For fiscal year 2015 (which ends on Sept. 30, 2015), the direct-pay subsidy for those bonds issued as direct-pay bonds is subject to a 7.3 percent reduction.

Unless a law is enacted that cancels or otherwise amends the sequestration, the existing subsidy reduction will remain in effect through the end of fiscal year 2024.

1. Included as Title II of H.R. 5771 is the “Tax Technical Corrections Act of 2014.” See Section 202(d) for the above-mentioned provisions relating to QZABs.

December 22, 2014

A 5-Part Test for Public-Private Partnerships.

Like it or not, public-private partnerships (P3s) for infrastructure are here to stay in the United States. The recent openings of two Florida projects, the I-595 Express highway and the PortMiami Tunnel, as well as Texas' North Tarrant Express highway — projects with a total cost of $4.9 billion — are high-profile success stories that provide a demonstrable proof-of-concept boost for the U.S. P3 market.

But P3s have not fared well in some places. The Philadelphia City Council, for example recently refused to vote on Mayor Michael Nutter's proposal to sell the antiquated Philadelphia Gas Works to UIL, a publicly traded company, for $1.86 billion. The failure of that transaction and earlier P3 proposals such as those involving the Pennsylvania Turnpike and Chicago's Midway Airport raise a fundamental question. What does it take for a P3 to succeed and reach the public-policy finish line?

Whether one is an official aspiring for the best deal for the taxpayers or a vendor trying to decide whether to invest millions of dollars in a P3 bid, there are principles that can provide guideposts. We suggest the following five conditions as a recipe for success:

1. Political will: Fundamental to any successful P3 initiative is broad-based, senior-level support within a government. If a jurisdiction is divided on partisan or other lines as to whether a P3 is the correct approach, it reduces both the chances of success and the vendor's appetite to present a financially attractive proposal. Without a real consensus at the outset, the risk of a P3 being thwarted or mischaracterized by opponents is simply too high. Dealing with the politics at the beginning of the process, not the end (as happened in Philadelphia), ensures that a government does not waste bidders' time or its own.

2. A belief in private-sector value creation: Philosophically, there has to be an embrace of the idea that the private sector can create value that government cannot achieve on its own. In advising a major U.S. city, a senior official once stated that "a contractor is nothing more than someone trying to get money out of the government's wallet." With any variant of this attitude — viewing a P3 partner in an adversarial way before even entering into a transaction — an initiative cannot succeed. In places as varied as Indiana and Florida, the public sector has embraced P3s because there is an underlying belief that, properly structured, they can create more value than traditional procurement approaches.

3. The underlying quality of assets: The assets involved in the P3 transaction must be of commercial interest to the private sector. This may seem basic, but there have been a number of situations where bid processes were launched involving distressed assets. A proposed lease of the Port of Chicago, which had operated at a loss for 10 years and had not seen significant investment since the 1980s, failed to gain traction in the market, for example. The takeaway: Clever public marketing can rarely overcome a difficult or unattractive business proposition.

4. Commercially reasonable contract terms: Negotiating a concession agreement or other project documents is always a balancing act. On the one hand, the public interest must be comprehensively protected. On the other, it is not uncommon to have a situation where all of the bidders object to a contract term proposed by the government, only to have their feedback ignored. When companies indicate that a contract term would prevent them from bidding, it is prudent to listen. A contract that allows multiple companies to submit final bids is critical. In its Ohio River bridges contract, Indiana got the risk allocation and other terms correct.

5. A willingness to pay transaction costs: Hiring experienced financial, legal and technical advisers is good public policy, but bringing these experts on board during the P3 process involves costs that can encounter political resistance. However, transaction costs effectively amount to a rounding error on large projects. In this regard, perhaps it wise to follow some age-old advice and avoid being penny wise and pound foolish.

Overall, it is expected that the United States will become the world's largest P3 market over the next decade. For that to happen, many successes will be needed. We believe the five-part test outlined here can be a useful filtering and decision tool for public officials evaluating P3 projects.

GOVERNING.COM

BY STEPHEN GOLDSMITH & ANDREW DEYE | DECEMBER 17, 2014

Even with Stock Market's Rise, Many Pensions Haven't Recovered from Recession.

Almost 40 percent of pension plans examined, even those that have been well-funded, have yet to reach their pre-recession peaks.

This fall, Jim Carroll appeared before the Kentucky legislature's Public Pension Oversight Board and testified about the state of the nation's worst-funded retirement plan. Over the last three years, said the co-founder of Kentucky Government Retirees, the Kentucky Employees Retirement System has exceeded its assumed rate of return — yet it lost more than half a billion dollars in that time.

In fact, the plan has been in a virtual freefall for years. At the end of the 2013 fiscal year, the plan had $3.3 billion in net assets — that's roughly half of its peak value just before the Great Recession. The gap makes it the pension system that has the farthest to go to recover the assets it lost in the stock market crash, according to a Governing analysis of 146 larger pension plans across the country.

It's not for lack of performance — Kentucky has had some big returns in recent years. This summer, it reported a 15.5 percent rate of return on the fiscal year that ended June 30. The year before that, it earned a 12.7 percent return on investments. But for all that great performance, Kentucky Retirement Systems has continued to bleed money. It now has just one quarter of the assets it needs to cover its more than $12 billion in estimated liabilities and its dependents worry it will run out of money in the next decade.

"We are not going to invest our way out of this," Carroll said.

Kentucky is not alone. Overall, 57 pension systems (39 percent) have not recovered their assets prior to the recession and 18 of those plans are still more than 10 percent below their peaks. Meanwhile, 89 systems have now regained their losses. Most plans' peak year was 2007, followed by losses the following two years that added up to a one-quarter drop in average value across the plans.

Most plans began their recovery in the 2010 fiscal year although many did face varying losses again in 2012. Governing's analysis, which used data from the Boston College Center for Retirement

Research (CRR), looked at the larger pension plans across the country with available data regarding plans' net market assets — the actual amount in the funds at year-end. That figure is a different from a plans' actuarial value, which projects earnings over time and incorporates other assumptions about the retiree population.

Collectively, the asset values of the 146 systems has recovered from the recession and now total $2.84 trillion, up about 1 percent from 2007. This value, however, does not account for inflation. If adjusted, the aggregate total would not yet have recovered from the recession's losses.

The recovery level of plans, however, is varied. Some have surpassed their pre-recession peaks by more than 50 percent. On the other end, Kentucky's state employee plan has the farthest to go, followed by other pension funds that commonly make headlines. Those are: Chicago's police, city and teachers' funds, Pennsylvania state and teachers plans and New Jersey Teachers' plan — all which are more or less one-quarter short of their pre-recession peaks.

Among these plans, underfunding is a recurring theme. All of the plans in the chart above were not being fully funded by their governments when the recession hit and they continued to be underfunded through the market recovery period. This meant that these pension plans were unable to fully capitalize on the big gains of the stock market in recent years. Meanwhile, noted CRR Assistant Director of State and Local Research Jean-Pierre Aubry, it's not as if liabilities stood still since the recession. "For the plan to improve its funded ratio, its assets have to grow faster than its liabilities, he said. "So when you've had the losses we've had in 2008 and 2009, they really need to have monumental gains to improve their funded ratio. If you already have huge numbers in liabilities, you can't just be plodding along if you want to make up that ground."

That also means that even plans that have been well funded by their governments have generally not been able to catch up to their funded status before the recession. They do, however, tend to be far healthier than the plans that have not caught up.

Texas' county and district pension plan, for example, was almost fully funded in 2007 when its assets suffered a 29 percent drop the next year. The contributing governments kept funding the plan, making slightly more than the recommended contribution each year. By 2010, the plan had recovered its losses. By 2013, the plan's net assets were 37 percent higher than in 2007. Yet its funded status was 88 percent — healthy by actuarial standards, which indicate plans should be at least 80 percent funded. But as the plan's liabilities grew, thanks to more employees retiring and living longer, the gains were not enough to get back to the 94 percent funded status it enjoyed before the recession.

Meanwhile, plans that don't have a history of consistent funding from their governments went from marginally healthy to ailing in a matter of years. Kentucky's state employee plan was actually overfunded in 2002, with 110 percent of the assets needed to cover liabilities. Since then, its actuarial liabilities have doubled while its assets have been more than cut in half. Over that same period of time, Kentucky has not made its full actuarial contribution. Even before the recession, Kentucky's funded status had taken a hit — in 2007, it was 58 percent funded. As it continued to lose money post-recession, its funded status slid further to 25 percent.

Another example: New Jersey had not been putting any money into its state teachers' plan since at least 2001 (as far back as the CRR data goes) because at the time, the system was fully funded. But even when it dipped below fully funded after 2003, it took a few years for the state to start making any contributions at all. And those contributions have been a small fraction of the amount the state should be paying. (In fact, last week, the state's three largest pension funds sued Gov. Chris Christie for cutting $2.4 billion in pension fund payments he promised to pay as part of 2011 pension reform.) New Jersey's teachers plan in 2007 had 75 percent of the assets it needed to cover promised payments to retirees; as of 2013, it had just 57 percent.

So, while a plan's investment recovery is not the only factor in its overall health, it plays a substantial role. Plans that have recovered their investment losses tend to be healthier than plans that have not. Just about everybody lost out when the stock market crashed. But the cut went a lot deeper for the pension plans that weren't getting enough money from their governments in the first place. In fact, three of these seven highlighted plans were healthy by actuarial standards before the recession. Today, none of them are.

"It illustrates the peril of becoming severely underfunded," said Keith Brainard, research director for the National Association of State Retirement Administrators. "Being severely underfunded combined with a strong market decline can really create fiscal distress for employers."

In Kentucky, that severity is reaching a breaking point. Since 2011, the plan has lost an average of $260 million per year while its payouts to retirees have averaged about $900 million per year. The state passed pension reform in 2013 that will effectively end cost of living pay increases to retirees. The reform also included a requirement that the state fully fund the plan, and for 2014, it has made its full actuarial contribution. But the retirees association's Carroll worries that won't be enough. He asserted that the state must also make up for at least some of its missed payments over the last decade.

"This deep hole has been dug with a shovel and it's being filled using a hand trowel," he said. "In several years I have to hope the situation will ease and I have to hope the stock market doesn't decline during that time."

GOVERNING.COM

BY LIZ FARMER | DECEMBER 17, 2014

Data Editor Mike Maciag contributed to this story.

Spotlight on Retiree Healthcare Benefits for State and Local Employees in 2014.

The National Association of State Retirement Administrators (NASRA) and the Center for State and Local Government Excellence (SLGE) have released a report entitled Spotlight on Retiree Healthcare Benefits for State and Local Employees in 2014.

The Week in Public Finance: Traffic Cam Drama, Retiree Healthcare and Another D.C. Shoutout A Roundup of Money (and other) News Governments Can Use.

Putting on the brakes

Are red light and speeding cameras that mail tickets to violators intended to be revenue generators or traffic calming measures? It's a debate that rages among communities that have the cameras but according to one credit ratings agency, the answer is clear. It's all about the money.

That's why Moody's Investors Service is raising the caution flag for New Jersey and Nassau County, N.Y. for failing to renew their red light camera and speed camera programs, respectively. Calling New Jersey's red light cameras a "a revenue generator" for local governments, Moody's on Dec. 19 said nixing the programs in both states will "further constrain governments' ability to implement new revenue streams at a time when these governments are facing property tax limits, uneven sales tax growth and anti-tax sentiment." Nassau's program, which installed speed cameras around schools, had only been implemented in July of this year and netted $21 million for the county. New Jersey's has been around since 2008 in 25 municipalities and typically accounted for between 1 and 2 percent of towns' revenues. Both programs faced public resistance and problems with their contracted operators that resulted in tens of thousands of violations being dismissed.

Costly promises

States' obligations to paying for retiree healthcare vary so incredibly that the gap between the most and least burdensome obligation is a whopping $67 billion. Of the states that directly offer retiree health care, Oklahoma has approximately $4 million in unfunded liabilities while New York has upwards of $67.7 billion, according to a new brief by the National Association of State Retirement Administrators (NASRA) and the Center for State and Local Government Excellence (SLGE). The assessment is an update to last year's brief that only looked at general state employees. The information now includes public safety officers, university employees, and legislators, among others for the 2013 fiscal year.

Some of the brief's findings include: more than three-quarters of the total state retiree healthcare unfunded liability is held by just 10 states and as of 2013, 33 states are setting aside assets to prefund these liabilities. That's up from 18 in 2011. Although many states believe that, legally speaking, retiree healthcare promises are more easily broken than pension promises, more government are paying attention to the mounting debts.

To be sure, these debts are now likely even higher than the brief suggests – also this week California State Controller John Chiang released his own report showing the state's unfunded liability for retiree healthcare as of 2014 totaled $71.8 billion. The change represents a staggering $7.2 billion jump from the $64.6 billion obligation identified last year. In his statement, Chiang urged adopting a policy of pre-funding retiree healthcare (as pensions are pre-funded), noting that such a move could reduce California's unfunded liability by $25 billion (or 35 percent) to $46.8 billion.

Farewell, Mayor Gray

The mayor of the nation's capital city steps down this month after losing his re-election bid. But Washington, D.C. Mayor Vincent Gray certainly made the most of his farewell address this week, which one local news outlet joked "ran nearly as long as his term in office." Still, you may be asking, what does that have to do with public finance? In his nearly 9,400-word speech, Gray championed his fiscal responsibility measures over the last four years, including restoring Washington's rainy day fund and seeing the city's credit rating rise to AA – it's highest ever. But most appreciated by yours truly was this little quip that sums up the importance of knowing the role of numbers in public service.

"Now, fiscal responsibility may not sound glamorous – but it is the foundation for everything a government does," Gray said. "Even the most well-intentioned plans fail if you can't pay for them."

Ain't that the truth.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 19, 2014

Environmental Risks Becoming Part of Bond Assessments.

Municipal bond investors have started asking governments to disclose their area's environmental hazards, but a lot of the information they want is not yet known.

Each spring the city of Orting, Wash., is the final stop on the Daffodil Festival Parade. Against the expansive backdrop of Mount Rainier, this town of 7,000 puts on a wonderful show that earned it the nickname "Small Town, Big View."

In all this bucolic delight, it's easy to forget that at any moment Orting could be wiped off the map. Mount Rainier is an active volcano. When it erupts, the resulting crush of lava, mud and glacial ice will bring disastrous problems for Orting and every town nearby.

This is no secret. In fact, in a recent bond offering document, Orting quoted the U.S. Geological Survey's (USGS) assessment that "over the past 10,000 years Mount Rainier has been the source of numerous volcanic debris flows that buried now densely populated areas as far as 100 km from the volcano." USGS also says it's not possible to predict the next eruption. So for now, folks in Orting will focus on the daffodils.

A statement about volcanoes might seem out of place in a financial report. But, in fact, this statement and many others like it are a direct response to specific questions posed by bond investors and other financial stakeholders. They use this information to measure and "price in" the potential for volcanoes, hurricanes, earthquakes and other discrete, catastrophic events. Their analysis matters a lot. For example, some academic papers have shown that, when they sell bonds, communities in California most vulnerable to earthquakes pay up to millions of dollars more in extra borrowing costs.

More recently these financial stakeholders have started to push the boundary for what we can reasonably include in a government financial statement. They have started to call for a new type of information about other environmental risks that are far more abstract and systematic. For state and local governments, these new demands present some big and immediate challenges.

Climate change is a prime example. At a recent industry conference, a panel of municipal bond investors and credit ratings experts outlined a sort of wish list of information that states and municipalities ought to share about the financial implications of future climate change. These investors are especially interested in the deleterious effects of rising water levels. Sewer systems, after all, run on gravity. If water levels rise, less water flows downhill, and that can render an entire sewer system useless. It makes sense that water and sewer bond investors would want to know if climate change might cripple their investment.

It doesn't stop with too much water. These same stakeholders have publicly called for better disclosures about the financial implications of prolonged droughts. Others want cities to speculate on how a massive conversion to solar energy might fundamentally alter urban infrastructure needs.

This appetite for information is more than understandable, but it also presents several problems for state and local governments. First, a lot of this information is unknowable. Scientists mostly agree about the likelihood and eventual effects of one-off catastrophic events like volcanoes and earthquakes. But at the moment they don't really agree on how, when and where climate change will happen, and how it will ultimately shift weather patterns, raise sea levels and melt glaciers. The science gets better every day, but for now these sorts of massive changes are difficult to understand and predict.

Moreover, if a government wants to disclose these risks it must exercise proper internal controls on how it carries out that risk assessment. These controls require a clear procedure to separate the "relevant" risks from the "nonrelevant" ones. Of course, this is difficult to do when the risk assessment is based on mathematical models that can reach qualitatively different conclusions if the assumptions change. Once a government discloses this information, citizens naturally start to wonder why their state or city isn't doing more to prepare for the eventual problems and other systemic threats related to climate change.

The beauty of budgets and financial statements is that they make abstract things real. But for that to work, those abstract events must be grounded in at least a little bit of empirical reality. Right now, there's no such reality for the information investors want the most.

GOVERNING.COM

BY JUSTIN MARLOWE | DECEMBER 2014

Falling Oil Prices Help Consumers, Hurt States.

