Bond Case Briefs

Municipal Finance Law Since 1971

Underwriter Settles SEC Charges for Failing to Disclose Conflicts: Cadwalader

An Arkansas-based broker-dealer and its former CEO settled SEC charges for fair dealing violations arising from a municipal bond tender offer.

In separate orders, the SEC found that, at the instruction of the former CEO, the broker-dealer recommended to a West Virginia county that it (i) effect a tender offer for bonds issued in 2006 in order to decrease its outstanding debt service expense, (ii) offer to purchase the outstanding bonds from the bondholders and (iii) bankroll the purchase of the bonds by selling new bonds with a lower interest rate that the broker-dealer would underwrite. According to the SEC's findings, the broker-dealer and its former CEO failed to disclose to the county when making those recommendations that it and its affiliates had recently purchased and sold a significant amount of the bonds that were the subject of the tender offer, which bonds were then sold back to the county at a significant profit.

As a result of its findings, the SEC determined that (i) the broker-dealer and its former CEO violated MSRB Rules G-17 ("Conduct of Municipal Securities and Municipal Advisory Activities") and G-27 ("Supervision") and (ii) the former CEO caused the broker-dealer to violate Section 15B(c)(1) ("Discipline of municipal securities dealers; censure; suspension or revocation of registration; other sanctions; investigations") of the Exchange Act.

To settle the charges, the broker-dealer and former CEO each agreed to (i) a censure, (ii) cease and desist from future violations, (iii) pay $44,072 and $46,481 in disgorgement and prejudgment interest, respectively, and (iv) pay $200,000 and $100,000 in civil money penalties, respectively. In addition, the former CEO agreed to "certain undertakings and limitations on activities."

Cadwalader Wickersham & Taft LLP

August 26 2021

Legislative Path Forward for Key Muni Legislation.

Yesterday, the House advanced the $3.5 trillion budget reconciliation framework, a legislative vehicle to be used for additional infrastructure spending after weeks of back-and-forth between a small caucus of Democratic moderates and House Leadership. The group pushed for a vote on the Senate bipartisan infrastructure package before advancing the budget framework, however, conceded, pushing the vote to September 27th setting up what will likely be a legislative battle through the fall.

With multiple infrastructure packages moving through Congress in the coming months, below is a primer on the status of key municipal bond legislation and prospects for each spending package:

Bipartisan Infrastructure Package

Earlier this month, the Senate passed a $1 trillion infrastructure spending package that includes nearly $600 billion in new funding. While a new direct-pay bond was originally included in the Senate outline, the American Infrastructure Bond was removed from the package due to a lack of offsets and the inability to reach a consensus on reimbursement rates. **While light on key municipal provisions, the bill relies heavily on the usage of PABs, including:**

- **The package would allow states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have access to broadband;**
- **Permit carbon capture and direct air capture (DAC) technologies to be eligible for PAB financing. These bonds would be 75 % exempt from the volume cap;**
- **The bill increases the current cap of tax-exempt highway or surface freight transfer facility bonds from $15 billion to $30 billion as proposed by the bipartisan BUILD Act (S.881). Currently, $14,989,529,000 billion of the $15 billion cap has been issued or allocated.**

As part of the House negotiations this week, the legislation will be brought to the House floor by September 27th, and will almost certainly become law shortly thereafter setting the stage for the budget reconciliation package that will include additional infrastructure spending, possibly including munis, following through on the Biden Build Back Better Agenda.

Infrastructure Focused Budget Reconciliation

Following the passage of the bipartisan package, the Senate turned its attention to the next phase of infrastructure spending, a robust budget reconciliation outline that provides the ability for an additional $3.5 trillion of federal spending. While initial policy details are light by design, through discussions with key Hill and Administration staff, the MBFA and BDA believe that municipals with receive consideration in the tax title of this potential package, with House Ways and Means Chairman Richie Neal (D-MA) a key ally for the municipal bond industry, helping to guide the path.

We remain focused on the municipal provisions included in the LIFT Act which was introduced earlier this year by House Ways and Means Member Terri Sewell (D-AL). This package includes:

- **The reinstatement of tax-exempt advance refundings,**
- **Raise the BQ debt limit, and**
- **Creation of a new direct-pay bond exempt from sequestration.**

While we believe municipals will play a role in this package, the road towards passage will likely be narrow. Senate and House moderates have pushed back at the $3.5 trillion price tag, so we expect that to come down substantially for passage. We remain focused on the LIFT Act provisions as they have support in both Chambers and remain a common-sense infrastructure solution at a low cost to the Federal government.

The MBFA and BDA will continue to provide updates as they become available.

Bond Dealers of America

August 25, 2021

BDA’s Fixed Income Leadership Three-Part Webinar Series is NEXT WEEK.

September 9-10, 2021

Thursday, September 9
Time – TBD

Corporate Market Structure, New Technologies, and Liquidity Providers
The conversation will focus on the evolution of electronic trading since the pandemic began, trading protocol usage, the role of non-bank liquidity providers, and what to watch in the coming year.

- Kevin McPartland, Coalition Greenwich
- David Parker, MTS Markets
- Jim DiMonte, KeyBanc Capital Markets

Friday, September 10
10:00 am ET

Bond Market Regulation – 4210, G13, 15c2-11, Muni Advisor Rule, Corporate Syndicate Rule, Remote Work
Hear from senior staff of the SEC, FINRA, and MSRB on hot topics in fixed income regulation, compliance, and enforcement. We will examine issues like FINRA’s margin rule, MSRB Rule G-13 and the recent related compliance case, SEC Rule 15c2-11, and other key topics. Dan Deaton, partner at BDA member firm Nixon Peabody, will provide commentary.

- Rebecca Olsen, SEC
- Cindy Friedlander, FINRA
- Gail Marshall, MSRB
- Dan Deaton, Nixon Peabody
- Moderated by Michael Decker, BDA

Friday, September 10
11:00 am ET

Municipal Markets 2021 – Credit Conditions and Issuance Expectations, plus What to Expect from Washington, DC
We will look into current credit conditions and issuance expectations as localities continue to recover from the COVID-19 pandemic and what we can expect for the remainder of the year. The discussion will also provide a legislative update and the current status of key muni legislation in DC.

- Tom Kozlik, HilltopSecurities
- Stephen Winterstein, MarketAxess
- Brett Bolton, BDA

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Please contact Rebecca Cooke-Rodriguez if you would like to change your registration at rcrodriguez@bdamerica.org

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SEC Fines Firm and Ex-CEO for Failing to Disclose Conflict of Interest.

Arkansas-based Crews & Associates has agreed to pay more than $200,000 and its former CEO more than $100,000 to settle Securities and Exchange Commission charges they violated fair dealing and supervision rules by failing to disclose the firm’s relationship with an affiliate that profited from business the firm did with a West Virginia county.

The SEC announced the settled administrative proceedings against the firm and former CEO Rush Harding III Thursday, a significant enforcement action that is only the third muni case of 2021 following a busy 2020 for the Public Finance Abuse Unit.

The charges stem from Crews? October 2015 recommendation that Ohio County, West Virginia, reduce its debt burden through a tender offer for bonds it had issued in 2006.