The price of oil has dropped by 40 percent over the past few months. Most oil states have money saved in permanent funds, but the drop in revenues is causing shortfalls already.

It's been nice for drivers to fill up their tanks at the lowest cost in years. But a 40 percent decline in oil prices over the last half of the year is bad news for energy-producing states.

In New Mexico, for example, every dollar drop in the price of a barrel of oil means $7.5 million less for the state's general fund. "It adds up pretty quick," said David Abbey, who directs the Legislative Finance Committee. "When prices are falling like a brick, we can't lower our estimates fast enough."

Abbey notes that his state – along with other oil and gas states such as North Dakota and Texas – devotes most of its oil revenues to permanent funds, which have billions of dollars in reserves. Capital outlays may be delayed and there could be less money for education or debt service, but money socked away when things were flush will keep those states from having to impose deep cuts right away. "They can weather these short term swings easily," said Norton Francis, a state tax policy expert at the Urban Institute. "The problem comes when this price stays low for a long time."

Some state officials are hopeful that the drop in gas prices – coming just in time for the holiday shopping season – will put more money in consumers' pockets and thus give a boost to sales tax revenues. Greg Albrecht, the chief economist for Louisiana's Legislative Fiscal Office, noted that mineral taxes account for a much smaller share of state revenues than sales taxes, which have run ahead of forecasts this year. Mineral taxes account for 13 percent of Louisiana's general fund revenues, compared with 29 percent from sales taxes.

Still, each dollar-per-barrel drop in oil cuts state revenue by $12 million. Declining oil revenues are the cause of more than half of Louisiana's $171 billion budget shortfall, which has already led to spending freezes and the elimination of state jobs. The situation is worse in Alaska. The state depends on oil for more than 90 percent of its general fund revenues and forecast the highest oil prices of any state when it set its budget. Oil revenues were already going to drop due to a tax cut, but the steep fall in prices has saddled the state with a $3.5 billion shortfall.

The situation is nowhere near as dire in other states, but oil dropping below $60 per barrel doesn't help states' bottom lines. Aside from a decline in severance taxes and royalty payments, low prices hurt oil state economies. Production is already being cut, with field workers being laid off. And the few states that link their gas taxes to the prices of oil, such as Kentucky and Pennsylvania, can count on a drop in fuel tax collections, noted Michael Streepey of the National Association of State Budget Officers. Kentucky, for example, can count on $129 million less in gas and diesel tax collections in 2015.

Diminished oil revenues are thus compounding budget problems that persist in many states, despite the overall economic recovery. Kansas is projecting $1 billion in shortfalls during the current fiscal year and next. "In Kansas, that's another $5 million that they don't have," said Francis, referring to the state's losses with every dollar drop in oil prices.

He said states like Kansas might ultimately be hurt the most. The major oil states such as Texas have been socking away billions in permanent or rainy day funds for years, if not generations. (Alaska had $14.7 billion in its reserve funds at the end of November.) They can ride out the price drop, which is expected to persist through 2015. It's the states that get a little extra help from oil that haven't saved as much and therefore are going to miss the money that's not coming in that much more. "Swings make them more vulnerable," Francis said. "If they're already in a precarious position like Kansas, even a small swing in oil money causes problems."

GOVERNING.COM

BY ALAN GREENBLATT | DECEMBER 24, 2014

The 2014 Takeaways from State and Local Finance.

A look back at four of this year's trends in public finance.

Some threats really are empty.

Remember the threat of the taper? When former Federal Reserve Chair Ben Bernanke hinted at slowing down the Fed's practice of quantitative easing (buying municipal bonds with newly printed money), it prompted a major sell-off in the market and spiked interest rates in the summer of 2013. Then, newly minted Chair Janet Yellen, actually did it after she took over in February of this year. So what happened? The municipal market prepared itself for higher rates, witnessed the successive tapering process, and then was taken by surprise as global weakness and declining inflation drove interest rates lower, noted Loop Capital Markets Strategist Chris Mier in his look back at 2014. Calling the falling interest rates "one of the most durable trends of the year," he said rates fell steadily from 4.75 percent to 3.83 percent, "with barely a glance in the rear-view mirror."

The fear of rising interest rates did have one notable result, however. That prospect, combined with government's reticence to increase debt loads, resulted in a slower municipal market in 2014. Total bond issuance declined nearly 10 percent from 2013.

Pensions aren't sacred. But retirees still have sway.

First Detroit's bankruptcy judge ruled that pensions could take a haircut alongside bondholders in municipal bankruptcies. Then Stockton, Calif.'s judge ruled similarly this year. Both rulings sent shockwaves through the municipal community but the end result was far less dramatic. Stockton, citing cuts already made to retiree healthcare, didn't cut pensions and exited bankruptcy in late October. Detroit did cut pensions — but far less than the cuts to what it owed bondholders. The Motor City exited bankruptcy in November.

Both cities' final plans caused concern among the credit community — up until this year, the General Obligation bond was pretty much sacrosanct. And it was just a few years ago that the Rhode Island town of Central Falls exited bankruptcy keeping bondholders whole while dealing major cuts to pensions. So what's the trend now? Investors are a little unsure and, not surprisingly, the credit ratings agencies have slightly different views. Moody's Investors Service said last month in a credit analysis, "pensions are likely to enjoy better treatment than general government debt in Michigan and California Chapter 9 cases, and potentially in bankruptcies filed in other states. [This has] negative credit implications for local government bond investors in Michigan and California, and the U.S. as a whole."

Meanwhile, Standard & Poor's said in a presentation this week to investors that city bankruptcies were still too unique to start drawing conclusions that a new trend is emerging. "Despite months of headlines and court battles, ultimately the outcomes of these bankruptcies will not impact our view on GO bond ratings," said Horacio Aldrete, managing director for S&P's U.S. Public Finance-State & Local Government Group.

Management matters. A lot.

Aldrete also noted that investors say a government's financial management is of the biggest difference-makers in S&P's rating assessments. Of the governments that S&P rates AAA (the top rating), 90 percent have either a strong or very strong management score. Conversely, the majority of credits rated BBB or lower got a weak or very weak management score. An analysis this week by the Municipal Market Advisors takes and puts some faces, er, stats, to that story.

At the end of the financial crisis that began in 2008, New Jersey and California were both grabbing headlines for monstrous budget woes. Today, one state is reforming its ways while the other keeps trying to fix problems with the same old tools. California ended a decade of budget deficits in 2013 and took that momentum into this year with a budget surplus. Gov. Jerry Brown throughout his tenure has been keenly focused on reducing the state's debt load and "exuberance over CA's fiscal and rating improvements led the state's securities to outperform the market for a second year," notes MMA's Matt Fabian. (In other words, California got good deals on its bond sales.)

Of particular note, the state's voters this fall approved new legislation that will double the size of the state's General Fund reserve, require deposits from capital gains windfalls to address revenue volatility issues and protect the funds from withdrawal. "These are authentic, structural improvements in the state's budget that should not be underappreciated," Fabian wrote. S&P agreed. The agency upgraded California's credit rating one notch to A one day after the voter approval.

Meanwhile, New Jersey has faced multiple bond rating downgrades under Gov. Chris Christie and this year it continued to use one-time fixes to plug its massive budget deficits. Fabian notes the state's lagging economic performance, overly optimistic budget projections and failure to consistently fund pensions, retiree healthcare and transportation has led to a persistent structural imbalance and a deteriorating fiscal position. “The lack of a Rainy Day Fund and thin General Fund balance — less than 1% of the budget — limits flexibility and cushion to address any unforeseen circumstances,” he added.

This might be as good as it gets.

Two state and local governmental organizations recently released annual reports on government financial health. They both essentially came to the same conclusion: Many governments are past the immediate pains of the recession but are now feeling the duller aches of the slow-growth economy. The National League of Cities’ City Fiscal Conditions Survey found that cities made some key gains in fiscal year 2014 although many still can’t claim a full recovery from the recession. Mainly, they have started to make up for areas where there were spending cutbacks during the downturn and they are increasing their reserve funds. And the overall positive figures are widespread — 80 percent of city finance officers reported improved fiscal conditions this year, the highest such number in the 29-year history of the survey.

The National Association of State Budget Officers also released its year-end report on the health of state finances. That analysis found state spending is increasing for the fifth straight year but growth continues to be minimal and the competition for limited dollars remains fierce. That’s because much of the projected 3.1 percent spending increase will be gobbled up by rising costs in education and Medicaid, leaving little money available for spending in other areas. Additionally, in no year since the recession has spending growth matched the nearly four-decade average of 5.5 percent. Even more alarming: This year’s total general fund spending of $748 billion is still 2 percent below the pre-recession peak, after accounting for inflation. “If we continue to see this for another two to three fiscal years,” said Scott Pattison at the report’s release, “we have to assume we are in a new economic era…this ‘new normal’ that economists talk about.”

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BY LIZ FARMER | DECEMBER 19, 2014

Public Finance Predictions for 2015.

Tight budgets, declining oil prices and pension scares are some key finance topics that state and local governments will face in 2015.

Here are some key public finance topics that state and local governments will face in 2015.

More belt tightening

The general consensus on 2015’s economy is that state and local revenues will continue to inch along, basically growing a little more than the cost of inflation. That leaves little room for increased spending in areas that saw funding drops during the recession. This is particularly true for cities, which have the least taxing power yet fund a lot of essential daily services. Throw in the fact that most citizens aren’t keen on higher taxes, and Jeff Winter, partner-in-charge of RubinBrown’s Public Sector Services Group, said that means governments will need to keep a tight lid on their expenses. “We’re seeing steady growth but at a slower rate than we were in 2012,” he said. “And cities that are sales-tax-dependent are not going to have huge increases in revenue sources in the future. There still needs to be attention paid to personnel costs and capital projects may have to be put on hold or financed in another way.”

However, economies will vary widely. Standard & Poor's Gabriel Petek predicted that economic growth in the West and Southwest will likely outpace the other regions in 2015, particularly in new housing growth. Income and wealth, however, will remain starkly higher on the coasts than in the South and Midwest.

Muni market activity will pick up (slightly)

Many analysts are predicting an uptick in municipal market activity for the first time in three years. The general consensus is that total offerings by governments, which include new bond sales and refinances, will increase in volume to about $335 billion, compared to an estimated $328 billion this year. Wells Fargo Senior Analyst Natalie Cohen predicts a slightly higher total ($340 billion) with a little more than half of that due to new bond issuance. "The higher new money issuance reflects economic improvement and a desire in many communities to 'get on with it' despite the chronic lack of action in Washington," Cohen wrote in her analysis this month. "Voters gave this positive signal at the ballot box, by approving significantly more bond issues than last year ($13 billion compared with $7 billion)."

Tom Kozlik, municipal credit analyst for Janney Montgomery Scott, offers up a dissenting view. He predicts that volume will decrease for a fourth straight year to no more than $275 billion total (and in fact, it won't pick up again until 2018). He attributes the dip to an expected increase in interest rates in 2015.

Here comes Kroll

As credit ratings agencies have increasingly disagreed with each other about the health of state and local governments, Loop Capital Markets' Chief Strategist Chris Mier pointed out in a year-end analysis that agitation has caused "a number of high-profile issuers to change their line-up, tossing out one firm and substituting another." (More specifically, Kozlik in a report this summer noted that has commonly meant that municipalities have favored using their ratings from S&P.) Mier also said in his assessment that "the increasing presence of Kroll Ratings" was contributing to that trend. Started in 2009, the agency named for its founder is small but growing fast, with revenue doubling every year, notes Forbes. Its biggest gains have come in the U.S. commercial and residential mortgage backed securities markets. This year it also expanded its public finance team and became a listed rating agency in EMMA, the online database where governments file municipal market disclosures. Look for Kroll to continue to elbow its way into rating the municipal market in 2015.

GASB stirring the pot

The Government Accounting Standards Board's (GASB) new rules on pension accounting will become visible for the first time on government balance sheets. Analysts have said the stricter view of unfunded liabilities are likely to encourage talks of reform in states– Namely, New Jersey, Illinois, Pennsylvania, Kentucky, Connecticut and Rhode Island–that are struggling to fund their pensions. New Jersey recently disclosed in its official statement that as a result of the more conservative GASB approach to calculating pension funding, its funded level decreased to 30 percent from 50 percent and its liabilities to $50 billion from $37 billion. "Stronger reporting standards alone won't solve or even address the challenge of pension funding," wrote Janney Montgomery Scott's Alan Schankel in a December analysis. "But they may draw closer attention to the most underfunded systems, pressuring political leadership to consider often needed reforms."

GASB is also likely to create some budgeting angst if it succeeds in its quest to require governments to report as lost income the tax incentives they award to companies. The new disclosures could shed light on a previously murky area of government finance and provide hard data on information that has often been assembled piecemeal, if at all. Some government finance organizations will likely push back on the proposal and argue that reporting tax abatements isn't an accounting issue – that policymakers think of these decisions as investments, rather than a drain on finances. Stakeholders have until Jan. 30 to comment but the debate will likely play out through the year.

Oil prices will impact state budgets

The recent decline in oil prices will give way to some mid-year budget scrambling as oil-dependent states revise their revenue expectations for fiscal 2015. But not all energy-based economies are equal. Alaska has been repeatedly cited by observers as particularly vulnerable. However, notes S&P's Petek, its extraordinarily high budget reserve levels buy the state time to develop a response. Alaska's fiscal 2015 budget originally assumed oil prices would average $105.06 per barrel, which would mean about 495,900 barrels per day of production on Alaska's North Slope, according to S&P. Based on more recent price and production information, the state has revised its estimates to $76 per barrel and 509,500 barrels per day for fiscal 2015.

Alaska is hugely dependent on oil – those revenues made up 88 percent of its estimated revenue for the 2014 fiscal year. With the updated figures, the state's budget gap has widened to $3.5 billion – equal to 57 percent of general fund expenditures. But Alaska's extraordinarily large budget reserves (which total more than three times its general fund expenses) are saving the state from a budgeting crisis at the moment. However if lower oil prices persist through 2015, the economies and finances of other energy producing states — Texas, Louisiana, Alaska, Wyoming, New Mexico, Oklahoma, and North Dakota – will also be put to the test.

For non oil-producing states and cities, look for some easing in costs (particularly in transportation) and a potential bump up in sales tax revenues as consumers saving money on gas are likely to spend that elsewhere.

An answer in Illinois

After a circuit court struck down Illinois' pension reform legislation, the state's Supreme Court is now weighing the constitutionality of provisions that reduce cost of living raises for retirees, cap eligible earnings and delay the retirement age for certain employees. An unfavorable ruling for the state could have "financial and societal consequences," predicted Municipal Market Advisors' Matt Fabian in his 2015 outlook, "including lower government employment, higher taxes, reduced social services, lower education spending, constrained investment in infrastructure, etc." However a ruling that the state was justified in its legislation, "would likely lead to healthier negotiations centered on obtaining the best sustainable compromise," Fabian said.

More clarity on the SEC's definition of a no-no.

In 2014, the SEC ran its Municipalities Continuing Disclosure Cooperation Initiative. The program allowed municipalities to look for and submit any additional information (like a credit rating change) they should have filed as a financial update to any bond sales completed in the last five years. Governments must continue to update investors with relevant information for as long as the bonds are outstanding. The Securities and Exchange Commission indicated it would offer "favorable" settlement agreements with those who fessed up but has been pretty mum on what kinds of omissions it would levy a more severe sentence.

The coming year should help clear that up as the SEC begins announcing its so-called enforcement actions against governments that have been lax with their disclosures. LeeAnn Gaunt, chief of the SEC enforcement division's municipal securities and public pensions unit, recently told a group of government finance officers the initiative showed that "many" official statements released in the past five years have incorrectly stated that issuers were in full disclosure. She declined to reveal just how many or what the worst cases were, reported the Bond Buyer. But thankfully, that wait should soon be over.

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BY LIZ FARMER | DECEMBER 26, 2014

lfarmer@governing.com | @LizFarmerTweets

Build America 21% Outperforms Local-Government ETFs: Muni Credit.

Four years after the last Build America Bonds were issued, the taxable debt is delivering the biggest gains among exchange-traded funds focused on municipal securities.

The SPDR Nuveen Barclays Build America Bond ETF (BABS) proved the best choice during a record-setting year for muni exchange-traded funds. Its 20.6 percent gain through Dec. 23 was highest among the 26 muni ETFs tracked by Bloomberg.

Build Americas benefited this year from their longer maturities, which are luring buyers seeking to pad returns with yields close to generational lows. The average maturity of the $113 million SPDR Nuveen ETF is about 25 years, according to its website. Munis due in 22 or more years have earned 14.9 percent in 2014, beating shorter maturities, according to Barclays Plc data.

"The market's been willing to trade the Build America Bond sector as a long maturity, a long-duration asset class, and that's helped drive the returns," said Bart Mosley, co-president of Trident Municipal Research in New York.

Leaping Assets

With the $3.6 trillion municipal-debt market earning 8.7 percent this year, the most since 2011, exchange-traded funds have emerged as a popular way to tap the rally. Muni ETFs had $13.4 billion of assets as of Sept. 30, the most ever and up from $7.8 billion three years earlier, according to Federal Reserve data.