The SEC said that following the discussions of the tender offer, Crews, with Harding’s approval, purchased millions of dollars of the county’s outstanding bonds and sold them to an entity affiliated with Crews and to Crews’ customers. Almost all of the bonds Crews acquired were eventually sold to its affiliate and tendered back to the county at a price that Crews had recommended, resulting in a net profit to the affiliate.

“In municipal bond offerings, underwriters must fully disclose to issuers their financial interests in the deal,” said LeeAnn G. Gaunt, chief of the Enforcement Division’s Public Finance Abuse Unit. “Failure to do so is a violation of their obligation to deal fairly with issuers.”

Both Crews and Harding agreed to the settlements without either admitting or denying the SEC’s findings.

The 2006 bonds, maturing in 2035 and bearing interest at 8.25%, contained a make-whole call provision that rendered calling them cost-prohibitive, and an ordinary refunding or advance refunding impractical, the SEC said. Crews had a business relationship with the county since 2007, and had underwritten nine bond offerings for it.

According to the SEC, Crews recommended that the county offer to pay bondholders a price higher than the current market price of its outstanding bonds to incentivize bondholders to tender their bonds. Crews also recommended that the county fund its purchase of those previously issued bonds through the sale of new, lower interest rate bonds, which Crews would underwrite. When Crews made these recommendations, the SEC found, the firm did not disclose to the county that Crews had recently acquired more than $1 million of the county?s outstanding bonds at market prices and then sold them to two customers.

In the months following the initial discussions of the tender offer, the SEC alleged, as Crews and the county finalized the terms of the proposed transaction, Crews purchased some $4.8 million more of the county’s outstanding bonds at market prices and sold them to an affiliated entity and to Crews’ customers. Almost all of the bonds Crews acquired were eventually sold to the affiliate and tendered back to the county by the affiliate at a price that Crews had recommended. Crews did not disclose to the county that the affiliate had acquired bonds to be tendered, or the resulting conflict of interest created by the affiliate’s financial interest in the tender offer, the SEC said.

The county authorized the issuance of $10 million of new municipal bonds to fund its purchase of the 2006 bonds. In January 2016, the notice of tender was publicly posted, with the maximum acceptable price set at 110% of par.

Crews then continued to buy 2006 bonds from third parties and from Crews customers at market prices, in some cases mark them up, and selling them to the affiliate, the SEC said.

By the time of the tender date, Crews had purchased $5.9 million in principal value of the bonds on behalf of its affiliate. On the tender date of Feb. 16, 2016, the affiliate offered to tender all of these bonds to the county's tender agent at the maximum acceptable price. Since the county did not receive a sufficient number of tender offers at prices lower than the maximum acceptable price, the county accepted the offer of the affiliate.

In all, the SEC found, the affiliate tendered 71% of all 2006 bonds that were tendered to the county. The deal did save the county money, the SEC found.

But as a result of the markups it charged on its transactions with its customers and the affiliate, Crews made a net profit of $34,631. The affiliate made a net profit of $27,153 as a result of its purchases of the bonds from Crews and its tender of those same bonds to the county.

MSRB Rule G-17 requires broker-dealers to deal fairly with all market participants, which the SEC said the firm violated by failing to make the county aware of the secondary market transactions going on. MSRB Rule G-27 requires that firms have in place a supervisory system reasonably designed to ensure compliance with all applicable securities laws and rules, but the SEC found that Crews' system provided no means of accountability and so the transactions were not reviewed as they should have been.

By violating these rules, the SEC found, Crews violated Section 15B(c)(1) of the Securities Exchange Act, which prohibits dealers from using the mail or "any means or instrumentality of interstate commerce" to execute municipal securities transactions in violation of any MSRB rule.

Crews agreed to pay a civil penalty of $200,000 and disgorgement of $34,631 and prejudgment interest of $9,441. The SEC said Crews has already taken steps to correct the supervisory problems that led to the action.

"Crews and Associates is pleased to resolve this matter and is now looking to the future," said Paul Maco, a Bracewell attorney who represented the firm. Maco said the firm is devoting its full attention to serving its customers and growing its business.

Harding agreed to pay a $100,000 penalty and disgorgement of $36,524 and prejudgment interest of $9,957. Harding, who is still a registered broker, may not participate in new issues or tender offers for 12 months. An attorney for Harding did not respond to a request for comment.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 08/26/21 12:45 PM EDT

Chicago Gambled on Federal Stimulus and Will Now Use $500 million to Pay Off Short-Term Borrowing.

‘This fits the spirit of the American Rescue Plan,’ one analyst says, even as she finds the opacity troubling

Savvy cash management, or creative bookkeeping?

The city of Chicago recently announced plans to use funds from the federal American Rescue Plan stimulus to pay down about $500 million in short-term debt it took out in December. The step received scant attention until a public-finance expert published a blog post on the subject in August.

As Amanda Kass, associate director for the Chicago-based Government Finance Research Center, makes clear, the move isn’t improper — but she thinks it isn’t a prudent selection among possible steps, either. At best, Kass sees it as a financial Hail Mary that will probably work out for the city at the expense of transparency and public engagement.

Here’s what happened. Last November, facing a near $800 million fiscal 2020 budget deficit, due mostly to the pandemic, city managers decided to take on $450 million in short-term debt, plus interest. City managers reached out to several banks and found JPMorgan Chase & Co. offered the best rate. The deal was finalized in December.

Continue reading.

MarketWatch

By Andrea Riquier

Aug. 27, 2021

August Issue of GFOA's Government Finance Review.

This month’s issue of *Government Finance Review* puts a spotlight on state banks. Are state banks a useful economic development tool with future promise?

Other topics from the magazine include budgeting bias, strengthening risk management, a spotlight on GFOA scholarship recipients, and more.

Financial Accounting Foundation Trustees Announce Appointment of New Chair of the Governmental Accounting Standards Advisory Council (GASAC)

Norwalk, CT—August 24, 2021 — The Board of Trustees of the Financial Accounting Foundation (FAF) announced today the appointment of Elizabeth (Beth) Pearce as Chair of the Governmental Accounting Standards Advisory Council (GASAC). Ms. Pearce’s term will begin January 1, 2022.

Ms. Pearce currently serves as the Treasurer for the State of Vermont. She is the state’s banker and investment officer. In her role, she manages short and long-term debt, the administration of three retirement systems, unclaimed property funds, and plays an advisory role to state policy makers.

The GASAC advises the Governmental Accounting Standards Board (GASB) on strategic and technical issues, project priorities, and other matters that affect standard setting. The GASAC provides the GASB with diverse perspectives from individuals with varied governmental, professional, and occupational backgrounds.

The FAF Board of Trustees appointed Ms. Pearce as a member of the GASAC, nominated by the National Association of State Treasurers, beginning January 1, 2021. She will succeed Mr. Robert W. Scott, who joined the GASAC in 2011 and became Chair in 2015.

"It is a pleasure to welcome Beth Pearce as our new GASAC Chair. She will play an important role in the GASB process," said Kathleen L. Casey, Chair of the FAF Board of Trustees. "We would also like to thank our departing Chair, Robert Scott, for his time, expertise, and the contributions he made to the standard-setting process," she added.

For a complete list of current Council members, visit the GASAC webpage.

- **Ed. Note:** It's happened yet again; the annual summer doldrums (*See*, Coleridge, Samuel Taylor) in which not much of anything seems to be happening. Going a month or so without providing you with substantive content used to stress us out, until we arrived at the Zen-like tranquility resulting from the awareness that we routinely – and gleefully – fail to provide you with any substantive content whatsoever for 12 months of the year.
- SIFMA State-by-State Capital Markets Database.
- Muni Buyers Grab Billions in Bonds They Won't See forMonths.
- Treasury Guidance on Non-Entitlement Units is Now Available.
- Muni Feeding Frenzy Seen Lasting as New Sales Lag Investor Cash.
- S&P: Could The Western U.S. Drought Threaten Municipal Credit Stability?
- Important Ohio Supreme Court Decision Clarifies Proper Method to Value "Big Box Stores."
- And finally, I'm Not Sure That I Agree With You 100% On Your Police Work, Lou is brought to us this week by *Gonzalez by Gonzalez v. City of Jersey City*, in which police officers were dispatched to a single-car accident on a Jersey City bridge. Upon arrival they encountered Hiram Gonzalez (a name we can make absolutely no sense of) standing by his wrecked truck and offered him a ride to a nearby gas station while he waited for assistance. Mr. Gonzalez declined, stating, "I am not riding with no Jersey City cops." Such a charmer, Hiram. Hiram was subsequently struck and killed on the bridge. When the autopsy revealed a BAC of .226%, and eyebrow or two was raised. But, really, what did the cops have to go on other than the symptoms of intoxication resulting from a .226, ("The toxicologist concluded that Gonzalez would have been 'markedly intoxicated' when speaking with the police."), a single-vehicle spinout at 3:24 on a Saturday morning, and the fact that, "Earlier in the evening, Gonzalez had posted pictures of alcoholic drinks on his social media, and an opened bottle of Hennessy was found in his truck after the accident." I mean, who could have known? Oh, on the advice of counsel and effective immediately, the BCB offices will be relocating to Jersey City, New Jersey. No particular reason.

BROWN ACT - CALIFORNIA

Daly v. San Bernardino County Board of Supervisors

Supreme Court of California - August 9, 2021 - P.3d - 2021 WL 3482924 - 21 Cal. Daily Op. Serv. 8047

Disappointed applicant for seat on Board of Supervisors and civic organization filed petition for writ of mandate, naming county Board of Supervisors and members who had participated in appointment of Board member, with appointed member as real party in interest, seeking judicial determination that initial nomination process violated Brown Act.

The Superior Court granted mandate petition. Board and appointed member appealed. The Court of Appeal denied writ of supersedeas effectuating such automatic stay of enforcement pending Board and appointed member's appeal on the merits. Board and appointed member filed joint petition for review asking whether superior court's order should have been automatically stayed as mandatory injunction. Petition for review by Board and appointed member was granted, and judgment and further proceedings below were stayed pending further order.

The Supreme Court held that:

- Superior court order was subject to automatic stay of enforcement pending Board and appointee's appeal on merits, and Board and appointee were entitled to writ of supersedeas effectuating such stay, and
- Quo warranto was available remedy for appointed member of county Board of Supervisors to be immediately excluded from office on claim that nomination process violated Brown Act.

On petition for writ of mandate seeking judicial determination that initial process to nominate applicant for county Board of supervisors position violated Brown Act, superior court order requiring Board to rescind its appointment of applicant as supervisor and instead to seat appointee named by Governor was subject to automatic stay of enforcement pending Board and appointee's appeal on merits, and Board and appointee were entitled to writ of supersedeas effectuating such stay, since requirement to remove appointee from supervisor position and seat Governor's replacement plausibly could not be described as merely incidental to other aspects of order.

Quo warranto was available remedy for appointed member of county Board of Supervisors to be immediately excluded from office on claim that nomination process violated Brown Act

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BALLOT INITIATIVE - MAINE

Caiazzo v. Secretary of State

Supreme Judicial Court of Maine - July 29, 2021 - A.3d - 2021 WL 3197177 - 2021 ME 42

Voter brought action to challenge Secretary of State's decision to draft a single ballot question for direct initiative regarding transmission lines.

The Superior Court affirmed, and voter appealed.

The Supreme Judicial Court held that Secretary of State appropriately exercised her discretion when deciding to draft single ballot question.

Supreme Judicial Court of Maine holds that Secretary of State appropriately exercised her discretion when deciding to draft single ballot question for direct initiative proposing "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region," as initiated bill presented a set of amendments aimed at a stated, but compound, purpose.

MUNICIPAL CONTRACTS - MARYLAND

Town of Riverdale Park v. Ashkar

Court of Appeals of Maryland - July 15, 2021 - A.3d - 2021 WL 2965001

Palestinian-American principal of towing company brought action against municipality and its personnel, claiming malicious prosecution and intentional discrimination on basis of national origin after he was denied municipal towing contract.

The Circuit Court granted judgment for municipality. Principal appealed. The Court of Special Appeals affirmed in part and reversed in part. Municipality's petition for writ of certiorari was granted.

The Court of Appeals held that:

- Argument that had not been advanced in motion for judgment could not be considered on review judgment notwithstanding verdict;
- All that Palestinian-American had to show, as member of protected class, to establish prima facie case of discrimination was that he was qualified, but despite those qualifications, his application for tow contract was rejected, and given to somebody else;
- Membership on tow list provided legally sufficient and nondiscriminatory reason for why other towing company may have been preferred over towing company owned by Palestinian-American that had lapsed membership;
- Palestinian-American presented sufficient evidence that discrimination against his national origin motivated employment decision by municipality;
- National origin discrimination from police department officers reasonably could be imputed to municipality;
- Evidence was sufficient for jury to find that municipality's use of law enforcement list of member towing companies as nondiscriminatory reason for decision to not select Palestinian-American's towing company for towing contract was not worthy of credence; and
- Circuit court's failure to decide whether to grant motion for new trial if judgment was later reversed on appeal required remand.

Palestinian-American presented sufficient evidence that discrimination against his national origin motivated employment decision by municipality to choose other towing company over his towing company for towing contract, where, among other things, claimant was called "camel jockey" by lieutenant colonel on two separate occasions, at least two more indications of discriminatory animus by police department were directed against claimant based on his national origin, police department, and specifically lieutenant colonel, was most important voice in denying claimant's bid for employment, contract was given to other towing company on basis that it was on law enforcement towing list but list was never mentioned as necessary qualification prior to granting contract, and municipality passed resolution preferring local vendors, claimant's company was local vendor, and other towing company was not.

MUNICIPAL CORPORATIONS - NEVADA

Endo Health Solutions, Inc. v. Second Judicial District Court of State in and for County of Washoe

Supreme Court of Nevada - July 29, 2021 - P.3d - 2021 WL 3266732 - 137 Nev. Adv. Op. 39

City brought tort action against manufacturers and distributors of prescription opioid medications to recover damages as a result of the opioid epidemic allegedly caused by defendants, and alleging public nuisance, common law public nuisance, negligence, and unjust enrichment.

The District Court denied in part defendants' motion to dismiss. Defendants petitioned for writ of mandamus.