ETFs are similar to mutual funds that track indexes of equities, bonds, commodities or geographic concentrations. They can be bought and sold during the trading day, allowing investors to jump on market moves more quickly than with mutual funds. U.S. ETFs have about $1.7 trillion in assets, Bloomberg data show.

Build America obligations were created under President Barack Obama's 2009 economic stimulus, and municipalities nationwide sold $188 billion of the debt before the program expired at the end of 2010, data compiled by Bloomberg show.

States and localities used the bonds to pay for infrastructure work, and received a 35 percent federal subsidy on interest payments. Congress reduced that support by 7.2 percent last fiscal year and 7.3 percent this year as part of federal budget cuts, according to the Internal Revenue Service.

Treasuries Tailwind

A rally in Treasuries has helped propel gains in Build America Bonds, said Dan Close, senior vice president at Nuveen Asset Management in Chicago and manager of the Build America ETF. Yields on 30-year federal debt have fallen by about 1.1 percentage points this year to 2.83 percent, the first annual decline since 2011, data compiled by Bloomberg show.

The ETF benefited from “a generally declining interest-rate environment and, to some extent, some spread narrowing,” Close said.

The performance of Build Americas sold by California underscores the rally in the securities.

Build America Bonds that mature in November 2030 traded Dec. 24 with an average yield of 2.96 percent, or about 1.1 percentage points more than Treasuries, Bloomberg data show. That gap has shrunk by more than half this year. Tax-exempt munis with a similar maturity yield about 2.46 percent.

The higher interest rates are a draw for investors, said Thomas Boccellari, an ETF analyst at Morningstar Inc. in Chicago. Improving state and local budgets also give bondholders confidence that municipalities will repay their obligations, he said.

Fiscal Confidence

“Not only was the fund getting a nice yield relative to other municipal bonds, but it was also getting that same increased price return from the underlying fundamentals of the municipal bonds,” Boccellari said.

State tax collections last quarter rose 4 percent from a year earlier, according to a report from the Nelson A. Rockefeller Institute of Government in Albany, New York. It was the biggest quarterly increase in a year.

Build Americas have maintained their value in part because a finite amount of the debt exists, Mosley and Boccellari said. Investors also face a limited universe of long-term corporate debt, they said.

“Not only are taxable munis attractive credits in and of themselves, but if you want to buy 20- or 30-year taxable bonds, you don’t have a lot of options,” Mosely said.

The prospect of higher interest rates next year as the economy grows may hinder the ETF’s performance, said Mosley.

Yields on 30-year Treasuries, a benchmark for borrowing rates, will climb about 0.9 percentage point to 3.7 percent a year from now, according to the median forecast of 53 analysts in a Bloomberg survey.

Even in that scenario, the extra yield on Build America Bonds will provide a cushion, Boccellari said.

“Even if rates go up, demand for BABs should continue in 2015 for their relative yield,” Boccellari said.

Bloomberg Muni Credit

By Michelle Kaske

Dec 25, 2014 5:00 PM PT

To contact the reporter on this story: Michelle Kaske in New York at mkaske@bloomberg.net

To contact the editors responsible for this story: Alan Goldstein at agoldstein5@bloomberg.net Mark Tannenbaum

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[Moody's: U.S. Public Finance Sectors Mostly Stable for 2015, Three Sectors are Outliers.]

As government revenues grow, US state and local government sectors have stable outlooks, as do the state housing finance agencies, independent schools, ports, public power agencies and toll roads. According to our report on outlooks for municipal market sectors, only three principal sectors have non-stable outlooks. Not-for-profit healthcare has a negative outlook as cash flows settle into low growth, higher education remains negative as it confronts slow tuition growth, while the airport sector is positive as air passenger numbers increase…

Purchase the Report.

18 Dec 2014

[Fitch: Chicago Pension Litigation Threatens Progress.]

Fitch Ratings-New York-19 December 2014: Tuesday’s legal challenge to Chicago’s recent pension reform plan was expected and underscores the difficulty the city faces in its efforts to put its pension plans on firmer footing. Illinois affords particularly strong legal protection to pension benefits.

If the litigation succeeds and changes to the cost of living adjustments (COLAs) and employee contributions are struck down (and no replacement legislation is passed), the city would likely revert back to the lower, statutorily based payments, as annual payments on an actuarially sound basis would rise dramatically. These increases would occur in the context of a statutorily required $538 million increase in contributions for the city’s other two pension systems (police and fire) in 2016. The city has not yet said how the increased pension costs will be accommodated, but Fitch Ratings believes they threaten to crowd out other governmental priorities and remain a formidable challenge to the city’s financial equilibrium.

The city benefits from a strong local economy and enjoys broad home rule authority to raise revenues. However, increasing pension costs are a common problem among Chicago-area governments and funding these increases will likely place a considerable stacked burden on the area’s resource base.

All four of Chicago’s (A-/Outlook Negative) pension plans are poorly funded, at a combined 35%, according to Fitch. Annual payments historically were calculated and made based upon a statutory formula, rather than on actuarial projections. The Illinois legislature passed changes to two of Chicago’s four pension plans in April 2013, trimming future growth of the liability with changes to the COLA while providing increased contributions from employer and employees.

If the new plan is upheld, it would require significant payment increases from the city, approximately half of which are expected to be funded by increased property taxes and half by budgetary savings. The city plans to gradually increase its revenues for pension payments, which may include property taxes, by $50 million (approximately 6%) annually for five years before reaching the target increment of $250 million in the fifth year.

Contact:

Arlene Bohner
Senior Director
U.S. Public Finance
+1 212 908-0554
33 Whitehall Street
New York, NY

Rob Rowan
Senior Director
Fitch Wire
+1 212 908-9159

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article, which may include hyperlinks to companies and current ratings, can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

WSJ: U.S. Muni-Bond Market Is on a Tear.

The Tax-Favored Debt Has Outperformed Corporate Bonds, Treasurys in 2014

The debt issued by U.S. cities, states and local entities such as sewer systems has posted its longest string of monthly gains in more than two decades in 2014, outpacing gains in corporate bonds and U.S. government debt, according to data from Barclays PLC.

Investors are flocking to the $3.6 trillion municipal-bond market at a time of low interest rates, uneven global growth and concern that the nearly uninterrupted rise in many stocks and bonds since the financial crisis will come to an end. The debt is especially attractive because interest payments typically don't generate federal taxes and, in some cases, aren't subject to state taxes.

That foundation, along with forecasts for relatively flat issuance of new bonds, is expected to support the rally in 2015 despite concerns about the impact of an increase in short-term interest rates by the Federal Reserve, which many economists and investors expect in the middle of next year. The fiscal woes of state and local governments are also a lingering worry.

“The U.S. muni market lurches between extended periods of tranquility and abrupt interludes of instability,” said Thomas McLoughlin, co-head of fundamental research at UBS Wealth Management Americas. “And the story of 2014 is this has been an extended period of relative tranquility.”

The gains in every month of 2014 have more than reversed the sector’s pullback last year, amid Detroit’s record bankruptcy, Puerto Rico’s financial straits and concerns about higher interest rates. Some observers warned that municipal bonds were vulnerable to an investor exodus, echoing a sentiment that pervaded the market after the 2008 financial crisis.

Instead, municipal bonds have returned 8.71% this year through Friday, including price gains and interest payments, according to Barclays. That compares with a total return of 15.3% for the S&P 500, 6.97% for highly rated corporate debt and 4.6% for U.S. Treasury debt.

The broad debt-market rally that upended Wall Street bets on rising interest rates in 2014 also fueled a surge of investor funds into municipal bonds, many of which are considered as safe as Treasurys because they are backed by tax revenue. Yields on municipal bonds fell to a two-year low of 1.94% in mid-October, according to Barclays data. Yields fall when prices rise.

Investors, led by individuals purchasing the debt through mutual funds, have poured $23.9 billion into municipal-bond funds through mid-December, according to Lipper. They withdrew $63.5 billion last year.

Low overall borrowing by belt-tightening public officials in cities and states through the first three quarters of the year reduced the supply of new bonds, while higher tax rates increased the relative attractiveness of tax-exempt debt, said Daniel Solender, director of municipal-bond management at Lord Abbett & Co., which oversees about $16 billion.

Despite a late-year increase in bond issuance and the prospect of the Fed raising rates, yields on municipal debt still look attractive, he said.

In the first quarter of the year, cities and states borrowed about one-quarter less than they did in the same period of 2013, according to data from the Securities Industry and Financial Markets Association. Municipal-bond issuance totaled $295.8 billion through November, about 4% less than in the same period last year.

“When you look at supply, which picked up for us in the fourth quarter, there are still more bonds being called out of the market than being issued, so that creates some demand,” Mr. Solender said.

The supply of bonds isn’t likely to surge in 2015. A SIFMA survey of municipal-bond underwriters and dealers this month predicted issuance will reach $357.5 billion, compared with a total of $348.1 billion forecast for 2014.

At the same time, demand from individual investors, mutual funds and banks and insurance companies has remained robust, said Ashton Goodfield, co-head of the municipal-bond department at Deutsche Asset & Wealth Management, a unit of Deutsche Bank AG . That has helped investors overcome last year’s fears about losses from Detroit or Puerto Rico. The U.S. commonwealth passed a law in June allowing some public agencies to restructure their finances.

“I think people are understanding that there’s not going to be a rash of bankruptcies in the market,” Ms. Goodfield said. “It’s a confirmation that municipal credits are generally solid.”

Some analysts said hedge funds and other distressed-debt investors have assumed much of the risk from Puerto Rico, which has about $73 billion in total debt. Hedge funds were the primary buyers in a March $3.5 billion bond sale. Puerto Rico’s cash-strapped electric-power authority owes about $9 billion and appointed a chief restructuring officer in September.

Investor concerns over municipal pension obligations, however, may become more apparent in the new year, leading some to avoid states with large funding gaps such as Illinois, said Tim McGregor, director of municipal fixed income at Northern Trust in Chicago, which manages about $30 billion.

“Many places have done good work on pension reform, but those that are lagging will continue to be under the microscope,” Mr. McGregor said. “I expect the market will begin differentiating a little more.”

An unexpected jump in interest rates could also slow the rally in 2015, said Chris Mauro, head of U.S. municipal strategy at RBC Capital Markets. A new Congress could also take up tax reform, introducing unforeseen changes to the municipal sector, breaking through a widespread perception of Washington gridlock.

“As we learned in 1986, large-scale tax reform is extremely unpredictable,” he said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Dec. 28, 2014 4:32 p.m. ET

Chattanooga Touts Transformation Into Gig City.

CHATTANOOGA, Tenn. — A city once infamous for the smoke-belching foundries that blanketed its buildings and streets with a heavy layer of soot is turning to lightning-fast Internet speeds to try to transform itself into a vibrant tech hub.

Through a combination of political will and federal stimulus money, 175-year-old Chattanooga became the first U.S. city to broadly offer a gigabit per second internet speeds — nearly 50 times the national broadband average.

Whether that’s enough to turn a modest southern city into a mini Silicon Valley remains to be seen, but local leaders are betting they’ve positioned themselves well for what lies ahead in the global economy.

“This is an old town with a new vision,” said Aaron Welch, who became a hero of the emerging tech scene when he sold his app that reserves specific tables at restaurants to a rival for $11.5 million.

Other startups migrating to the “Gig City” to tap into the government-owned broadband network include 3D Ops, which converts MRI or CT scans into anatomical replicas to help doctors prepare for surgeries; shoemaker Feetz, which makes custom footwear using 3D printing technology; and moving service Bellhops, which coordinates the logistics of managing 8,000 college student contractors nationwide.

The nascent tech scene is the latest development in Chattanooga's decades-long effort to reinvent itself after a 1969 federal study called it the most polluted U.S. city.

A downtown revival over the last two decades was anchored by the Tennessee Aquarium and a $120 million redevelopment of the Tennessee River waterfront. German automaker Volkswagen in 2008 cited the city's turnaround in its decision to build a $1 billion assembly plant on the site of a former TNT plant.

The city inaugurated its fiber optic network — with a $111 million boost from the 2009 federal stimulus package — even as larger cities like Atlanta and Nashville wait for private providers like AT&T and Google to roll out comparable service.

"We're at a pivotal time in the relationship between cities and communications networks," said Susan Crawford, a professor at Harvard Law School who has written extensively about the power of Internet providers. "And there are mayors all over the country who are watching Chattanooga with envy and wishing and planning for fiber optic networks of their own."

While commercial providers pick and choose which neighborhoods to serve, Chattanooga's network covers the city.

"The whole point is that you want everyone to have this capacity, and not to leave anyone behind," said Crawford.

Chattanooga's fiber network grew out of efforts to install a smart electric grid in a city where tornados and ice storms have caused serious power outages. During the upgrade, the Electric Power Board, or EPB, also issued $226 million in bonds to help fund a fiber optic network, hoping the super fast phone and Internet service would attract new business.

According to the Federal Communications Commission, the average broadband speed in 2013 was 21.2 megabits per second. A gigabit equals 1,000 megabits.

"Our competitors have said things like, 'Oh nobody needs a gig,'" EPB's president and CEO Harold DePriest said at a recent tech forum in a converted downtown church. "That's absolutely true. But how many of us need color TV? We have color TV because we want color TVs.

"And in America we have this unique way of making wants into needs," he said.

The fiber network has upload speeds matching downloads, bringing near real-time transfer of information between high-bandwidth users. It let musicians T Bone Burnett in Los Angeles and Chuck Mead in Chattanooga play a live concert together while thousands of miles apart in December 2013.

Jonathan Taplin, director of the Annenberg Innovation Lab at the University of Southern California, which helped organize the concert, said entertainment executives might be intrigued.

James Cameron, director of the movies "Avatar" and "Titanic," wants to make films at double the current ultra-high definition 4K standard, Taplin said. The 500 megabits per second needed would be out of reach for most, but Chattanooga's fiber customers "could handle that today."

The municipal network has been criticized for unfairly crowding out private providers.

"EPB's entire network is propped up on the backs of ratepayers and taxpayers," said Justin Owen, head of the Beacon Center of Tennessee, a conservative think tank.

Mayor Andy Berke counters that the city had no other option.

"No one was begging to come to Chattanooga to put up a fiber optic network," he said.

EPB initially charged $350 a month for the gigabyte speed, but has slashed that to $70, driving subscriptions from fewer than 100 to more than 4,700. Another 55,000 residential customers get the cheaper 100-megabyte service.

Tech startup guru Sheldon Grizzle founded The Company Lab to hold tech competitions and mentorship programs that take advantage of the city's internet capacity — and to connect entrepreneurs with investors. They included Welch, who first hashed out his reservation app idea in one of the lab's 48-hour startup competitions.

Grizzle in 2011 persuaded Welch to quit his day job by helping land a $65,000 investment in his company, Quickcue, which was sold to reservation giant Open Table in 2013. Welch went on to found Iron Gaming, which hosts competitions for gamers, and is working on creating a television network for computer geeks.

But Welch said developers still struggle to lure financial backers in a city long associated with heavy industry, the Chattanooga Choo-Choo and the country's first Coca-Cola bottling plant — though there are signs that venture capitalists in cities like San Francisco and Los Angeles might finally be paying attention.

"Now, it's like 'Oh, yeah, they have that really forward-looking, advanced infrastructure,'" Grizzle said.

Other cities, including Austin, Texas; Santa Monica, California; and Kansas City, are coming online with their own fiber networks, while several others have plans to build them. Berke sees that as a good thing for his city.

"If nobody else has it, there's nothing for us to develop that will work elsewhere," he said. "So it's essential that more cities get this."

By THE ASSOCIATED PRESS

DEC. 27, 2014, 10:45 A.M. E.S.T.

SIFMA Commends Passage of Eminent Domain Provision in Spending Bill.

Washington, DC, December 16, 2014 – Today, SIFMA issued the following statement from Kenneth E. Bentsen, Jr., SIFMA president and CEO, after President Obama signed into law a spending bill to keep the government running through FY2015 which contains a provision preventing the federal government from supporting state and local efforts to use eminent domain to acquire mortgages:

"SIFMA applauds Congress and the Administration for wisely stepping into the eminent domain debate and preventing the misuse of an important federal backstop by private parties to facilitate an unconstitutional taking of personal property for private gain. Today's action should go a long way in improving investor confidence in the housing finance system and installs one more obstacle to this reckless proposal. SIFMA and its members welcome this development and encourage communities considering this form of eminent domain to reconsider and work to find alternatives that help homeowners and protect taxpayers and investors."

Release Date: December 16, 2014

Contact: Carol Danko, 202.962.7390, cdanko@sifma.org

Pension Plans Can Provide Retirement Income at Half the Cost of Individual Accounts.

Defined benefit plans are inherently more cost-efficient than defined contribution plans, according to A Better Bang for the Buck, an updated study by the National Institute on Retirement Security. A typical DB plan provides equivalent retirement benefits at about half the cost of a DC plan, and 29% lower cost than an "ideal" DC plan modeled with generous assumptions, according to the study. DB plans have three structural cost advantages, compared to DC plans: longevity risk pooling, the ability to maintain a well-diversified portfolio over a long investment horizon, and low fees and professional management. Given the cost efficiencies inherent to DB plans, the study concludes that employers and policymakers should carefully evaluate claims that money can be saved by switching to a DC plan.

NABL Ethics Teleconference Replay: A Disturbance in the Regulatory Forcefield.

To listen to a recorded version of the teleconference click here.

Date/Time: Wednesday, December 17, 2014, 1:00-2:30pm Eastern

Description: With the rise in the number and scope of audits, investigations and regulatory initiatives of the IRS and the SEC in recent years, bond lawyers must now consider ethical scenarios which were previously unimaginable. This panel will focus on the application of the model rules of professional responsibility in situations involving these regulatory agencies and the previously unforeseen conflicts of interest that arise as a result.

To download the Teleconference Agenda click here.

Panelists:

Tyler Kalachnik (Ice Miller LLP)
Erik Long (Ice Miller LLP)
Arnold Pagniucci (ALAS – Chicago)
David Unkovic (McNees Wallace & Nurick LLC)
Philip Whistler (Ice Miller LLP)

CLE Information: You may receive ethics CLE credit for listening to the recorded version of the teleconference. NABL has applied for and anticipates receiving ethics CLE credit for between 1.5

and 1.8 hours in most states that accredit teleconferences. No credit will be available in Pennsylvania. To obtain CLE credit you must pay the CLE fee listed below and fill out the payment form. Be sure to include your CLE states and identifying numbers on the payment form. Certificates of Attendance will be e-mailed to you , and credit hours will be reported to those states that require sponsors to report credit.

CLE Fees: $195 for members; $250 for non-members

A New Prosecutorial Frontier - SEC Seeks Bans on Municipal Officials: Burr & Forman.

The Securities and Exchange Commission ("SEC") was recently granted a preliminary agreement by a federal judge to bar a municipal official from participating in future bond sales. As reported by the Wall Street Journal, the move marks a new enforcement method utilized by the SEC and was undertaken pursuant to the SEC's broad antifraud authority. While the SEC has received preliminary agreement in one case, other requests are still outstanding.

The preliminary agreement awarded to the SEC involved a Harvey, Illinois city official who allegedly diverted municipal bonds for undisclosed purposes. The city official refused to settle the claims with the SEC and did not respond to the SEC's lawsuit against him. As a result of the official's failure to respond, the court preliminarily approved the agreement to bar the official from participating in future municipal-bond sales.

The Harvey, Illinois enforcement action coincides with another ground-breaking action brought by the SEC against the City of Allen Park, Michigan and two former Allen Park city officials. In that action, the SEC is seeking to settle fraud claims against all of the parties arising from municipal bonds issued to finance a movie-studio project. The officials allegedly misrepresented the viability of the studio project, and investors relied on the false information in purchasing the bonds. The studio project subsequently failed, and the bonds suffered losses as a result. The SEC's settlements with the Allen Park officials included requests that the officials be banned from future municipal-bond transactions. Although the settlements have not yet been approved by the court, approval is highly likely given the broad deference afforded to the SEC in this area.

Municipal officials and firms that assist with municipal-bond sales can expect continued and heightened scrutiny. Speaking at the annual meeting of the Securities Industry and Financial Markets Association in New York last month, the director of the SEC's enforcement division, Andrew Ceresney, publicly announced the SEC's intent to remain focused on municipal securities. In particular, Ceresney indicated that the focus of the SEC's increased enforcement in municipal securities would be on pension fund abuses, pay-to-play violations, and undisclosed conflicts of interest. Combined with the ongoing oversight of municipal advisors under the Dodd–Frank Act, both municipal officials and firms that assist with municipal-bond sales can expect continued and increased scrutiny. Moreover, officials and firms should be aware of the implications raised by the SEC's new enforcement techniques in this area, including whether officials who provide information on misrepresentations will receive any favorable treatment in a subsequent prosecution.

12/23/2014

by Kip Nesmith | Burr & Forman

[S&P Places Radian Asset Assurance on CreditWatch Negative Following Assured Guaranty Deal.]

Standard & Poor's Ratings Services said today that it placed its ratings on Radian Asset Assurance Inc. (Radian Asset), including its 'B+' long-term counterparty and financial strength ratings, on CreditWatch Positive. We are also affirming our 'AA' financial strength and enhancement ratings on Assured Guaranty Municipal Corp., Assured Guaranty Corp. (AGC), Assured Guaranty Re Ltd., and Municipal Assurance Corp. (collectively, Assured).

Assured will purchase Radian Asset through AGC for $810 million in cash. As of Sept. 30, 2014, Radian Asset had statutory capital of $1.3 billion ($1 billion of surplus and $287 million of contingency reserves), remaining unearned premium reserves of $176 million, and present value of installment premiums of $66 million. Assured's purchase of Radian Asset will have an immaterial effect on Assured's capital adequacy. We expect the company to maintain on a pro-forma basis more than $1.3 billion capital cushion at the current rating level following the close of the acquisition.

As of Sept. 30, 2014, Radian Asset's insured par totaled approximately $19 billion, comprised of $11 billion in public-finance transactions and $8 billion of structured-finance transactions ($6.1 billion of corporate collateralized debt obligation exposures will mature by 2017). The proposed purchase does not materially increase the theoretical losses of Assured's insured portfolio or materially reduce the pro-forma capital positon upon the transaction close.

The stable outlook on Assured reflects its strong competitive profile and very strong capital adequacy even with the proposed acquisition.

We could lower our rating on Assured below the 'AA' category if the current interest-yield and credit-spread compression environment persists beyond the next 12 months and Assured's public finance risk-adjusted pricing ratio remains at or less than 4%. We could also lower the rating if the company exhibits significant volatility from earnings or capital adequacy. Based on our view of the new-issue U.S. public finance and financial guarantee markets, we do not believe the business or financial risk profiles of the company will change dramatically and therefore do not expect to raise the ratings.

The complete list of ratings affected by this action will be available in the coming days. When available, the list can be found on Standard & Poor's public Web site at www.standardandpoors.com. Our analysis of these ratings actions is ongoing; we will post any additional rating changes at the same location.

The CreditWatch Positive on Radian Asset is based on our expectation that the company's insured obligations will become obligations of AGC. We also expect that upon close of the transaction, Radian Asset will be folded into AGC and dissolved. We would maintain the rating on Radian Asset at the current level if the transaction fails to occur.

December 23, 2014 11:26 AM EST

[Municipal Bond Interest Paid By a Bond Insurer After an Issuer's Bankruptcy Discharge Can Remain Tax-Exempt: Mintz Levin.]

In the aftermath of recent municipal bankruptcies in which issuers proposed and/or implemented bankruptcy plans involving partial discharges of the issuer's payment obligation on insured bonds, there has been increased focus on whether municipal bond interest paid by a bond insurer after the bankruptcy plan's effective date continues to be tax-exempt.

Market confusion as to the treatment of bond insurance payments in the discharged issuer context is at least partially attributable to an incomplete understanding of why bond insurer payments of municipal bond interest are deemed tax-exempt in other contexts. Although the IRS has not specifically addressed the tax status of bond insurer payments following the issuer's partial (or full) discharge in bankruptcy, review of IRS rulings on bond insurance suggests that, in ordinary circumstances, interest on the insured bond continues to be tax-exempt notwithstanding that the only source of payment is the bond insurance.

The technical basis for the continued tax-exemption of post-discharge interest is discussed in detail below. The analysis is rooted in one simple concept articulated in an IRS revenue ruling: in ordinary circumstances, a payment by a bond insurer is deemed, for tax purposes, to have been made by the issuer of the bonds. For this reason, although a bankruptcy may, for non-tax purposes, discharge an issuer from further liability on all or a portion of bond payments, for tax purposes the bond payments made by the bond insurer continue to be treated as being made by the issuer. All else is detail, for those with an interest in such detail.

And so, on to the technical discussion.

The tax-exempt treatment of interest paid by a municipal bond insurer is founded on a trio of favorable IRS revenue rulings, which, unlike private letter rulings, are statements of IRS policy on which the market can rely.

The first such ruling, Revenue Ruling 72-134, dealt with the situation where the issuer pays for bond insurance when the bonds are issued, and concluded that "defaulted interest paid by the independent insurance company is excludable from the gross income of the bondholders."

Revenue Ruling 72-575 extended such favorable treatment to a bond insurance policy purchased by the underwriter, and Revenue Ruling 76-78 went a substantial step further, upholding the tax-exemption of interest payments received under secondary market bond insurance purchased by a bondholder.

These three rulings state a favorable result without discussing the rationale. The technical basis for the tax-exemption of bond insurance payments is illuminated in Revenue Ruling 94-42, an adverse ruling involving a bondholder that purchased secondary market bond insurance on zero coupon bonds, rerated the bonds AAA and resold the bonds. The bond insurance premium for the secondary market insurance was an amount sufficient to fund the bond insurer's purchase of a high-yielding portfolio of Treasury securities that economically defeased most of its insurance obligation. In the ruling, the IRS expressed concern that treating such bond insurance interest payments as tax-exempt would effectively permit a secondary market arbitrage bond, and set about distinguishing the scenario under review from "customary" bond insurance payments treated as tax-exempt in the earlier rulings.

In the 1994 ruling, the IRS noted that customarily bond insurance enhances marketability and reduces interest rates, which is consistent with the IRS's objective of preventing overburdening of the market with tax-exempt interest. The ruling stated that such tax-exempt treatment is accomplished by "integrating the insurance contract with the obligation of a political subdivision" instead of treating the bond insurer's obligation as a separate debt instrument.

According to this key ruling, "an insurance contract or similar agreement is treated as both incidental to bonds and not a separate debt instrument … only if, at the time it is purchased, the amount paid is reasonable, customary, and consistent with the reasonable expectation that the issuer of the bonds, rather than the insurer, will pay debt service on the bonds." The ruling concluded that at the time the bond insurance policy under review was purchased, the insurance premium was not reasonable and customary and reflected an expectation of default by the issuer. The IRS ruled that because the insurance purchaser looked primarily to the insurer for payment of the debt service on the bonds, the bond insurance was not incidental and should be treated as a separate non-municipal obligation rather than integrated with the insured bonds. The conclusion that the interest payments by the bond insurer were taxable followed from the treatment of the bond insurance as a non-municipal obligation.

Two significant concepts are articulated in Revenue Ruling 94-42. First, the technical basis for treating bond insurance interest payments as tax-exempt is that, for customary bond insurance transactions, the bond insurance is integrated with and treated as the same debt instrument as the insured municipal bond. Second, the treatment of bond insurance as integrated with the insured bond versus as a separate debt instrument that is not a municipal bond is determined based on reasonable expectations at the time the bond insurance is purchased.

In other words, provided the bond insurance is "customary" at the time it is purchased, it becomes another source of payment by the issuer of the insured bonds, albeit one that, at the time the insurance is purchased, is not expected to be needed. If circumstances change and defaulted interest is paid from the bond insurance, it is deemed a payment by the municipal issuer on the insured bond, not a separate payment by the bond insurer.

Nothing in the revenue rulings on the tax-exemption of interest payments sourced to a bond insurer makes the integration of the bond insurance with the bond dependent on the continuing legal obligation of the issuer to make the insured debt service payment. The above-summarized favorable revenue rulings describe customary bond insurance as including provisions under which a bond insurer's payment to a bondholder does not discharge the bondholder's payment claim against the issuer, to which the insurer becomes subrogated. But such revenue rulings do not suggest that if a bondholder has no claim against the issuer because the issuer has received a bankruptcy discharge, the worthlessness of the bond insurer's subrogation claim alters the character of the bond insurance payment as an integrated tax-exempt payment on the municipal bond constructively made by the issuer, notwithstanding the issuer's discharge as a source of payment for non-tax purposes.

The utility of bond insurance, and the reduction in bond interest rates and the aggregate amount of tax-exempt bond interest that have justified its tax treatment, would be substantially eroded if the IRS were to rule (which it never has) that the tax-exempt nature of bond insurance payments hinges on abstract distinctions between whether non-payment from other sources is due to the issuer's financial condition or to the legal discharge in bankruptcy of the issuer's duty to make such payments. Bond insurance is purchased for the precise purpose of insuring against default by the issuer, foreseeably and prominently including the possibility of the issuer's bankruptcy and the potential legal discharge of part or all of its legal obligation to pay debt service.

The cause of non-payment of the bonds from sources other than the bond insurance is immaterial for tax-exemption purposes once the bond insurance payment is recognized as integrated with and indistinguishable from the other sources of payment of the bond. Moreover, the line between an issuer's lack of a legal obligation to pay and factual insolvency is often vague, and if such a distinction affected tax-exemption of bond insurer payments, uncertainty would prevail. For example, a conduit bond issuer whose obligation to pay is limited to loan or lease payments from a conduit obligor that is not making any payments could be characterized as lacking a legal obligation to pay and/or the financial ability to pay. Similarly, an issuer that ceases to operate and is dissolved without assumption of its liabilities by another party could be characterized as legally non-existent and/or factually unable to pay.

The tax treatment of bond insurance should not, and the relevant revenue rulings support the view that it does not, depend on distinctions that are esoteric, unpredictable and impractical. Notably, in a slightly different context, the market does not doubt the continued tax-exemption of interest on innumerable “legally defeased” bonds payable solely from portfolios of Treasury securities, although the issuer is contractually discharged from making payments from other sources.

The tax impact of bankruptcy plan modifications of an issuer’s rights and duties on insured bonds are often an afterthought not adequately focused on in the plan or the plan disclosure. Documentation and characterizations of what is technically occurring to the insured bonds under the plan may be imprecise. A bankruptcy plan may suggest that portions of insured bonds that the issuer will be discharged from paying are being extinguished, when what is actually meant is that such bonds will remain outstanding and payable from bond insurance that for tax purposes is attributed as an issuer payment.

To be sure, some bankruptcy plans may purport to make changes to insured bonds beyond the full or partial discharge of the issuer’s liability. Presumptively, a modification of the issuer’s contractual duties under a bankruptcy plan does not change the payment obligations insured by the bond insurer. Nonetheless, to avoid muddying the waters plan language should be crafted in a manner that ensures that any portion of the original insured bond from which the issuer is discharged remains outstanding for tax purposes as well as for purposes of claiming against the bond insurer.

Any purported changes by a bankruptcy plan to the terms of the bonds beyond a reduction or elimination of the issuer’s liability require separate tax analysis. The devil is frequently in the details, and the debtor and its representatives may not be focused on or impacted by the tax treatment of insured future bond payments from which the issuer has been discharged. Holders of insured tax-exempt bonds that are being modified in any manner by a bankruptcy plan may wish to obtain input from tax counsel experienced in bankruptcy-related tax-exemption issues in time to impact the plan wording and structure relating to such bonds. But, although the IRS has not directly addressed the topic, there is no reason to presume that interest paid by a bond insurer on an outstanding municipal bond will be taxable simply because the issuer will have no remaining legal obligation to make the insured payment from another source.

THE NATIONAL LAW REVIEW

DECEMBER 23, 2014

AUTHORS:

Leonard Weiser-Varon

Member

Len is active in both municipal finance and corporate finance, with an emphasis on financings for 501(c)(3) institutions, project finance, secured lending, structured finance transactions, workouts and restructurings, corporate debt, and Section 529 college savings programs.

His practice includes service as bond counsel, issuer’s counsel, underwriters’ counsel, and counsel to institutional purchasers and borrowers in connection with public offerings and private placements of, and defaults and bankruptcies involving, tax-exempt and taxable debt for public, nonprofit, and…

LWeiser-Varon@mintz.com
617-348-1758
www.mintz.com
www.publicfinancematters.com

Maxwell Solet, Tax attorney, Mintz Levin, Law firm Maxwell D. Solet

Member

Mike has tax responsibility in connection with the firm's role as bond counsel, underwriter's counsel, and purchaser's counsel on numerous state and local bond issues. The firm has served as bond counsel for the Commonwealth of Massachusetts, the Massachusetts Educational Financing Authority, the Massachusetts Bay Transportation Authority, the Massachusetts School Building Authority, the Massachusetts State College Building Authority, the Massachusetts Turnpike Authority, the New York Liberty Development Corporation, and the Vermont Bond Bank, as well as in many school…

MDSolet@mintz.com
617-348-1739
www.mintz.com

Summer Program Unveiled for Treasury Management.

Public pension fund trustees and other financial professionals can go back to school, in Malibu, Calif., no less, thanks to a new partnership between the National Institute for Public Finance and Pepperdine University.

The new Public Treasury Management program will be July 26-29, at Pepperdine's Graziadio School of Business and Management. Treasurers, investment staff, pension fund trustees and other finance professionals will earn a certificate after taking courses that include investments and pensions, public finance and debt management, and executive treasury management. Faculty members include public- and private-sector professionals and academic leaders.

The program will cover current public finance issues, industry best practices and strategies for dealing with public finance challenges. "The culmination of best practices, strategies, and ideas from private-sector, public finance and academic leaders makes the institute an invaluable learning experience," said NIPF Co-Chairwoman and North Carolina state Treasurer Janet Cowell in a news release.

The enrollment deadline is June 15.