The Supreme Court held that District Court's failure to strictly apply statutory definition of "matter of local concern" as set forth in modified Dillon's Rule warranted writ of mandamus.

IMMUNITY - NEW JERSEY

Gonzalez by Gonzalez v. City of Jersey City

Supreme Court of New Jersey - August 4, 2021 - A.3d - 2021 WL 3376907

Estate brought negligence action against police officers, city, and police department, arising out of motorist's death from being struck by a car on a highway bridge where officers allegedly left him after responding to his one-vehicle accident that left his vehicle inoperable.

The Superior CourT granted summary judgment in favor of defendants. Estate appealed. The Superior Court reversed. Defendants' petition for certification was granted.

The Supreme Court held that:

- Officers' actions did not implicate the Good Samaritan Act;
- Immunity for acting under statute requiring removal of an incapacitated person from public place to a treatment center did not apply;
- Fact issues precluded summary judgment; and
- Neither immunity for failure to enforce a law nor immunity for good-faith enforcement of a law applied.

PUBLIC INTEREST PRIVILEGE - NEW YORK

Comptroller of City of New York v. City of New York

Supreme Court, Appellate Division, First Department, New York - August 12, 2021 - N.Y.S.3d - 2021 WL 3555807 - 2021 N.Y. Slip Op. 04685

Comptroller brought proceeding against city for an order compelling city to fully comply with subpoena comptroller issued after city failed to produce documents requested by comptroller in investigation under city charter regarding city's preparation, planning, and response to the COVID-19 pandemic.

City filed cross petition seeking an order dismissing proceeding and quashing, modifying, or fixing conditions on city's compliance with subpoena. The Supreme Court, New York County, granted in part and denied in part the petition and cross petition, ordering city to comply with the request for documents but quashing the request for documents relating to communications involving mayor or first deputy mayor, and denying city's request in cross petition to quash testimonial subpoenas.

The Supreme Court, Appellate Division, held that:

- Comptroller's investigation did not exceed his authority under city charter, and
- Public interest in protecting mayor's and first deputy mayor's predecisional and deliberative communications outweighed public interest in allowing comptroller to review and possibly publish those communications as part of his investigation, and thus, public interest privilege applied to such communications.

Comptroller's investigation into city's preparation, planning, and response to the COVID-19 pandemic did not exceed his authority under city charter; charter gave comptroller power to audit and investigate all matters relating to or affecting the finances of the city and to issue subpoenas, and although investigation into city's pandemic response was not strictly targeted to finding out how the response affected city finances, charter provided comptroller with broad investigative authority of matters that affected city finances and did not strictly limit investigations to only fiscal matters, and investigation addressed the impact of the city's response to the pandemic on the city's finances.

The public interest in protecting the mayor's and first deputy mayor's predecisional and deliberative communications outweighed the public interest in allowing comptroller to review and possibly publish those communications as part of his investigation into city's response to COVID-19 pandemic, and thus, public interest privilege applied to such communications; given the ongoing threat of the pandemic, mayor and leadership team needed access to information and advice from all sources, which required that the sources had some assurance that their advice would remain confidential and free from fear of reprisal, and public disclosure of confidential communications could chill future deliberations about pressing matters, potentially to the public's harm.

MUNICIPAL ORDINANCE - WASHINGTON

City of Seattle v. Long

Supreme Court of Washington - August 12, 2021 - P.3d - 2021 WL 3556950

Truck owner sought review of municipal court order requiring him to reimburse city $547.12 for impoundment costs via payment plan of $50 per month, for truck that served as owner's home and that was impounded for violation of city's 72-hour parking ordinance.

The Superior Court affirmed in part and reversed part. City petitioned for discretionary review, and owner cross-petitioned. The Court of Appeals affirmed in part and reversed in part. Parties sought further review.

In a case of first impression, the Supreme Court held that:

- Truck automatically qualified as a homestead;
- Homestead claim was premature;
- Impoundment did not violate state constitutional provision protecting against unwarranted government intrusions into private affairs;
- Impoundment and associated costs were partially punitive and thus constituted fines;
- A court considering whether a fine is constitutionally excessive should consider a person's ability to pay; and
- Payment plan as imposed violated excessive fines clause.

Truck that served as owner's home and that was impounded by city for parking infraction automatically qualified as a homestead without need for owner to file a declaration.

Truck owner's homestead claim seeking shield against attachment, execution, or forced sale of his truck that served as his home and that was impounded by city for parking infraction was premature, where city did not seek to collect on owner's debt in the form of impoundment costs for which magistrate set up payment plan to reimburse city.

City's impoundment of truck for parking infraction and $547.12 payment plan of $50 per month for impoundment costs were unconstitutionally excessive for truck owner who used truck as residence, where nature of offense was a civil parking infraction that carried a $44 fine, city suspended enforcement of the 72-hour parking violation during COVID-19 pandemic signaling that city viewed violation as a relatively minor offense, there was no evidence that the infraction was related to any other criminal activity, truck was not parked in residential area or area of hot demand for city vehicles, owner made at most $700 per month, owner was attempting to save for apartment to move himself out of homelessness, and owner could not access his tools for work as general tradesman during impoundment.

Impoundment of truck for parking infraction after city posted notice of violation of 72-hour parking ordinance did not violate state constitutional provision protecting against unwarranted government intrusions into private affairs, where truck owner told officers his truck was in need of repairs and could not be driven, even though owner used truck as his home and did not have access to it for 21 days.

Impoundment and associated costs for truck that had a parking infraction were partially punitive and thus constituted fines under excessive fines clause, even though owner retrieved truck and costs were intended to reimburse city for towing and storage fees, where costs were imposed only as a result of the impoundment, which city code characterized as a penalty.

SIFMA State-by-State Capital Markets Database.

Explore the companies and municipalities accessing capital markets to drive economic growth in this state-by-state database.

View the SIFMA database.

This Week in Federal Funding.

In the latest edition, we talk with Shamiah Kerney, director of Baltimore's new Office of Recovery Programs. Also, updates from St. Louis, Hoboken, N.J., and Memphis.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

AUGUST 17, 2021

Billions From Biden Aid Plan Left Untapped by Cash-Flush States.

At least 10 states haven't spent any of the aid from the American Rescue Plan legislation as officials grapple with how to use the unprecedented federal relief that Congress approved almost six months ago.

Tens of billions of dollars that U.S. states got as a lifeline from the Biden administration is sitting idle in local coffers already flush with cash.

Michigan has budgeted just 7% of its $6.5 billion allocation and hadn't spent any as of last week. South Dakota officials haven't even gotten around to asking for their $974 million allotted under the White House's American Rescue Plan legislation. In West Virginia, a state website says detailed plans for its $1.35 billion are "COMING SOON."

Officials nationwide are grappling with how to spend an unprecedented infusion at a time when their coffers have been replenished by a rebounding economy that in many cases is generating billions more in tax revenue than budgeted for.

Continue reading.

Bloomberg CityLab

By Amanda Albright and Danielle Moran

August 17, 2021, 6:54 AM MDT

S&P: Could The Western U.S. Drought Threaten Municipal Credit Stability?