PENSIONS & INVESTMENTS ONLINE

BY HAZEL BRADFORD | DECEMBER 22, 2014

Public Pensions Are America's Greece.

Bruce Rauner, a Republican, liked to talk tough about unions and public-sector pensions when he was campaigning for governor in Illinois.

“The system is full of fraud and self-dealing and abuses, such as folks who have a pay rise in the last years of their career [so their pension is higher] or folks who moved in and out of certain jobs, so they could get a pension,” he said in August 2013.

With two or three pensions, some are making as much as half a million dollars in retirement pay, he claimed. This, he thundered, is a rip-off of taxpayers and other workers.

But as soon as Mr Rauner was elected last month, the self-made millionaire toned down the rhetoric. The size and complexity of the public-pension mess suddenly hit him, and, aware that he had to bring together Democrats, unions and creditors, he began to backtrack. He declares now that it is most important to “protect what is done–don’t change history. Don’t modify or reduce anybody’s pension who has retired, or has paid into a system and they’ve accrued benefits.”

Illinois is like Greece in one obvious way: it overpromised and underdelivered on pensions and has little appetite for dealing with the problem, says Hal Weitzman of the University of Chicago Booth School of Business. This large Midwestern state, with a population of 13m (Greece has 11m, though a far smaller GDP than Illinois), has the most underfunded retirement system of any state and the largest pension burden relative to state revenue.

It also has the highest number of public-pension funds close to insolvency, such as the one looking after Chicago’s police and firemen. According to the Civic Federation, a budget watchdog, Illinois has piled up a whopping $111 billion in unfunded pension liabilities, in addition to $56 billion in debt for health benefits for pensioners. The state devotes one in four of its tax dollars to pensions, which is more than it spends on primary and secondary education.

Mainly as a result of this gargantuan pension debt, Illinois’s bond rating is the lowest of all the states, which means dramatically higher borrowing costs. When the state government failed to address pension underfunding in its budget for 2014, two credit-rating agencies, Fitch and Moody’s, cut the state’s bond rating, which in Moody’s case put Illinois on a par with Botswana. (An incensed editorial in the Chicago Tribune asked what Botswana had done to be so insulted.)

The main reason for the pension debacle is decades of underfunding. “Everything was always done with a short-term view,” says Laurence Msall, head of the Civic Federation. “Unique to Illinois is the idea that you don’t have to pay for pensions and you don’t have to follow actuarial recommendations.”

Whereas most other states follow the rules set by the Governmental Accounting Standards Board (GASB), which, however imperfect, require some budget discipline, Illinois has mostly ignored them. In 2013 the state paid $2.8 billion into its pension fund for teachers, one of its five pension funds, but GASB rules would have required a contribution of $3.6 billion, says Joshua Rauh, a professor of finance at Stanford University.

According to Mr Rauh’s calculations, Illinois’s true unfunded pension liability is $250 billion. All the other calculations, he says, are based on over-optimistic assumptions. For example, the state assumes an average annual return on its investments of 7.75% over 30 years. But according to Mr Rauh it has only a 25% chance of achieving gains of that order.

After the public-relations disaster of the credit downgrades, Pat Quinn, the outgoing governor belatedly pushed for pension reform. In December 2013 the legislature approved a bill that reduces annual increases in pension payments, increases the retirement age and caps pensionable salaries. Some have welcomed it as Illinois's first actuarially sound pension-funding scheme, designed to get the five plans fully funded in 30 years. Mr Rauh, however, thinks that the reform "does not even come close to addressing the problem".

Mr Quinn's changes were supposed to become law in June, but were held up by legal challenges and ultimately rejected by Judge John Belz of the Sangamon County circuit court for violating the state constitution, which makes existing pension contracts virtually untouchable. (Only New York and Arizona have similar safeguards in their constitutions.) Lisa Madigan, the state attorney-general, has appealed against the ruling to the Illinois Supreme Court, which is looking at the case.

James Spiotto, a lawyer at Chapman Strategic Advisors, argues that if a state is unable rather than unwilling to pay its pensions, then the well-being of its citizens overrides any constitutional protections. The Supreme Court has consistently ruled that states cannot abdicate their responsibility to provide essential services and infrastructure. And if Illinois cuts public services yet further the state will lose more taxpayers, resulting in "a death spiral", says Mr Spiotto.

Union representatives disagree with this scenario. Dan Montgomery, the president of the Illinois Federation of Teachers, believes Mr Quinn's reform is illegal and that the state must find ways to pay up, for instance by extending the repayment schedule of its debt and increasing tax revenue by closing loopholes and expanding a sales tax on services.

Mr Rauner was elected on a promise that he would not make his predecessor's temporary increase of income and corporate tax permanent. But he has not explained how Illinois will cope with the loss of more than $7 billion in annual revenue. Nor has he laid out any broader plans for fixing the pensions mess. For a start he might look to Washington and the budget deal hashed out in Congress. This allows some distressed private-sector pension plans to cut the benefits of retirees. In Illinois, though, more inventive measures may be needed.

In 2015 Illinois will either sink further into a Greek-style morass of debt or start its long-delayed rehabilitation. Mr Rauner has warned of a rough 24 months ahead. "I ain't going to be Mr Popularity for a while," he says. Voters may not mind, if he is able to sort this disaster out.

THE ECONOMIST

DEC. 20, 2014, 1:02 PM

Creditor to Oppose San Bernardino Bankruptcy Plan Favoring Calpers.

LOS ANGELES (Reuters) – A major capital markets creditor of bankrupt San Bernardino, California, will oppose any exit plan that is more favorable to Calpers, California's public pension fund, a source familiar with the creditor's strategy said on Thursday.

The creditor intends to pursue a new approach when hearings resume next year, in light of a deal the city reached with Calpers in November that will see the pension fund paid in full under a bankruptcy plan. The city has been ordered to produce a plan by May.

"We will strongly resist a plan that treats its pension claims substantially better than our claim," the source involved in the creditor's San Bernardino strategy said, who spoke on the condition of anonymity because negotiations with San Bernardino are subject to a judicial gag order.

The move is significant because all the capital market creditors have so far supported the bankruptcy and it signals a change in course, speaking to the wider fight between Wall Street and pension funds over how they are treated in municipal bankruptcies.

San Bernardino declared bankruptcy in July 2012 with a $45 million deficit. Along with Calpers, other major creditors include Ambac Assurance Corp, the insurer of $50 million of pension obligation bonds issued to the city in 2005; Erste Europäische Pfandbrief-und Kommunalkreditbank AG, the holder of the bonds; and Wells Fargo Bank, the bond trustee and the flagship bank of Wells Fargo & Co.

The deal with Calpers has alarmed many of the city's other creditors, who fear they will be forced to bear the brunt of the city's debt restructuring if the pension fund is left unharmed.

San Bernardino, a city of 205,000, 65 miles east of Los Angeles, is one of a handful of municipal bankruptcies that has been closely watched by the $3.6 trillion U.S. municipal bond market.

Bondholders, public employees and state and local governments want to understand how financially distressed cities handle their debts to Wall Street, compared with other creditors like large pension funds such as Calpers, during Chapter 9 protection.

Two other U.S. cities – Detroit, Michigan and Stockton, California – produced bankruptcy plans this year where pensioners emerged relatively unscathed but where Wall Street bondholders and insurers took significantly greater losses.

Gary Saenz, San Bernardino's city attorney, said Stockton chose to pay Calpers in full in its bankruptcy plan. "The city has to have a life after bankruptcy," Saenz said. "To achieve that there needs to be a stable workforce. Without stable pensions it's difficult to maintain a stable workforce."

Calpers said: "The city (San Bernardino) has made the right decision to fulfill the retirement security promises made to its employees."

Reuters News | Dec 18, 2014

By Tim Reid

(Reporting by Tim Reid; Editing by Bernard Orr)

[Kansas Pension-Bond Plan Revived Amid Budget Strain: Muni Credit.]

Governor Sam Brownback's plan to divert pension cash to plug a budget deficit has Kansas Treasurer Ron Estes recommending a fiscal tool the state hasn't used in a decade — selling bonds to fund its retirement plan.

Brownback, a Republican who starts his second term in January, last week proposed shortchanging the state's pension contributions by $58 million to close a $280 million budget hole caused in part by tax cuts the governor championed. Kansas, with the fifth-weakest pension system among U.S. states, had its issuer ratings downgraded by Standard & Poor's and Moody's Investors Service this year.

To close a $7.35 billion funding shortfall, the state needs to keep commitments that were part of a 2012 pension overhaul, said Estes, a Republican who also won re-election last month. The plan called for more funding from the state, including revenue from casinos it owns, and raised the amount employees pay.

“We need to keep working on our pension reforms passed two years ago or we’ll fall further behind,” Estes said in an interview from Topeka.

2004 Example

Kansas can take advantage of interest rates close to five-decade lows to raise cash, increase the funding level and create fixed payments, Estes said. The state issued $500 million of pension bonds in 2004; a proposal to sell another round stalled in the legislature last year.

The 2004 bonds were sold through the Kansas Development Finance Authority. The debt, which is insured, has traded this month at an average yield of 4.5 percent for a May 2034 maturity, Bloomberg data show. That’s about 1.9 percentage points above Treasuries.

Because of investment losses from the recession and insufficient contributions, public retirement plans nationwide are at least $1.3 trillion short of the assets needed to pay about $5 trillion of projected benefits, Federal Reserve data show. Since 2005, every state but Idaho has passed laws to boost pension funding, according to the National Conference of State Legislatures.

Kansas is among states and localities that have turned to debt to bolster their plans. Led by California’s Orange County, municipalities have issued a combined $356 million of revenue-backed pension bonds this year, compared with $424 million in 2013, according to data compiled by Bloomberg. In 2003, Illinois sold $10 billion of bonds for its pensions.

Backfire Risk

The debt, which is typically taxable, carries risk. The strategy is to invest the proceeds, usually in stocks, and earn more than it costs to repay bond investors. The approach can backfire if issuers borrow when equities are at historic highs, said Jean-Pierre Aubry, assistant director of state and local research at the Center for Retirement Research at Boston College. The S&P 500 Index this week posted its best two-day gain in more than three years.

“There are instances where they can work, but they can be risky financial tools for cash-strapped borrowers,” Aubry said in a phone interview. “They’re gambling on the market and should be undertaken by those with the appetite for the risk and the ability to absorb the risk.”

Kansas, which was charged by the U.S. Securities and Exchange Commission in August with failing to disclose its pension liability to municipal-bond investors, passed legislation in 2012 to bolster its retirement plans. The state’s pensions were 56.4 percent funded as of 2013, higher than only four states, according to data compiled by Bloomberg. The ratio would reach 100 percent by 2033 if Kansas sticks to the changes laid out in 2012, Estes said.

Paying Up

Starting next month, workers’ contributions to the Kansas Public Employees Retirement System will increase to 6 percent of their salaries from 5 percent. About 281,000 people pay into the system, which has $14 billion of assets.

The system supports issuing bonds or any measure that boosts its funding, said Kristen Basso, a spokeswoman.

“Pension bonds would reduce our unfunded liability and improve our funded ratio,” she said in an e-mail.

Brownback’s plan would reduce the pension payment by almost 12 percent. He can make general-fund budget cuts on his own, without the legislature’s approval, according to Ashley Murdie, a spokeswoman for Estes.

“I can’t go into details right now, but the governor will address the long-term sustainability of KPERS,” said Eileen Hawley, the governor’s communications director. “It is one of his top priorities.”

The budget deficit for the state of 2.9 million arose when a committee that estimates revenue met this month and lowered its projection. After tax reductions approved by the legislature in 2012, the state took in about $340 million less than forecast during the year through June.

Debt from Kansas has earned 8.4 percent this year, compared with 8.8 percent for the entire municipal market, Barclays Plc data show.

In August, S&P cut the state to AA, the third-highest level. It assigned a negative outlook, citing budget pressure as scheduled income-tax cuts are phased in. Moody’s in April dropped it to an equivalent Aa2.

“There could be a threat of a downgrade if this situation goes on for several years,” said Estes.

Bloomberg Muni Credit

By Darrell Preston Dec 19, 2014 8:24 AM PT

To contact the reporter on this story: Darrell Preston in Dallas at dpreston@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net Mark Tannenbaum, Mark Schoifet

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Green Bonds Sell Big in 2014 as Finance Bids to Help Climate.

(Reuters) – A “green” bond market has taken root this year, with municipalities and corporations issuing new environmentally-focused bonds and money managers jumping in to buy them.

But it’s too soon to tell whether all the new activity – less than a sliver of the $91 trillion worldwide bond market – will send much new money to projects like efficient buildings and better water systems.

Instead, the new bonds reflect the complexities of using finance to address issues like climate change. While the sale of notes termed green bonds tripled to $35 billion worldwide in 2014, many are bonds that might have been sold anyway without the label, and which trade at terms comparable to non-green bonds.

Nor is it clear the new bonds are “green” in the environmental sense that investors may expect, and issuers face only voluntary standards so far.

Participants say that to avoid the impression that green bonds are just a marketing ploy, they still need to show more corporate treasurers and investors the bonds can make it easier to fund projects, a corner they have not yet turned.

"If people think this is just to raise the flag, it's not going to last long," said Christopher Flensborg, Head of Sustainable Products and Product Development for Skandinaviska Enskilda Banken AB, the Swedish bank that's the world's largest underwriter of green bonds.

Still, the spike in new activity shows some success to date, with new issuers and new buyers. Green bonds used to come exclusively from AAA-rated organizations like the World Bank; the last year has seen rising issues of green bonds from municipal issuers as well as some from corporations that are rated junk.

On the buy side, State Street Corp has filed a registration with the U.S. Securities and Exchange Commission to run what could be the first green bond index fund. Also, since July Bank of America Corp, Standard & Poor's and Barclays MSCI each have launched new green bond indexes that may form the basis of future mutual funds and exchange traded funds.

Corporate and municipal issuers started issuing bonds they labeled as "green" in earnest last year, when they realized that they could pull in some new buyers who wanted to invest environmentally.

"We thought the worst thing that happens is we get more people interested in our bonds" said Alan Westenskow, a Zions Bank vice president who works with municipal issuers. He advised the Utah Associated Municipal Power Systems on a $21 million offer this month to pay for systems to turn waste heat to electricity. The offering, made in several sections, pays a coupon ranging from 3 percent to 5 percent.

Spanish clean energy company Abengoa Greenfield, a unit of Abengoa SA issued its first high-yield green bonds in September – a 500-million-euro issue in all. A representative said "90 percent of our projects qualify as green projects, so why not issue a Green Bond?"

Still unclear is how much extra demand the green label creates. The Abengoa representative said the company didn't have information on the extra demand. A spokesman for Bank of America, which underwrote the Utah bonds, said executives there would not comment on demand.

JUNK GREEN BONDS

In August 2014, the first wave of corporate junk green bonds entered the mix, when an affiliate of Princeton, New Jersey, power producer NRG Energy Inc sold $500 million of senior notes to pay for the purchase of the Alta Wind Energy Center, a wind farm in California. Abengoa followed suit, bringing the green high yield market to $1 billion.

Corporate issues now make up 14 of the 51 green bonds tracked in Bank of America's green bond index, and have driven down its average rating to AA2 from AAA, according to a BofA Merrill Lynch research report.

At $1.98 billion, green muni bonds themselves are just a fraction the "green" market, possibly because many muni issues have traditionally backed environmental projects and find investors even without the green label.

"At the end of the day, a bond is still a bond whether it's dubbed as 'green' or not," Eva Rippeteau, associate director at Fitch Ratings, said in an emailed analysis sent after the Metropolitan Water Reclamation District of Greater Chicago came to market this week with a $300 million green bond, with a coupon ranging from 2 percent to 5 percent. “In many cases, these bonds are funding the same projects that a regular bond would.”

Orders for a recent $350 million green bond sale by Massachusetts exceeded $1 billion, like many other over-subscribed municipal offerings. One buyer, Charles Hill, portfolio manager of T. Rowe Price’s $3.9 billion Summit Municipal Intermediate Fund, said he has never had client requests for green bonds specifically, but bought the Massachusetts bonds because he liked them for traditional criteria like their intermediate duration, and their 5 percent coupon, comparable to that of similar non-green bonds.

GREEN CONSCIOUS

To be sure, the entire movement isn’t about labeling. A spokeswoman for NRG Energy said it used the term “to be able to target an incremental universe of investors who are more green conscious and to differentiate ourselves from other issuers.”

Steve Liberatore, a TIAA-CREF fund manager who oversees $6 billion in bond products that use social or environmental criteria to pick investments for clients concerned about the use of their money, said he skipped the NRG bond because the company also has natural gas operations. He aims to avoid fossil fuels.

“What we’re seeing is a shift in the ability of the investor to link up directly with the projects” focused on sustainability, he said.

Interested investors and issuers are willing to give it time to grow, and to improve their standards. The Climate Bonds Initiative, a London nonprofit that promotes investments to reduce carbon emissions, estimates 39 percent of green bonds sold since 2013 were issued without an independent review of how green they are. Many institutional buyers do have internal standards for what kinds of projects green bonds can back.

Catherine Roy, Calvert Investments’ chief investment officer for fixed income, said she expects no slowdown. “There are still trillions of dollars of capital needed to address a wide range of global environmental challenges,” Roy said.

Reuters
By Ross Kerber and Hilary Russ
December 18, 2014 1:05 AM

(Reporting by Ross Kerber in Boston and Hilary Russ in New York. Additional reporting by Francesca Landini in Milan and Jose Elias Rodriguez in Madrid. Editing by Linda Stern and John Pickering)

U.S. Stellar Municipal Bond Returns Set to Dim in 2015.

Dec 18 (Reuters) – U.S. municipal bonds’ stellar 9 percent performance so far this year may not continue in 2015 as interest rates are set to rise and dampen returns, analysts and fund managers said.

Munis bounced back from a negative return in 2013, when investors fled the asset class partly on concerns about high-risk situations in Detroit and Puerto Rico. This year, high-yield funds and long-duration munis clocked among the highest returns.

For 2015, investors are anticipating higher interest rates, which could bring the rally to a halt. Bond prices typically move inversely to interest rates, and the U.S. Federal Reserve has signaled it will raise rates in 2015.

“An unanticipated jump in interest rates has the potential to reintroduce households, who are the biggest holders of municipals, to interest-rate risk,” said Chris Mauro, head of U.S. municipals strategy at RBC Capital Markets. “This could cause a negative, herd response on the part of these investors, temporarily dislocating the municipal market.”

The S&P Municipal Bond Index returned 9.25 percent as of Dec. 17. That beat both its Treasury Bond Index, which has returns of 3.83 percent, and its investment-grade corporate bond index, with returns of 7.28 percent. This year’s returns for the S&P Muni index are on track to be the highest since 2011.

“We’ve had a very good year in the muni market,” said Jeffrey Lipton, Managing Director, Municipal Research, at Oppenheimer & Co, pointing to positive flows into intermediate, long-term and high yield funds.

Interest rates on long-term bonds this year have taken the biggest plunge in a decade. According to Municipal Market Data, a unit of Thomson Reuters, the yield on top-rated debt maturing in 20 years and beyond has fallen the most since 2004 on its benchmark scale, meaning the prices spiked during that time.

That’s unlikely to be repeated in 2015.

“We’re expecting the on-paper returns will end the year (2015) looking somewhat boring but the path to get there will be anything but boring,” said Morgan Stanley analyst Michael Zezas. “There is plenty of risk in the market that has the potential to create a fair amount of volatility along the way.”

Municipal bond performance could remain positive at the beginning of the year, but overall in 2015 the range could be somewhere between a negative return of 2 percent to a positive return of 5 percent for 2015, said Richard Ciccarone, head of Iowa-based Merritt Research Services.

Constricting supply pushed up returns this year. The amount of outstanding debt, $3.63 trillion, is the smallest in five years.

Issuance so far this year through Wednesday is $312 billion, according to Thomson Reuters data, level with 2013’s figure for the year as a whole. Many expect next year’s supply to be higher, boosted by bond ballot measures in November’s elections and continued demand to improve creaking infrastructure.

“We’ve gone through a period of time when America has been holding back,” said Ciccarone. “Physical structures can only take that for so long.”

According to a survey of banks released earlier this month by the Securities Industry and Financial Markets Association, sales of all municipal bonds will likely rise to $357.5 billion in 2015 from $348.1 billion estimated this year.

Inflows into bond funds are also expected to continue. With two weeks remaining in the year, municipal bond funds have received total net inflows of $23.3 billion, compared to record net outflows of $64.2 billion in 2013, according to Lipper.

Reuters

Thu Dec 18, 2014 1:29pm EST

(Reporting by Megan Davies, Lisa Lambert, Hilary Russ, Robin Respaut, Karen Pierog, Ed Krudy; writing by Lisa Lambert and Megan Davies; Editing by Cynthia Osterman)

Pension Time Bomb Ticks as Disclosure Rules Toughen: Muni Credit.

Jersey, like other municipal governments, used an accounting sleight-of-hand for years to boost pension-funding levels. New rules are putting an end to the practice.

Last month, the state became the first to disclose weaker funding ratios under the revamped approach, according to Fitch Ratings. Under the new regime, which officials nationwide have phased in starting in 2013, governments must determine when their pensions will run out of money and reflect that projected investment returns will taper off after that date.

New Jersey's experience shows how funding ratios can plummet as a result. In documents for a bond sale last month, the Garden State said its plans will start running out of cash in 2021. Based on that calculation, it had 32.6 percent of assets to pay promised retirement benefits, down from 54.2 percent in 2013. By making pensions look worse off, the new rules may jolt localities into action, said Matt Fabian at Municipal Market Advisors.

"We're optimistic that the new accounting treatment will generate a stronger policy response," said Fabian, a managing director at the Concord, Massachusetts-based research firm.

U.S. state and local retirement plans are short at least $1.3 trillion because of investment losses triggered by the recession and insufficient contributions, according to Federal Reserve data. The deficit strains government finances, forcing officials to balance payments into pension plans with money for schools and roads.

GASB Says

The Norwalk, Connecticut-based Governmental Accounting Standards Board, which makes accounting rules for states and localities, released the rule in August 2012 to improve pension disclosure. The change transforms how governments report the cost in financial statements, in current dollars, of benefits that won't be paid for decades. The overhaul followed criticism from investors in the $3.6 trillion municipal-bond market that governments were underestimating the expense.

Dallas said in documents for a bond sale this month that the shift could have a "significant" impact on its financial statements and unfunded pension liability of about $1.8 billion. The city won't have more specifics until it gets data from its retirement plans later this year, Jeanne Chipperfield, Dallas's chief financial officer, said in an e-mail. Its two largest pension funds were at least 78 percent funded, according to fiscal 2013 financial statements.

Prairie Headwinds

California is among states that anticipated the shift and passed laws to increase funding or curb benefits, said Keith Brainard, the Georgetown, Texas-based research director for the National

Association of State Retirement Administrators. Since 2009, almost every state, including New Jersey, has enacted such changes, according to Brainard's group.

Efforts to reduce pension deficits face headwinds in states grappling with financial strains. In Kansas, Governor Sam Brownback may deepen the retirement liability by diverting money from the plans to balance the budget.

New Jersey, after overhauling and pledging to fund its pensions, skipped $2.5 billion of promised contributions for fiscal 2014 and 2015 as revenue missed projections.

"The problem New Jersey faces is much worse than it was," said Douglas Offerman, senior director with Fitch. "The cost becomes higher as the state tries to catch up with its underfunding."

The accounting change "does not materially impact New Jersey's fiscal position or the system's current assets of approximately $40 billion," Christopher Santarelli, spokesman for Treasurer Andrew Sidamon-Eristoff, said in an e-mail.

Decision Time

Illinois, which had the weakest funding ratios among U.S. states in 2013, at 39.3 percent, won't report under the new rules until the end of this fiscal year, said Abdon Pallasch, the state's assistant budget director. Last month, a ruling by a circuit court judge struck down a 2013 law that raised the retirement age. Illinois's attorney general appealed the decision to the state Supreme Court.

"If the court upholds pension reform it means we will be reporting better numbers," said Pallasch.

In most cases, retirement systems getting the required payments won't deplete their assets, so they wouldn't see funding ratios drop under the new approach, Brainard said.

Kentucky, with the second worst-funded state plans for 2013, with 44 percent of promised assets, overhauled its system last year and officials pledged to keep up with funding.

"Our actuaries say if we meet our assumptions we won't run out of money," said William Thielen, executive director of Kentucky Retirement Systems. "It may drop a bit more in the near-term, but in the long run it will come back."

Scrimpers' Remorse

Governments are supposed to set aside money every year to invest to pay promised pension benefits. Municipalities that scrimp on the payments and funnel the money toward services or to fill budget holes have to catch up as workers approach retirement age.

"If you are not investing assets in a manner to achieve a long-term rate, you generally are not going to earn a long-term rate," said Scott Reeser, project manager for GASB.

Under GASB's overhaul, governments calculating pension costs for the period after the depletion date must use lower assumed rates of return. Instead of projected annual earnings of about 8 percent, as is typical for many systems, they have to use a return based on 20-year general-obligation bonds rated at least AA, the third-highest level, said Reeser. The bonds yielded 3.19 percent as of Dec. 12, Moody's Investors Service data show.

"That rate is generally lower than most governments use as a long-term expected rate of return," Reeser said. "The lower the discount rate used, the higher the liability."

Bloomberg Muni Credit

By Darrell Preston

Dec 17, 2014 8:50 AM PT

To contact the reporter on this story: Darrell Preston in Dallas at dpreston@bloomberg.net

To contact the editors responsible for this story: Stephen Merelman at smerelman@bloomberg.net

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Contesting Traffic Fines, Missouri Sues 13 Suburbs of St. Louis.

ST. LOUIS — Missouri's attorney general announced lawsuits against 13 of this city's suburbs on Thursday, accusing them of ignoring a law that sets limits on revenue derived from traffic fines. The move comes after widespread allegations of harassment and profiteering by small municipal governments against the poor and minorities.

The attorney general, Chris Koster, a Democrat, spoke in downtown St. Louis and suggested that more sweeping changes could be needed to bring municipalities into line.

Since the racially charged protests over the death of Michael Brown at the hands of a police officer in nearby Ferguson in August, demonstrators have frequently complained about a perceived hypervigilance to minor traffic violations in St. Louis County's patchwork of 90 municipalities. Many of those cities have their own courts and police departments, but some are only a few square blocks in size and have populations smaller than some high schools.

"When traffic ticketing is used to promote public safety, that's appropriate," Mr. Koster said. "When traffic tickets are used to promote revenue, that's inappropriate." Such practices, he said, are "predatory."

Ferguson, with roughly 20,000 residents, was not among the suburbs sued by Mr. Koster, and is large compared with many nearby cities in the northern part of the county, where many of the suburbs sued by Mr. Koster are situated.

State law requires towns to report the percentage of general operating revenue that comes from fines for traffic violations, and limits their potential to profit by requiring that proceeds beyond 30 percent be turned over to the state.

In Normandy, a city near Ferguson, 38 percent of the revenue came from fines and court costs. Mr. Koster sued five St. Louis municipalities that he said failed to file any report, four that filed a report without calculating a percentage, and four, including Normandy, that had revenue over the limit.

At its meeting here this week, the state-appointed Ferguson Commission discussed possible changes to municipal courts. The 16-member commission was asked by Gov. Jay Nixon to listen to residents and propose ideas for lasting social and political changes around St. Louis. The commission's leaders appeared with Mr. Koster at Thursday's announcement.

Many say young black men, who are pulled over at a higher rate than whites in some St. Louis County towns, are particularly affected by police officers' enforcement of traffic laws and municipal judges who impose fines. If defendants do not pay their fines, they are sometimes jailed.

“We have heard across the board, there’s broad agreement, that the municipal courts create challenges for us,” said the Rev. Starsky Wilson, a Ferguson Commission chairman. “Municipal courts are a focal point between policing on the streets and community relations there and municipal fragmentation.”

Mr. Koster said he had not reviewed Ferguson’s records on traffic ticket revenue because the suburb’s report for the last fiscal year is not yet due.

Mayor Francis G. Slay of St. Louis, in a separate news conference Thursday, said that his city’s municipal judges could now take into account someone’s financial means when setting up payment schedules. Mr. Slay suggested that the region’s other courts, where some defendants also struggle to pay, could look into similar changes. But he cautioned that widespread implementation outside St. Louis city limits might be a challenge.

“If you want to get something done in the city, you know where to go,” Mr. Slay said. “In the suburbs, there’s a lot of municipalities.”

Though protests have continued on an almost daily basis, there are signs that St. Louis is returning to some level of normality. Governor Nixon allowed a monthlong state of emergency to expire on Wednesday, resulting in the withdrawal of the Missouri National Guard.

But even with the Guard gone, conversation continues about perceived racial inequities around St. Louis. On Thursday, the American Civil Liberties Union filed a federal lawsuit against the Ferguson-Florissant School District, arguing that the district’s method of electing school board members dilutes the influence of African-American voters. Only one of seven board members is black, though African-Americans constitute a majority of the student body.

THE NEW YORK TIMES

By ELI YOKLEY and MITCH SMITH

DEC. 18, 2014

Eli Yokley reported from St. Louis, and Mitch Smith from Chicago.

NYT: Foes of Unions Try Their Luck in County Laws.

BOWLING GREEN, Ky. — Conservative groups are opening a new front in their effort to reshape American law, arguing that local governments have the power to write their own rules on a key labor issue that has, up to now, been the prerogative of states.

Beginning here in the hometown of Senator Rand Paul and the Chevy Corvette, groups including the American Legislative Exchange Council, the Heritage Foundation and a newly formed nonprofit called Protect My Check are working together to influence local governments the same way they have influenced state legislatures, and anti-union ordinances are just the first step in the coordinated effort they envision.

A carefully devised plan began to unfold last week, when the Warren County Fiscal Court met here and preliminarily approved, in a 6 to 1 vote, a “right to work” ordinance that would allow employees represented by a union to opt out of paying union fees. This week two more Kentucky counties, Fulton and Simpson, followed suit, and a dozen more are expected to do the same in the next six weeks.

Supporters of the effort say that if they are successful in Kentucky, they will try to pass similar local laws in Ohio, Wisconsin, Pennsylvania and other places that do not have a statewide right-to-work law. Protect My Check is promising to pay for the legal battles of any local government that tries it.

“There are literally thousands of targets for the initiative,” said Brent Yessin, an anti-union consultant and lawyer who is on the board of advisers for Protect My Check, said at a recent meeting in Washington. “Doing this county by county, city by city is more time consuming, but it’s also more time consuming and draining for the unions to fight.”

Mr. Yessin was speaking at a conference held by the exchange council, also known as ALEC, an influential organization whose supporters include the oil and pharmaceutical industries and the Koch brothers. The group has coordinated efforts to get Republican-controlled legislatures to enact a template of business-friendly legislation including privatizing education, water systems and roads and stopping the expansion of Medicaid under the Affordable Care Act. This year the group introduced a program, the American City County Exchange, to do the same for local governments.

The session on local right-to-work ordinances was open to journalists; a session on combating local minimum wage increases was not. The panelists mapped out a strategy that included raising money from local businesses, persuading lawyers to work pro bono and convincing local politicians that supporting right-to-work ordinances would not be political suicide.

Bill Londrigan, the president of the Kentucky State A.F.L.-C.I.O., objected: “This is being promoted here in Kentucky by outside interests who have nothing else in mind but to damage unions, weaken unions and lower wages.”

Under federal labor law, a union that bargains a contract for all employees can require employees who choose not be union members to pay fees to cover the cost of being represented, unless “prohibited by state or territorial law.” About half of the states have enacted such prohibitions, becoming right-to-work states.

Kentucky provides a perfect laboratory, said Jason M. Nemes, a Louisville lawyer involved in the initiative, because it is the lone Southern state that does not have a right-to-work law, and its neighbor West Virginia, where Republicans captured control of the Legislature last month, may soon pass one. Other states where Republicans expanded their control in the midterms, like New Mexico and Wisconsin, are also considering statewide bills.

A right-to-work law became a major issue in Kentucky’s midterm elections when Republicans, who control the State Senate, promised to pass one if they gained control of the House. They fell short of that goal, priming local officials like Judge-Executive Mike Buchanon, the elected head of Warren County, to act.

“We’ve always been interested in promoting right to work, and as all of our states around us became right to work, it has become a competitive issue,” Mr. Buchanon said, asserting that many businesses would not even consider locating in areas without right-to-work laws. He added that he was put in touch with Protect My Check by Senator Paul or one of his aides and was promised that the county’s legal bills would be covered.

Mr. Yessin, based in Tampa, Fla., said his group’s donors were not public but, other than his own contribution, all of the money raised so far had been from local businesses and employers in the targeted counties.

Nearly 1,000 union members make Corvettes at a Chevrolet plant in Bowling Green, Ky. Credit Bryan Lemon for The New York Times

Last week’s vote in Bowling Green took local union members by surprise. It was advertised in advance as “an ordinance relating to the promotion of economic development and commerce,” and there was little public comment, though there were presentations by the Chamber of Commerce and the Bluegrass Institute, a policy group with close ties to ALEC.

“It was sprung on everybody,” said Connie Warren, the financial secretary of the United Automobile Workers Local 2164. “The other side had all their ducks in a row; we didn’t have even the opportunity to say how we felt about it.”

Officials acknowledged that the county was doing relatively well without a right-to-work law. “The Warren County economy is very strong; it’s very diversified,” said Ron Bunch, the president of the local Chamber of Commerce. “We have the lowest unemployment rate in Kentucky.”

But they said they lost out on many prospects, pointing to Beretta, the gun manufacturer, which chose Gallatin, Tenn., 45 miles south, over Bowling Green as its new home. “What we’re passing is putting an ‘Open for Business’ sign on our front door,” Mr. Buchanon said.

It is difficult to measure the effects of right-to-work laws on wages and jobs, but experts say they do weaken unions, discouraging organizing efforts and creating “free riders,” employees who benefit from collective bargaining but decline to pay fees. Unions and some economists argue that if right-to-work laws succeed in attracting businesses, it is because they drive down worker pay.