Key Takeaways

- Water supply challenges could create credit pressure for municipal utilities, irrigation districts, and local governments resulting from either a materially unfavorable shift in cost or if the service area economy stagnates due to insufficient supply.
- Managing water demand, procuring drought-resistant supply, and maintaining storage will be critical to managing fluctuations in hydrology. Issuers with prudent rate structures and strong balance sheets will be best positioned to absorb disruptions in operations or revenue collections from hydrological variability.
- Drought-related credit pressures for local governments include potential limits on economic growth, heat waves that require assistance for residents, and climate change-induced hydrological volatility that weakens levees and leads to flash flooding and mudslides.
- Extreme hydrological variability has been a pervasive challenge across the West. As droughts become more prolonged or expansive, there could be credit pressure. We expect well-defined climate adaption policies, credible long-range resource plans, and achievable supply and demand management strategies will support stable credit quality. Many of these plans will be part of issuers' ESG planning as they address what could become the "new normal" across the West.

Continue reading. (Registration required.)

18 Aug, 2021

S&P: Ten U.S. Cities Successfully Weathering The Pandemic Thanks To Strong Management, Federal Support

Key Takeaways

- Although COVID-19 had a significant effect on major U.S. cities, strong management conditions and considerable federal support prevented credit deterioration.
- The sudden stop recession was shorter, and the economic rebound stronger, than anticipated, leading to more robust revenue for local governments than originally expected.
- Unprecedented federal relief was a lifeline and abated liquidity pressure.
- Current challenges for big cities include the delta variant, changing work/school patterns, and an uptick in violent crime.

Continue reading. (Registration required.)

19 Aug, 2021

Transit Leaders See New Federal Money as a Bridge, Not the End of the Line.

Bus, subway and local rail systems nearly shut down when the pandemic first struck. Now they're trying to find a new way forward.

Congress pulled public transit agencies from the brink of financial collapse during the darkest days of the pandemic, and it is getting closer to helping them upgrade their physical assets too. But that doesn't mean the agencies running buses and trains are in the clear yet.

The actual impact could vary greatly from one agency to the next, but overall, the industry is still worried about whether ridership will return to pre-pandemic levels.

Recent estimates show that ridership levels are now about 58 percent of what they were before the pandemic. Many agencies hope to see that number climb as offices reopen after Labor Day. If not, agencies may have to change the services they offer, make spending cuts or find new sources of funding to make up the difference.

Continue reading.

ROUTE FIFTY

by DANIEL C. VOCK

AUGUST 21, 2021

S&P Credit FAQ: Global Not-For-Profit Transportation Criteria Implementation Results Show How Operational Risk And Tax Support Influence Ratings

Key Takeaways

- The implementation of S&P Global Ratings' updated not-for-profit transportation infrastructure enterprise (TIE) criteria resulted in 22 rating actions (15 upgrades and seven downgrades) where the TIE criteria were the primary criteria applied; and four priority-lien rating upgrades where the updated TIE criteria were used to determine the obligor's creditworthiness for 32 priority-lien ratings of 21 different mass transit obligors that issued sales tax-backed obligations.
- For operating revenue-backed ratings on TIEs, positive rating changes were due to the added financial stability and flexibility from receiving significant tax revenues (like property or sales taxes) that do not fluctuate with transportation activity levels; for sales tax-backed ratings on TIEs where our priority-lien tax revenue debt criteria are applied, positive rating changes were generally due to an improvement in the linked obligor's creditworthiness, which incorporates pledged tax revenues that were generally resilient, as further evidenced during the COVID-19 pandemic; and for property tax-backed ratings on TIEs, negative rating changes were largely attributed to our incorporation of operating risk exposure for debt issued by TIE entities as well as weakened market positions for those issuers sensitive to changes in transit ridership or air travel volumes.
- Twenty-nine TIE entities benefiting from tax support received one to three notches of rating uplift; 14 received one notch of uplift, 13 receiving two notches of uplift, and two received three notches of uplift. Key considerations behind the amount of uplift were the significance of the tax revenue relative to total revenues, the type of tax (for example, sales versus property taxes), tax base characteristics as measured by diversity and stability, and a demonstrated willingness and ability to increase the tax levy.

Continue reading. (Registration required.)

17 Aug, 2021

S&P Global Mass Transit Ratings And Outlooks As Of Aug. 16, 2021.

Read the S&P list of ratings.

Bonding Time Podcast – Infrastructure Analysis and Muni Bonds with Tom Kozlik and Brett Bolton

In this installment of Bonding Time featuring Tom Kozlik of HilltopSecurities, we discuss the ongoing infrastructure deliberations in Congress and likely next steps for the bipartisan bill as well as the budget reconciliation package that will potentially provide an additional $3.5 trillion in infrastructure spending.

We also take a look at the debt ceiling and the recent extraordinary measures implemented by Secretary Yellen halting the sale of SLGS and the potential credit ramifications of default.

Click here for audio.

Bond Dealers of America

rcrodriguez

August 18, 2021

House Returns to Debate Infrastructure Legislation – MBFA and BDA Continue to Advocate for Muni Priorities.

Today, the House returns from August recess for a week-long session to debate budget reconciliation instructions and voting rights legislation. At this time, House leadership remains steadfast in their position that the Chamber will not debate the Senate bipartisan infrastructure package until the budget reconciliation package, which will serve as a vehicle for additional infrastructure spending potentially including key muni priorities, becomes law– likely a months-long process.

In response to Leadership's position, a group of 9 rank-and-file Democrats demanded the House pass the bipartisan infrastructure package prior to advancing the budget reconciliation outline. This weekend, the group remained staunch in their legislative opposition penning an op-ed laying out their position.

At this time, House Leadership does not have the votes to pass the budget reconciliation instructions, setting up a likely legislative showdown in the next 48 hours. While it is too early to predict outcomes for this week's process, the MBFA and BDA believe both the bipartisan infrastructure package and a narrowed budget reconciliation package focused on the Biden Build Back Better infrastructure agenda will become law by year-end regardless of procedural hiccups.

Muni Priorities Update

The BDA and MBFA continue to press for the inclusion of key muni priorities in the budget reconciliation package. The MBFA recently met with Senior Staff in Rep. Terri Sewell's (D-AL) office to discuss the Congresswoman's muni package, the LIFT Act, and possible inclusion in the draft budget bill. The MBFA plans to continue meeting with key offices leading up to the introduction of legislative text promoting all muni priorities including:

- The reinstatement of tax-exempt advance refundings,
- Raise the BQ debt limit, and
- Creation of a new direct-pay bond exempt from sequestration.

The MBFA and BDA will continue to provide updates as they become available.

Bond Dealers of America

August 23, 2021

The Infrastructure Bill Shows Why Congress Must Stop Enabling Bad Behavior by Cities and States.

Under America's constitutional system, states and cities are responsible for maintaining public infrastructure such as streets, schools, parks, and water and sewer facilities. Yet even as Congress moves ahead with the $1 trillion Infrastructure Investment and Jobs Act, and even as calls increase for more federal assistance to ease burdens on local taxpayers, it's clear that the legislative branch largely fails to understand how states and municipalities manage their budgets.