The ordinance will certainly be challenged in court. A recent paper by the Heritage Foundation argues that because cities and counties are not specifically prohibited from passing such laws, they can do so. Supporters say that despite earlier federal and state rulings that cities cannot pass right-to-work laws, counties are political subdivisions of the state and are thus imbued with its powers. The Supreme Court has never ruled on the issue, but conservatives are hoping to find a sympathetic ear on the federal bench.

Lynn Rhinehart, a lawyer with the A.F.L.-C.I.O., asserted that federal law unambiguously pre-empted local ordinances and that trying to prove otherwise was a waste of taxpayer money. “Nice try — state means state,” she said. As for “territorial,” she added, “It’s fair to say it means Guam, and it doesn’t mean county.”

Conservatives, though, point to a 2002 circuit court ruling allowing right-to-work laws on tribal lands as evidence that there is wiggle room.

Mr. Buchanon said he believed that Kentuckians overwhelmingly favored the right to work and that union members had quietly told him that they did, too.

Chad Poynor, a United Auto Workers committeeman at the Corvette plant, conceded as much, saying that concessions made by the union in recent years had angered rank-and-file members, even though the recession was largely to blame.

“We haven’t had a raise in eight years, so those things are hard to swallow. You hear people all the time say, ‘If I were in a right-to-work state, I’d withdraw’ ” from the union, he said. “But you have to look at the big picture over the last 30 years, what we’ve kept. We went through a bankruptcy and kept our pension. A lot of people can’t say that.”

THE NEW YORK TIMES

By SHAILA DEWAN

DEC. 18, 2014

- **Program Note:** We'll be taking next week off to spend some much-dreaded time with our families. We'll be back on the 30th to wrap up the year.
- S&P: U.S. Local Government Rating Review Shows Varied Economic Conditions Being Met With Sound Financial Underpinnings.
- S&P: U.S. State and Local Government Credit Conditions Forecast: For 2015, the Future is Now.
- MSRB Adopts Best-Execution Rule to Enhance Fairness and Efficiency in the Municipal Securities Market.
- SIFMA Submits Comment Letter to MSRB on MSRB Rule G-20 relating to Gifts, Gratuities and Non-cash Compensation.
- S&P Request for Comment: U.S. Public Finance Waterworks, Sanitary Sewer, and Drainage Utility Systems: Methodology and Assumptions.
- NABL Submits Comments to IRS on Purpose Investment Valuation.
- Nabors, Giblin deviously waits till winter to advertise a public finance associate position in sunny, sunny Tampa, Florida.
- And finally, condo association engages in ruinously expensive litigation to (rather uncharitably) prevent sewer district from running a trunk line across its property, only to eventually be stuck with both a sewer line *and* a $1,350 payment for the easement, which presumably more than covered its attorneys fees. Is there such a thing as a Pyrrhic Defeat?

EASEMENTS - IDAHO

H.F.L.P., LLC v. City of Twin Falls

Supreme Court of Idaho, Boise, October 2014 Term - December 8, 2014 - P.3d - 2014 WL 6865494

Purported dominant estate owner brought action against city, alleging existence of prescriptive easement over city-owned property. Following a bench trial, the District Court entered judgment in favor of city. Purported dominant estate owner appealed.

The Supreme Court of Idaho held that:

- Federal district court did not have exclusive subject matter jurisdiction over dispute;
- Use of road was not continuous and uninterrupted;
- Use of road was permissive, rather than adverse;
- Easement by necessity claim was tried by implied consent; and
- Purported dominant estate owner did not establish unity of title to support easement by necessity claim.

CODE ENFORCEMENT - ILLINOIS

Sequoia Financial Solutions, Inc. v. City of Chicago

United States District Court, N.D. Illinois, Eastern Division - December 9, 2014 - Not Reported in F.Supp.3d - 2014 WL 6910494

After the City of Chicago sued Sequoia Financial Solutions, Inc. in Illinois state court for violating the City's building code, Sequoia demolished the allegedly offending structure rather than continue to defend the suit, which the City then dismissed. Two months later, Sequoia brought a case against the City and several City employees for allegedly falsifying an inspection report and coercing Sequoia into tearing down the structure through its allegedly baseless state court suit.

The District Court dismissed, struggling to make sense of Sequoia's claims and noting that Sequoia had at all times been entitled to undertake its own inspection and to challenge the City's findings in state court.

EMINENT DOMAIN - ILLINOIS

Rock River Water Reclamation Dist. v. Sanctuary Condominiums of Rock Cut

Appellate Court of Illinois, Second District - December 11, 2014 - N.E.3d - 2014 IL App (2d) 130813

In order to build a sewer extension, the Rock River Water Reclamation District sought to obtain a permanent easement and a temporary construction easement from The Sanctuary Condominiums of Rock Cut to run a trunk line through its property. As a result, plaintiff sought to obtain from defendant both a permanent easement and a temporary construction easement. After discussions to acquire the easements broke down, the District filed a complaint for condemnation in the circuit court. On Condo's motion, the trial court dismissed the District's complaint on the bases that the ordinance authorizing construction of the Oak Crest project failed to state that a taking of defendant's property was necessary and failed to describe with reasonable certainty the property sought to be taken.

Thereafter, the District enacted another ordinance in an effort to cure the deficiencies identified by the trial court. The District then offered defend $2,700 for the easements, double their appraised value. Condo rejected District's offer and District initiated a new condemnation action. The trial court determined that $1,350 was just compensation for the easements. Condo Appealed.

The Appellate Court held that:

- Condo was not entitled to dismissal of the second condemnation action on the ground of res judicata;
- District had the authority to condemn property; and
- The trial court did not err in refusing to compensate Condo for any damage that installation of the proposed trunk line would cause to its property.

"In light of the foregoing cases, we conclude that the two lawsuits in this case do not share an identity of causes of action, because they are based upon different sets of operative facts. The second condemnation action is based upon the 2011 Ordinance whereas the first condemnation action was based upon the 2010 Ordinance. The 2010 Ordinance provided for the construction of sanitary sewers in the Oak Crest Sanitary Sewer Area and provided for a special assessment to pay for the project. Plaintiff's first condemnation action was dismissed after the trial court concluded that the 2010 Ordinance neither stated that a taking of defendant's property was necessary nor described the portion of defendant's property to be taken. In an attempt to cure these deficiencies, plaintiff enacted the 2011 Ordinance, which states that an easement across defendant's property is necessary, incorporates a description of defendant's property by reference, provides that plaintiff's attempts to negotiate for the easement have been unsuccessful, and authorizes plaintiff to initiate condemnation proceedings to acquire the defendant's property. In other words, the 2010 Ordinance's deficiencies identified by the trial court in the first condemnation action were not at issue in the second condemnation action."

ZONING - KENTUCKY

Bardstown Junction Baptist Church, Inc. v. Shepherdsville City Council

Court of Appeals of Kentucky - December 5, 2014 - Not Reported in S.W.3d - 2014 WL 6879919

The City of Shepherdsville approved three separate zoning map amendment applications, each of which rezoned property from "Agriculture" to "General Industrial."

Bardstown Junction Baptist Church, Inc., a neighboring property, appealed the City Council's by bringing an action in Circuit Court. The Church's primary objections were that the rezoning would result in increased traffic and flooding. The Circuit Court ruled against Church and Church appealed.

The Court of Appeals noted that the Planning Commission's findings were as follows: (1) the requested rezonings were not in agreement with the adopted Comprehensive Plan; (2) the existing zoning classification given to the property was not inappropriate; but (3) there had been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of the area.

The Court of Appeals reversed the Circuit Court's decision and found the City Council's actions void. The record introduced before the Planning Commission, and even after reviewing the numerous other records the applicants and City Council appellees improperly introduced before the Circuit Court, the Court of Appeals could locate no evidence, per KRS 100.213.(1)(b), demonstrating "major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of the area."

ZONING - MICHIGAN

Forest Hill Energy-Fowler Farms, L.L.C. v. Township of Bengal

Court of Appeals of Michigan - December 4, 2014 - Not Reported in N.W.2d - 2014 WL 6861254

Plaintiff obtained a special land use zoning permit from Clinton County that allowed it to operate a wind energy system. While plaintiff's application for a special use permit was pending, two townships located within the county adopted ordinances imposing more restrictive requirements for wind energy systems, which they contended were enacted pursuant to their general police powers, not as a zoning regulation. Plaintiff filed a declaratory judgment action requesting the trial court to declare defendants' ordinances invalid and unenforceable. The trial court granted plaintiff's motion for summary disposition under MCR 2.116(C)(10), ruling that defendants' ordinances were in substance zoning regulations that were unenforceable because they were not enacted under the Michigan Zoning Enforcement Act (MZEA) and conflicted with the county's ordinance, which had been enacted under the MZEA.

The Court of Appeals affirmed.

OPEN MEETINGS LAW - MICHIGAN

Citizens United Against Corrupt Government v. Troy City Council

Court of Appeals of Michigan - December 4, 2014 - Not Reported in N.W.2d - 2014 WL 6852960

The Troy City Council held a closed session meeting for the stated purpose of reviewing applications for the position of City Manager and selecting finalists who would then be interviewed at a subsequent open meeting. Following the closed meeting, five finalist candidates were announced. The City Council then held an open meeting and, after public interviews, selected a new City Manager.

Plaintiff requested a copy of the minutes from the closed session, but defendant denied the request on the basis that the Open Meetings Act (OMA) did not warrant disclosure. Plaintiff then filed suit seeking injunctive relief and a declaratory judgment that defendant violated the OMA by holding the closed session and that the minutes from that session should be disclosed.

The Court of Appeals held that plaintiff did not establish an actual controversy pursuant to MCR 2.605. Even though the Council's closed session may have violated plaintiff's rights, declaratory judgment in this circumstance would not guide plaintiff's future conduct in order to preserve plaintiff's legal rights. The alleged injuries—the improper holding of a closed session and the improper withholding of the minutes of that session—have already occurred.

Plaintiff did not seek to prevent further injury, only to see the minutes from the closed session and a declaration that the session was improperly held. Any future injury plaintiff would seek to prevent is merely hypothetical, especially given plaintiff's very specific request for relief, which only related to the closed session. Thus, the court was unconvinced that a declaratory judgment would guide plaintiff's conduct in order to preserve plaintiff's legal rights.

LIABILITY - MISSISSIPPI

Brantley v. City of Horn Lake

Supreme Court of Mississippi - December 4, 2014 - So.3d - 2014 WL 6843494

Ambulance patient filed a personal injury action against city that alleged he was injured by the negligence of a city fire department emergency medical technician (EMT). The Circuit Court granted city summary judgment. Patient appealed.

The Supreme Court of Mississippi held that EMT's actions as part of ambulance crew that transported patient to hospital did not constitute fire protection, for the purpose of the police-or-fi-e-protection exception under the Mississippi Tort Claims Act, and thus city was not shielded from liability based on the exception in patient's lawsuit against city after EMT, who was a member of city fire department, dropped patient while unloading him at hospital.

DEVELOPMENT IMPACT FEES - NEW HAMPSHIRE

K.L.N. Construction Company, Inc. v. Town of Pelham

Supreme Court of New Hampshire - December 10, 2014 - A.3d - 2014 WL 6967664

Developers brought a petition for declaratory judgment and writ of mandamus seeking the return of development impact fees (DIF) paid to the Town of Pelham. The Town's DIF ordinance provided that, if the Town had not spent or otherwise encumbered the impact fees within six years, current owners of property on which impact fees had been paid could apply for a full or partial refund of such fees.

The Supreme Court of New Hampshire held that the Town was within its authority to enact an ordinance directing that any refund of impact fees be paid to the current property owner. "Because there is no dispute that the petitioners no longer own any of the properties for which they paid the impact fees at issue, we conclude that the petitioners have no standing to seek a refund of the unencumbered fees. Accordingly, the trial court did not err when it dismissed the case."

BANKRUPTCY - NEW YORK

In re MA Salazar Inc.

United States Bankruptcy Court, E.D. New York - December 8, 2014 - Slip Copy - 2014 WL 6888442

MA Salazar Inc. (the "Debtor") appealed the Bankruptcy Court's decision denying its request to hold the Incorporated Village of Atlantic Beach (the "Village") in contempt for violating an order of the Bankruptcy Court, and for failing to obtain an order from the Bankruptcy Court regarding the applicability of the automatic stay prior to taking action against the Debtor's property. The order in question prohibited any party from entering the Debtor's premises.

Prepetition, the Village after extensive litigation had been authorized to demolish the Debtor's property, as the State Court ruled that demolition was necessary to protect the public from the unsafe structure on the Debtor's property. After the order prohibiting any party from entering the Debtor's premises was entered, the Bankruptcy Court found that the automatic stay did not apply to the proposed acts of the Village. The Village failed to submit an order memorializing the Court's decision, and immediately proceeded to demolish the building. In denying the request for sanctions, the Bankruptcy Court held that the automatic stay did not apply, therefore the Village could not be sanctioned based on a violation of 11 U.S.C. § 362(a). The Bankruptcy Court further held that it did not have the authority to impose sanctions based on a prior order that did not clearly set forth that the Village could be held in contempt for its failure to abide by the prior order.

The District Court reversed in part, holding that the Bankruptcy Court had inherent authority to sanction the Village for a violation of the automatic stay, and that the Bankruptcy Court had the inherent power to impose submission to its lawful mandates. Because the prior order directing parties not to enter the Debtor's property was specific enough to put the Village on notice, and the Village's acts violated that order, the matter would be remanded for the Bankruptcy Court to make the following determinations: whether 1) the Court ruled that the stay did not apply to the Village pursuant to section 362(b)(4), or whether the stay applied and the Court vacated the automatic stay to permit the Village to demolish the Debtor's building, 2) whether the Village should be sanctioned for violating the order prohibiting any party from entering the Debtor's property, and 3) whether the Village should be sanctioned for its failure to submit an order regarding the applicability of the stay prior to demolishing the Debtor's property.

First, the Bankruptcy Court clarified that the automatic stay did not apply to the Village as its actions were taken in the exercise of its police and regulatory powers under Bankruptcy Code § 362(b)(4). Second, the Village's violation of the order prohibiting any party from entering the Debtor's property was not sanctionable. The Village believed in good faith that its conduct did not run afoul of this order. Its belief stemmed from the fact that the Bankruptcy Court ruled that the stay did not apply to the Village, and parties were prohibited from entering the Debtor's property for their own protection. If anything, the Village's actions served to further the protection of the public. In addition, the record in the case demonstrated there was honest confusion over whether this order was meant to keep the Village from demolishing the Debtor's property once the Court ruled that the automatic stay did not apply. Third, the Village's failure to submit an order regarding the applicability of the automatic stay prior to demolishing the Debtor's property did not demonstrate bad faith. Without a finding of bad faith, the Village's conduct did not warrant the imposition of sanctions.

LIABILITY - NEW YORK

Ritchie v. Churchville-Chili Central School Dist.

Supreme Court, Appellate Division, Fourth Department, New York - November 14, 2014 - N.Y.S.2d - 122 A.D.3d 1265 - 2014 N.Y. Slip Op. 07792

Mother of student injured when he was struck by motor vehicle while crossing street to attend school fundraiser brought personal injury action against school district and its employees. Defendants moved for summary judgment. The Supreme Court, Monroe County, granted motion. Mother appealed.

The Supreme Court, Appellate Division, held that school district owed no duty of care to student, where mother had told student to stay on that side of road and school district employees had not yet gained the physical custody or control of student at time of accident.

IMMUNITY - NORTH CAROLINA

AGI Associates, LLC v. City of Hickory, N.C.

United States Court of Appeals, Fourth Circuit - December 11, 2014 - F.3d - 2014 WL 6981327

Lender brought diversity action against borrower and city, who had contracted with borrower for aviation services, alleging judicial foreclosure, accounting, disgorgement of rents, and unjust enrichment claims. City moved to dismiss for failure to state a claim and for lack of subject matter jurisdiction. The City's motion was based upon the argument that it was entitled to governmental immunity. The District Court held that by acting in a proprietary, as opposed to governmental, capacity in operating the airport, city waived its governmental immunity and therefore denied the motion to dismiss for lack of subject matter jurisdiction.

The Court of Appeals held that under North Carolina law, as predicted by Court of Appeals, governmental immunity from equitable claims is waived when a county or municipality acts in a proprietary, rather than governmental, capacity.

LAND USE - WASHINGTON

Durland v. San Juan County

Supreme Court of Washington, En Banc. - December 11, 2014 - P.3d - 2014 WL 7003787

Objectors filed a petition under Land Use Petition Act (LUPA), challenging county's grant of a building permit. County and applicant moved to dismiss the action. The Superior Court dismissed with prejudice. In a second action, objectors filed a complaint and land use petition challenging the dismissal as a violation of their constitutional right to due process. The San Juan County hearing examiner dismissed the appeal as untimely. Objectors then filed a § 1983 claim. The Superior Court dismissed the LUPA petition and granted county and applicant's motion for summary judgment. Objectors appealed both Superior Court judgments. The Court of Appeals affirmed. Further review was sought.