This lack of understanding—or willful ignorance—is a critical shortcoming that should be addressed promptly, given the enormous amount the federal government already spends to subsidize state and local governments. In 2019, such subsidies accounted for 22% of those governments' operating expenditures of $3.5 trillion, according to U.S Census data. Federal tax deductions on interest on most municipal bonds, the financing vehicles that cities and towns use to build roads, bridges, and schools, will cost $334 billion in forgone federal revenue from 2021 to 2030, U.S. Treasury projections show. Federal aid and tax breaks also help support the jobs of 19 million schoolteachers, police officers, firefighters, public health workers, and other state and local employees whose roles have been so critical during the COVID-19 crisis.

If the infrastructure bill and a proposed $3.5 trillion budget resolution become law, federal assistance to states and municipalities will swell even further, with Congress on the hook for much of the cost of everything from roads and bridges to broadband Internet installations, in the process helping states and localities avoid taking on massive amounts of new debt beyond the $4 trillion they have already borrowed.

Continue reading.

Yahoo Finance

by William Glasgall & Richard Ravitch

August 19, 2021,

BlackRock: Infrastructure Spending Will Continue To Be A 'Ballast' for Municipal Bonds

BlackRock Municipal Bonds Group Head Peter Hayes joins Yahoo Finance to explain the municipal bonds outlook.

Video Transcript:

EMILY MCCORMICK: Welcome back to "Yahoo Finance Live." US Treasury Secretary Janet Yellen doubled down on her support for President Joe Biden's infrastructure investment plans in an op-ed published to Yahoo Finance earlier today. The plans include the $1 trillion infrastructure bill passed by the Senate last week, and the $3.5 trillion budget plan to expand the social safety net, which the Senate also approved the blueprint for last week. Here to discuss infrastructure, the outlook for the Fed, the markets and more is Peter Hayes, BlackRock's Municipal Bonds Group Head.

And Peter, I want to start off with that op-ed and those remarks from Janet Yellen. She highlighted several points to make the case for the spending now. And from your vantage point, how could investors be thinking about municipal bonds, specifically as a way to trade this increased government spending?

PETER HAYES: I think in general, first of all, thanks for having me, great to be back. I'll say that in general, there's been an awful lot of stimulus since the start of the pandemic on the part of both the Fed and Congress. And this is just another element. So I think it probably gives a tailwind to assets in general. But certainly adds a big balance to the municipal bond market. When you think about the spending that's occurred at the state and local level, it's been really beneficial on top of actually surprisingly strong tax revenues that have occurred.

Remember, most states and cities were really talking about large budget deficits, and actually what we've seen, is large budget surpluses. I think I saw today where the state of New York, their July revenue collections are up 21% from a year ago. New York City, 14%. Many states have not even touched these billions of dollars that they've received from the federal government. So all of this investment, all of this infrastructure spending will continue to be a ballast I think to the economic environment and the municipal market going forward over even, probably the next two years.

ADAM SHAPIRO: Peter, it's always good to see you. When we talk about going forward, I realize that you and the team, the bonds group deal in much larger numbers, but I'm going to ask a question from the kind of perspective of a lot of people who might be 45 years and older looking at the future. If they had say $500,000 saved up for retirement, how do you advise them?

Because it used to be a chunk of that you might want to put into municipal bonds. And you noted in the note that 27% of the supply was taxable issuance, because we're seeing the refinancing of what had been tax exempt muni bonds by cities and municipalities into taxable. What would you say to that potential woman or man regarding the future for them?

PETER HAYES: I'd say a lot of it is around, how much do you want to protect from taxes? And that's one of the reasons we've seen such strong inflows into the asset class this year. We've seen $62 billion in mutual fund inflow. So that's about the strongest that I can remember going back into the '90s. And I think a lot of that is because the fear of taxes going up. Now it's likely that the marginal tax rate for individuals, perhaps it goes back to 39.6%. So the benefit there is somewhat incremental. I think the bigger fear is corporate taxes. But clearly, for that individual looking to shelter income and not pay taxes on that income, municipal bonds will continue to provide, I think will provide that benefit.

The other element that sometimes is forgotten, is you look, if you think interest rates are going to rise, municipal bonds tend to do better. Well, look at this year. Year to date, the municipal index is up 1.6%. Most fixed income asset classes are actually negative. We'll use the Barclays ag. That's down negative 70 basis points. So a fair amount of outperformance. But it provides you some insulation if you really believe interest rates are going to rise.

And the other one is, it's a great hedge against equity risk. It's always done very well when you see volatility in the equity markets. Municipal bonds tend to be a safe haven for that. So it's really got kind of a three-pronged benefit to that investor, and that's what I would tell them. Adam.

ADAM SHAPIRO: In fact, the S&P municipal bond index, to reiterate what you said, has you said in the note, year to date, total return of about 1.9%, almost 2%. The other thing that's great about your note, is how everything is connected. You talk about climate change impacting revenue to utilities, especially the water utilities. Out West, which are now going to have to restrict demand, and you ended that part of the note by saying, we anticipate water usage limitations will become stricter and more widespread through year end. What kind of pressure does that put on the utilities to make good on their notes? I don't think anyone's going to default, but does it put pressure on them?

PETER HAYES: Well, I'll start with your comment. No one's going to default. I think that's very important. Sometimes they see these headlines and they think that means that an issuer is not going to repay their debt. That's never happened. California in particular has had a long history of drought. And even, and you look in some other areas of the US where droughts have been an issue over the years, water utility systems have always been very resourceful. They could cut water usage, they could raise rates. There's a lot of ways that they can actually utilize to repay their debt.

And the other one is just general utilities. So you talk about A, water restrictions. We saw I think in the Southwest yesterday for the first time they're going to cut the water usage in the Southwest to the Colorado River. And then the other is just general utilities. We saw today where I think PG&E is going to basically cut power to a certain part of their population in Northern California. That can impact revenues in the utility sector.

But again, they have a lot of tools at their disposal that they can ultimately use to help repay the debt. So it's not a default issue. Sometimes it's a rating issue, but it hasn't even really been that. Sometimes they go on negative watch, but again, investors shouldn't be necessarily very concerned about that on a going forward basis.

ADAM SHAPIRO: Peter, just quickly on interest rates. What are you expecting from the Fed meeting minutes tomorrow and Jackson Hole next week? When do you expect that tapering announcement and the actual start of tapering?

PETER HAYES: That's the $64,000 question that the bond market I think would love to know. I think our feeling generally is that interest rates have to rise. When you look at the, something you asked at the outset about the economic stimulus that's occurred, when you look at some of the supply chain disruptions and you look at the impact it's had on inflation, the notion that it's transitory is probably under, I think probably overvalued to some degree. This is here to stay for a while. So interest rates have to rise. It's a matter of when, and that goes to your question.

I think Jackson Hole is going to be somewhat of a non-event. I think the market may be expecting more out of Jackson Hole. Probably not likely to see anything there. I think it's more likely to occur in the coming months after that when we get by this Delta variant. The Fed wants to see what the impact will be on the economy. And then I think if we can get through that, if there's some clarity around the booster, and is a 2022 to restart to the economy, then you have to think more seriously about the Fed tapering, beginning to raise short-term interest rates, all of which are more likely to occur in 2022.