Following consolidation, the Supreme Court of Washington held that:

- In the first action challenging county's grant of a building permit, the Superior Court lacked jurisdiction to hear the petition;
- In the first action, objectors' failure to exhaust administrative remedies deprived them of standing to file a LUPA petition;
- County code provision that imposed a height and size limitation on the construction of residential structures, including garages, did not create a property interest in neighbors' view of the water, or in the denial of a third-party's building permit for purposes of the Due Process Clause;
- Under statutory provision allowing for an award of attorney fees to a prevailing party on appeal of a land use decision, fees may be awarded to private parties who prevail on procedural or substantive grounds, but may be awarded to a public entity that made the permitting decision only when it succeeds in defending its decision on the merits, disapproving *Coy v. City of Duvall*, 174 Wash.App. 272, 298 P.3d 134, *Witt v. Port of Olympia*, 126 Wash.App. 752, 759, 109 P.3d 489, *Overhulse Neighborhood Ass'n v. Thurston County*, 94 Wash.App. 593, 601, 972 P.2d 470, and *Northshore Investors, LLC v. City of Tacoma*, 174 Wash.App. 678, 700–01, 301 P.3d 1049;
- Applicants were entitled to an attorney fee award in first action; and
- While applicants were not entitled to attorney fee award with regard to objectors' § 1983 complaint in second action, they were entitled to attorney fee award to the extent objectors' action related to their LUPA petition.

PUBLIC RECORDS - WASHINGTON

City of Lakewood v. Koenig

Supreme Court of Washington, En Banc - December 11, 2014 - P.3d - 2014 WL 7003790

City brought an action against requester for a declaratory judgment that city complied with requests under the Public Records Act (PRA). The Superior Court granted summary judgment in favor of city and denied requester's request for costs and attorney fees. Requester appealed. The Court of AppealS reversed and remanded.

After grant of city's petition for review, the Supreme Court of Washington held that:

- City violated requirement of PRA that city provide brief explanation of how disclosure exemptions applied to redacted information, and
- Determination that city violated brief explanation requirement of PRA was a vindication of requester's right to receive a response, as would entitle requester to attorney fees.

EMINENT DOMAIN - WISCONSIN

118th Street Kenosha, LLC v. Wisconsin Dept. of Transp.

Supreme Court of Wisconsin - December 10, 2014 - N.W.2d - 2014 WI 125

After the Department of Transportation (DOT) recorded an award of damages for a temporary easement on property, property owner challenged the award. The DOT filed a motion in limine to prohibit property owner from introducing any evidence that it was entitled to compensation "for any item whatsoever other than the temporary limited easement." The Circuit Court granted the motion. Property owner appealed. The Court of Appeals reversed and remanded. DOT petitioned for review, which was granted.

The Supreme Court of Wisconsin held that property owner was not entitled to diminution of value damages caused by previous relocation of access road.

Temporary limited easement that authorized DOT to construct new driveway connecting commercial property to a different road did not cause commercial property to lose direct access and proximity to previous access road, and therefore property owner was not entitled to damages in eminent domain proceeding regarding easement for commercial property's diminution in value resulting from its loss of direct access and proximity to previous access road. It was the previous access road's relocation that caused the loss of direct access, rather than the subsequent temporary limited easement.

GFOA: City of Houston's New Financial Policies Promote Fiscal Responsibility, Transparency.

Strengthened financial reserves, increased transparency, and an expanded focus on long-term planning are among the highlights of new financial policies approved this week by Houston City Council.

"These policies are to serve as a guide for improved financial management and heightened accountability, with more focus on making sure today's decisions are sustainable in the future," Mayor Annise Parker said of the policies, last updated more than a decade ago. "City staff did an outstanding job of researching and developing these policies, using lessons learned in other communities to craft a document that suits Houston as we work to strengthen our City's financial future."

The policies were drafted over the past year by City finance staff in coordination with the office of City Councilmember Stephen Costello, who chairs Council's Budget and Fiscal Affairs Committee. Reflecting best practices from the Government Finance Officers Association and cities across the United States, the policies address topics ranging from debt management to internal financial controls to evaluation of proposals for City investment in economic development.

"Approval of these new policies is just a first step," said Parker. "Adherence to them is essential to the City's long-term financial health, especially in light of financial challenges ahead.

The new policies include the following:

- An increase in the City's minimum financial reserves to hedge against risk;
- Clearer communication to councilmembers and the public regarding decisions on budgeting and spending public funds; and
- Greater emphasis on long-term planning and forecasting to identify and anticipate budgetary challenges before they become unwieldy.

The new 13-page document also requires the City to report in its annual budget whether it is in compliance with each component of the policies. "The requirement for public reporting on our adherence to the new policies is an important one," according to Kelly Dowe, the City's chief business officer. "While the policies codify our current practices in many regards, they also set a high standard for us not just in how we manage and utilize public resources, but how we inform citizens and their elected representatives as to our progress."

The full text of the policies as adopted can be found at the City's website.

Friday, December 5, 2014

Muni Markets: Let the Sun Shine In.

SIFMA believes that tremendous strides have been made in improving market transparency for retail investors over the past twenty years – yet for people who are familiar with the equities market that operates with a central exchange and constant trading activity, the municipal market may still seem opaque. In fact, the municipal market operates differently-but those differences are not incomprehensible and they are not part of any deliberate plan to obscure the facts or impede the ability of investors to understand bonds or their pricing. Continuing retail investor confidence in the municipal bond market that has financed four million miles of roads, half a million bridges, 16,000 airports and 900,000 miles of water pipes all across the country is critical.

First, the bond "market" is not the same as the stock "market". There are several structural differences between the two. There is no central place or exchange to sell or buy municipal bonds; the municipal market is a huge "over-the-counter" market consisting of a network of over 1,600 independent dealers across the country. The muni bond market is so vast that its size, which consists of approximately $3.7 trillion of outstanding bonds, is sometimes hard to imagine. This year alone, state and local governments across the country have accessed over $215.4 billion in funding through the municipal bond markets.

Second, stocks are traded frequently by investors-so frequently that there is a minute-by-minute ticker of trades that took place seconds ago. In contrast, municipal bonds tend to be a "buy and hold" product. Most retail investors do not ever intend to trade their bonds; they bought them to collect the interest and receive a return of principal at maturity. Third, there are many more municipal bonds than stocks – over a million different bonds versus several thousand different stocks; and the number of units of each security available are very different allowing investors to select a bond based upon the maturity that best fits their individual goals and risk profile, as well as tax benefits. While a public company often has millions of shares of stock outstanding, a single maturity of a municipal bond issue has far fewer bonds outstanding (several hundred is typical).

This means that for the vast majority of municipal bonds bought and sold in the secondary market, there just aren't a lot of trades. Overall, there are on average 42,000 trades per day in the municipal bond market, versus 10,500,000 in the stock market. In other words, the vast majority of individual bonds do not trade on a given day, resulting in the absence of a continuous two-sided market (one with lots of bids and offers), limited depth of market (few people buying and selling), and the absence of fresh, up-to-the-minute pricing data (infrequent trading of most bonds).

Regulation may be able to enhance the way the muni market trades, but it cannot create a minute-by-minute two-sided market for the simple reason that most bond-owners don't care to sell their bonds.

As a result of all this, the process for selling municipal bonds is very different from selling stocks. When customers want to sell publicly traded stock, their sell orders are generally executed within seconds of being placed. In contrast, selling municipal bonds generally involves one of two possibilities. The financial firm may simply buy them back from the customer (this practice makes it easier for customers to quickly sell their bonds, known as "liquidity"). Or there may be a bid solicitation process: when a customer decides to sell a municipal bond, the financial advisor's firm must actively look for bids to buy that bond. To find the best bid, one of the firm's bond traders places the bond out for bid. Some firms do this through a municipal securities broker's broker or through an electronic trading platform – that connects many, but not all, bond dealers throughout the country to solicit anonymous bids. In some cases, one trader inside a financial services firm may bid on bonds placed on the bid-wanted listing system by another trader at the same firm without knowing the source of that bid wanted.

But, as discussed, there are many, many different bonds and not a large number of trades. Sometimes a bond that is for sale does not receive any bids, or may receive a bid that is, in the trading firm's opinion, not reflective of a fair price for the bond, even if it is the best available bid in the market at the time. As a result, a customer seeking to sell a bond may be left with a difficult choice: either sell the bond at a price below perceived or expected value, or hold the bond in anticipation of more buyers (and potentially better bids) entering the market, though there can be no assurance that this will occur. In fact, it is possible that the bids will be lower later or there may not be a bid available at all. In such cases, a firm may make an accommodation bid — the purchasing firm buys the bond for its own account and will seek to sell the bonds at a later time. As with any bid, the customer may either accept the accommodation bid or reject it.

Strengthening the execution standard in the municipal market is something that SIFMA has long championed. Adding additional protection for investors, firms will soon be subject to a muni best-execution rule that is based on the best-execution rule that governs the equities and other fixed income markets. Municipal bond dealers will be required to diligently search for the best price for a customer. Some firms have already put such rules in place internally, despite the considerable technology costs of implementation.

As for transparency, more trade and transaction data is available to retail investors than ever before. The MSRB began the limited dissemination of prices for the municipal securities market in 1995 (when not everyone had a computer), and has increased price transparency in a series of measured steps as technology, and access to it, has advanced. These initial transparency efforts began with daily price transaction reports, available only to subscribers. In 1998, SIFMA's predecessor made this data publicly available to investors free of charge through its investor education website. By 2000, the MSRB was making all trade data public on a one-day delay. And in 2005, the MSRB began disseminating near-real-time, or immediate, municipal bond prices, which continued to be made publicly available by SIFMA.

Ten years after SIFMA began making municipal bond prices available to the public, the MSRB launched its EMMA website – emma.msrb.org – in 2008 as a free online source of key municipal market information for retail investors. Since 2009, EMMA has been the centralized repository of all primary offering disclosure documents as well as continuing financial and significant event disclosures in the municipal market pursuant to Securities and Exchange Commission (SEC) Rule 15c2-12. Along with this development, the market moved to an “access equals delivery” standard for distribution of official statements. This standard allows brokers to notify customers to whom they are selling municipal securities that offering documents are immediately available on EMMA rather than provide them with mailed, printed copies.

In addition to disclosures identified in SEC rules (issuers contractually agree with bondholders to make these disclosures via EMMA), the MSRB also provides issuers and obligated persons with the ability to voluntarily post additional disclosures about their securities to EMMA. The EMMA website also serves as the go-to web venue for public access to variable rate security information, transaction data, dealer reportable political contributions, as well as market statistics and investor education. Funded by a $1 per trade technology fee tax paid by dealers that has raised in excess of $22 million since 2011, the MSRB has made significant improvements to EMMA including adding comprehensive investor education tools and other functionality. Through the investor tools at this website, anyone with internet access can track his or her own portfolio, easily review daily and historical trade data, view trade price and trade yield graphs, and utilize the Price Discovery Tool which allows the user to find and compare trade prices of municipal bonds with similar characteristics.

The “access equal delivery” model for primary market disclosures has been very successful and puts customers in control of deciding how much and what kind of information they want to review. It is efficient and cost effective. SIFMA believes that this model should be followed for other municipal market information that may be of interest to investors. Dealers should be encouraged to direct retail customers to EMMA instead of creating costly new systems to provide customers with data that is already publically available and easily accessible on EMMA.

As securities regulators consider regulatory reforms to the fixed income markets, SIFMA urges them to weigh the unique characteristics and structural realities of each of these varied over-the-counter markets. Copying the existing standards from equity and other fixed income markets is simply unfeasible. “Square peg; round hole; force to fit” is a bad recipe for success. We all want to advance investor protection and improve, where possible, market liquidity in the municipal market. But it will not aid investors familiar with the operation of the equities market if regulators impose the exact same rules and unrealistically expect the same results. Improvements in the municipal market should be market-participant driven. Some changes, such as an expressed desire for increased electronic trading, should evolve organically and are already occurring. SIFMA will continue to support regulatory reform that reflects the unique characteristics and structural realities of the municipal bond market, and which appropriately balances investor-protection interests with the need for efficient municipal markets and the economic impact of such proposals on all participants.

David Cohen

Managing Director and Associate General Counsel

SIFMA

December 09, 2014

[MSRB Adopts Best-Execution Rule to Enhance Fairness and Efficiency in the Municipal Securities Market.]

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission (SEC) to require municipal securities dealers to seek the most favorable terms reasonably available for their retail customers' transactions. While investors are already protected from unfair pricing practices under long-standing MSRB rules, the new "best-execution" rule taking effect December 7, 2015 will establish explicit standards for how dealers handle and execute customer orders for municipal securities.

"Today, we reached an important new milestone in the municipal market," said MSRB Executive Director Lynnette Kelly "Introducing a 'best-ex' standard will buttress pricing standards, promote fair competition among dealers and enhance market efficiency all for the benefit of retail investors in municipal bonds."

The new rule is among several MSRB initiatives underway that are designed to enhance fairness and transparency in municipal securities transactions. In November, the MSRB released a proposal to require dealers to disclose certain pricing reference information on customer confirmations. This proposal and the new best-execution rule advance the vision outlined in the MSRB's long-range plan for market transparency and align with recommendations in the SEC's July 2012 report on the municipal securities market.

The best-execution rule will require municipal securities dealers to use "reasonable diligence" to identify the best potential trading venue for a particular security and then execute transactions in that venue to provide the customer with a price as favorable as possible under prevailing market conditions. The rule is modeled on a similar rule for the equity and corporate fixed income markets, but is appropriately tailored to the characteristics of the municipal securities market. Dealers will generally meet the new obligations by establishing and periodically improving their policies and procedures for handling and executing customer orders.

Notably, transactions with sophisticated municipal market professionals (SMMPs) are exempt from the rule, and its adoption, accordingly, is accompanied by amendments to related provisions to help ensure that only appropriate investors are treated as SMMPs.

The MSRB is providing dealers with a one-year implementation period to come into compliance with the new rule. During that time, the MSRB plans to provide dealers with practical guidance on the application of the rule.

The MSRB will host an educational webinar about the key provisions of the new rule on February 5, 2015 at 3:00 p.m. ET. Register for the webinar.

Date: December 8, 2014

Contact: Jennifer A. Galloway, Chief Communications Officer
(703) 797-6600
jgalloway@msrb.org

Judge Nixes $110 Million Deal to Sell Atlantic City's Revel Casino.

A bankruptcy judge on Friday scrapped a $110 million deal to sell Atlantic City, N.J.'s closed Revel Casino Hotel to a Canadian private-equity firm.

During a hearing at the U.S. Bankruptcy Court in Camden, N.J., Judge Gloria Burns approved a request from the boardwalk resort to terminate the sale, placing a Florida-based real-estate developer in line to purchase the property.

Revel had asked Judge Burns in an emergency filing earlier this week to cancel the sale agreement with the firm, Brookfield Capital Partners LP, and instead declare Florida developer Glenn Straub the winning bidder.

Mr. Straub, whose final $95.4 million bid for Revel was ultimately topped by Brookfield, was named the backup bidder at the end of an auction for the property in early October.

A hearing to approve the sale to Mr. Straub, who didn't attend the hearing Friday, has been scheduled for Jan. 5.

"We have to get the sale process moving," Judge Burns said during the hearing.

Last month, Brookfield informed Revel that it planned to pull out of the deal over costly payments related to the property's custom-built power plant. Brookfield later missed a Nov. 28 deadline to close the sale.

"They failed to close as they were required to do," John Cunningham, a lawyer for Revel, said at the hearing Friday. "We believe we absolutely have the right to terminate this agreement."

According to Mr. Cunningham, Brookfield didn't respond to Revel's request to terminate the sale and wasn't present in the courtroom Friday.

A spokeswoman for Brookfield declined to comment.

A showdown with the bondholders backing Revel's power plant, which Mr. Cunningham called a "game of chicken," remains a major obstacle for Revel.

The plant, operated by ACR Energy Partners LLC, is located next to the resort and is Revel's only source of both electricity and hot water, court records show. Revel, in turn, is ACR's only customer.

ACR issued $120 million worth of municipal bonds in 2011 to cover 75% of the power plant's construction cost, according to court filings. In return, Revel agreed to purchase power, hot and chilled water exclusively from ACR for 20 years. Revel also agreed to pay the plant's operating costs and guaranteed at least a 15% return on ACR's $40 million equity investment.

The monthly payments to ACR total more than $3 million, according to estimates in court papers.

Mr. Cunningham said Friday that if Mr. Straub wins approval to buy Revel, he will ask for court permission to revoke the contract with ACR.

Mr. Straub, who has expressed interested in purchasing other Atlantic City properties, is continuing to appeal Judge Burns' decision to approve the sale to Brookfield. The developer accused Revel of failing to disclose information about competing bids and conducting much of the auction behind closed doors.

The $2.4 billion Revel emerged from its first bankruptcy in May 2013 under the control of its lenders after having slashed more than $1 billion in debt from the balance sheet.

The beachfront resort filed its second Chapter 11 case in June.

THE WALL STREET JOURNAL

By TOM CORRIGAN

Dec. 12, 2014 12:15 p.m. ET

Write to Tom Corrigan at tom.corrigan@wsj.com