ADAM SHAPIRO: Peter Hayes, BlackRock Municipal Bonds Group Head, thank you so much.

August 17, 2021

Munis In Focus: NJ Megamall Sinking In Debt (Bloomberg Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest news from the muni market. Hosted by Paul Sweeney and Matt Miller. (Taylor Riggs fills in for Paul Sweeney)

Play Episode

Bloomberg Markets

August 20, 2021

Convention Centers Face Risks as Delta Ramps Up Threat to Crowds.

- **S&P warns of slow recovery, trouble reaching pre-Covid levels**
- **Texas borrowers have convention center deals on calendar**

The Delta strain is dealing a setback to the convention industry's fragile recovery.

Some big gatherings are being shut down as the number of coronavirus cases surges again, dealing a fresh hit to a business that was already struggling to revive from the era of social distancing and working from home. The New York International Automobile Show was canceled this month for the second year in a row because of concerns over the pandemic. In Florida, the epicenter of the U.S. outbreak, the North American Association of Food Equipment Manufacturers and the Global Surgical Conference called off their events, with organizers of the later, citing the "dramatic surge" in the state's cases.

"It is very hard to pull a group of people and make sure that they are all comfortable in meeting together," S&P Global Ratings credit analyst Safina Ali said in an interview. "To an extent, they might not even get back to pre-Covid" levels, she said, referring to convention centers.

Bond-financed convention centers have seen their businesses dry up since the pandemic struck the U.S. in early 2020. The Center for Exhibition and Industry Research reported that the industry has shriveled to $24 billion, down $77 billion from 2019.

"There is not going to be a light switch and everybody is able to go back and go to events," said Brad Mayne, president and chief executive officer of the International Association of Venue Managers.

Still there isn't much distress right now for convention center debt, said Eric Kazatsky, senior U.S. municipals strategist at Bloomberg Intelligence. Many of these had pretty solid cash on hand going into the pandemic and decent credit quality.

"They had some cash to burn," Kazatsky said. "Things aren't at a total zero. They've just declined. There are still conventions being held."

Plus the muni market is searching for supply amid ongoing investor demand, and there is appetite for new projects, he said.

About $1.5 billion of municipal bonds for convention centers have been sold so far this year, down from $2.4 billion in the same period in 2020, according to data compiled by Bloomberg. There are some upcoming municipal bond deals that may offer a look at how investors view the risk.

The city of Abilene, Texas, through the Abilene Convention Center Hotel Development Corp., is looking to finance the construction for a full-service, upscale 200-room hotel and conference center 150 miles (241 kilometers) west of the Dallas-Fort Worth area. S&P considers the $19.5 million first-lien bonds BBB-, one step above junk. Additionally, the corporation is also selling $24.7 million of second-lien bonds for the project.

Also in Texas, the Baytown Municipal Development District outside of Houston plans to sell about $61 million in bonds to finance the development of the Baytown Convention Center Hotel with about 208 rooms, according to bond documents.

Yet such deals may belie the risks posed the industry's slowdown. Earlier this week, S&P said it expects Overland Park Development Corp. in Overland Park, Kansas to draw on $530,000 debt service reserves to cover a portion of its Sept. 1 interest payment.

"If revenue fails to meaningfully improve over the remainder of 2021, particularly given the additional uncertainty imposed by the Delta variant, credit quality could deteriorate," S&P said in the report on Tuesday on the Overland debt.

Cooper Howard, director of fixed-income strategy at the Schwab Center for Financial Research, said the impact of the pandemic on convention centers is about "looking at the liquidity and health of the region that they are located in. "Right now the delta variant doesn't appear to be posing a major risk to this sector, longer term it is something that yes, we will be watching," Howard said.

Bloomberg Business

By Skylar Woodhouse

August 19, 2021, 12:30 PM MDT

— With assistance by Natalia Lenkiewicz

Municipal Bonds Are Still a Solid Summer Bet for Retirees.

Municipal bond yields aren't exactly thrilling these days, but the asset class remains an important income-generator and risk-reducer for investors in retirement.

While yields are broadly low today in the municipal bond space, there are some positive points for retirement investors to consider, and the asset class is proving sturdy even as the delta variant of the coronavirus vexes investors.

"Municipals maintained their seasonal trend and posted strong performance throughout the month of July. The market benefited from a favorable supply-demand backdrop and rallying interest rates due to excess liquidity, short covering, and Delta variant fears," according to BlackRock research.

More recently, longer duration munis and those with lower credit ratings delivered upside for investors as muni market participants sought to embrace credit and duration risk. A recent decline in supply could be another factor supporting municipal bonds.

"Supply moderated from the robust levels experienced in June and trended more in line with historical expectations. Issuance of $35 billion was down -26% month-over-month but just 5% above the 5-year average, bringing the year-to-date total to $255 billion," notes BlackRock.

While yields are low within the broader municipal bond universe, investors are still displaying enthusiasm for this form of debt, with flows to related funds, including exchange traded funds, poised to hit records this year.

"Demand remained firm with the asset class garnering continued inflows. While fund flows slowed slightly into month end amid lower absolute yields, 2021 remains on pace to eclipse 2019 as the best fund flow year on record," continues BlackRock.

The asset manager recommends underweighting munis tied to "speculative projects with weak sponsorship, unproven technology, or unsound feasibility studies," as well as senior and assisted living facilities in markets that already have plenty of those establishments. However, BlackRock is bullish on munis issued by states in strong fiscal positions as well as munis issued by cities and school boards with robust property tax bases. The fund issuer also likes some high-yield munis.

ETF Trends

AUG 16, 2021

[Treasury Guidance on Non-Entitlement Units is Now Available.]

The United States Treasury has issued [guidance on non-entitlement units] (NEUs) providing additional information on eligibility and a step-by-step guide for states to allocate and distribute funds to their NEUs. States should follow the guidance and calculate allocations based on the [list of local governments] and their respective populations. The statute requires that all allocations to eligible governments be based on population. Treasury expects to make payments to states for distribution to NEUs in two equal tranches approximately twelve months apart.

NASACT

[Muni Feeding Frenzy Seen Lasting as New Sales Lag Investor Cash.]

- **One-third of outstanding debt will be paid off by end of 2026**
- **Investors already face 'a very challenging muni environment'**

Municipal-fund managers awash with cash are struggling to find bonds to buy, a situation that may persist for the next few years if new issues continue to fall short of the demand.

About 21% of outstanding tax-exempt debt will mature or be called by the end of 2024, according to data compiled by Bloomberg. That rises to 31% by the end of 2026. The figures are higher than those seen historically and exacerbate the challenge bondholders have in reinvesting their payments, said Matt Fabian, partner at Municipal Market Analytics. Meanwhile, new dollars continue to flow apace into mutual funds.

So far this year, issuers have sold $289 billion in long-term municipal debt, higher than the $267 billion over the same period last year, according to data compiled by Bloomberg. While the federal infrastructure bill in the works may drive more sales of new debt, it's unclear if it will be "enough to offset the giant sucking sound of the pending maturity schedule," Fabian said.

"We need to see a material increase in new money projects, if only for the market to stand still," he said.

The dynamic underscores the strength of the municipal-bond market, which is notching positive returns even as several other corners of the fixed-income universe are down for the year. Investors are shifting into the tax haven as President Joe Biden's administration pushes to raise income taxes on the highest earners. Meanwhile, Biden's stimulus packages easing the impact of the coronavirus pandemic have boosted the credit quality of local government borrowers such as cities and transit systems.

Investors have plowed a record amount into municipal-bond funds for the first seven months of the year, totaling more than $69 billion, according to Refinitiv Lipper US Fund Flows data. The wall of cash has led Nuveen to turn new investors away from its high-yield municipal bond fund, the market's biggest.

The demand from mutual funds and those seeking to redeploy their principal payments will likely keep spreads at tight spreads, Fabian said.

"This is a context in which spreads are not going to widen absent some kind of surprise," he said. "We need some big city to file for bankruptcy, or some kind of major reversal of revenue trends."

Meanwhile, portfolio managers are left scrambling to get a piece of new deals, which receive so many orders that underwriters are able to lower yields that the buyers feel compelled to accept.

"What starts off looking attractive, by the time it comes to you, it's okay," said Sweta Singh, portfolio manager at City Different Holdings LP. "It is a very challenging muni environment, for sure."

Bloomberg Markets

By Romy Varghese

August 20, 2021, 10:00 AM MDT

— With assistance by Natalia Lenkiewicz

Muni Buyers Grab Billions in Bonds They Won't See for Months.

- **Sales with later delivery head for record as rate risk rises**
- **Ban on tax-exempt advance refundings lifts popularity of tool**

State and local governments barred from a key refinancing tactic are turning more than ever to a funding tool that helps them avoid the risk of rising interest rates.

Sales of municipal bonds that won't be delivered to investors until months after they price have reached about $10.5 billion in 2021, up 174% from the same period a year ago and on pace for a record, according to data compiled by Bloomberg. California issued the largest ever so-called delayed-delivery bond four months ago, while deals by issuers from across the country are set to price in the weeks ahead.

The structure allows state and local governments to lock in interest rates in anticipation of refinancing higher costing debt that's not yet eligible to be called back. It's an attractive tool for governments that believe rates are going to rise, said Vikram Rai, head of municipal strategy for Citigroup Inc. The structure has grown in popularity since a clause included as part of former President Donald Trump's 2017 tax cuts banned the sale of tax-exempt bonds to refinance debt ahead of the call date.

"It's a rate call," Rai said in an interview. "Rates are low and I find it difficult to believe that they will go lower."

California sold nearly $1.1 billion in April to be delivered next month, and the state plans to sell $372 million of the same structure in October. The Phoenix Children's Hospital is selling $150.4

million through the Arizona Industrial Development Authority that will be delivered in November. And Connecticut's Health and Educational Facilities Authority sold $206 million Wednesday that will be delivered no earlier than April.

The rising volume of forward sales comes as demand outpaces the supply of new bonds in the $4 trillion muni market, leaving yield-hungry investors willing to take on more risk to boost returns.

Rising inflation, the potential for Treasury yields to climb higher and the possibility the Federal Reserve starts tightening monetary policy could all shift future pricing for state and local governments. Ten-year top rated municipal benchmark bonds currently yield about 0.9%, according to Bloomberg BVAL pricing.

"What's in it for us is we get the advantage of low rates," Tim Schaefer, the deputy treasurer of public finance for the state of California, said in an interview. The state began issuing large chunks of bonds for forward delivery last October, and while it doesn't make interest-rate predictions, it wants to benefit from the low-yield environment, he said. "All of our risk of rate fluctuation beyond the date we sign the contract is thus eliminated. We have certainty."

Forward-delivery bonds offer extra yield to investors to compensate for the risks associated with waiting months to get your bonds. Rai, the Citigroup analyst, estimates the premium is about 3 to 4 basis points per month, meaning the further out the settlement date, the higher cost of selling the debt.

"This structure is seen as a win-win for issuers which can lower their cost of capital while investors will usually get some modest additional spread on forward delivery deals," said Erin Ortiz, managing director for municipal credit at Janney Montgomery Scott. "In fact, investors appear as being comfortable with forward delivery deals settling much longer out, even some over one year, as opposed to three or even six months."

Illinois's Metropolitan Pier and Exposition Authority sold about $811 million forward delivery bonds in July to take advantage of "favorable" interest rates, said Jason Bormann, chief financial officer of the agency. A bond that matures in 2052 priced at a yield of 97 basis points over the Bloomberg BVAL benchmark, according to data compiled by Bloomberg. It generated $140 million of present value savings, the authority said. The bonds won't be delivered to investors until March.

"I don't see the demand changing on the issuer side unless the advance refund rules change," Bormann said.

Bloomberg Markets

By Shruti Singh and Danielle Moran

August 18, 2021, 11:56 AM MDT Updated on August 18, 2021, 1:04 PM MDT

— With assistance by Skylar Woodhouse

[CDFA // BNY Mellon Development Finance Webcast Series: Layering the Capital Stack]

September 21, 2021 | 2:00 PM – 3:00 PM Eastern

The phrase “Capital Stack” is one that is pretty commonplace in the Development Finance nomenclature these days, but what does it truly mean to build the Capital Stack and how can it work for your project? This session will discuss how Bonds, Tax Increment Finance, Tax Credits as well as the litany of federal funding through recent legislation can work for your project and ultimately the community that is benefitting.

Click here to learn more and to register.

Important Ohio Supreme Court Decision Clarifies Proper Method to Value “Big Box Stores.”

The Ohio Supreme Court issued an important decision today clarifying the proper method under Ohio law to value big box stores—in this case, a Lowe’s store.

The Ohio Supreme Court rejected the property owner’s argument that an appraiser should presume that the property is vacant when appraising the property. Instead, the Court agreed with the school board and county that a property should be valued using market rent rather than the actual rent from an existing lease encumbering the property at the time of the sale and transfer.

The Court was called upon to interpret somewhat recent changes to R.C. 5713.03, which requires county auditors to value property based upon the value of the “fee simple estate, as if unencumbered.” Rejecting the property owner’s argument, the Court clarified that this statute invokes a market-lease rule, rather than a vacant-at-transfer rule. This decision, commonly referred to as *Rancho Cincinnati*, is the latest in a series of decisions in Ohio that affect the valuation of big box stores. The Court’s decision will be perceived as more favorable to political subdivisions and taxing authorities; in contrast, the Court’s decision will diminish the salience of appraisals that use a “go-dark” value of big box stores.

The *Rancho Cincinnati* decision was issued by the Ohio Supreme Court on August 18, 2021 and may be cited as *Rancho Cincinnati Rivers, LLC v. Warren County Board of Revision, et al.*, slip opinion no. 2021-Ohio-2798.

If you have questions about how this case impacts the valuation of properties located in your school district, please contact your legal counsel.

Bricker & Eckler LLP

August 19, 2021

Solving The Housing Crisis With OZs, With Riaz Capital.

In this webinar, Garrick Monaghan discusses the need for affordable housing in the Bay Area and the Riaz Capital Ozone Fund III.

Watch the webinar.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 13, 2021

Real Estate Technology And Opportunity Zones, with Steve Nson.

How does real estate innovation intersect with Opportunity Zones? How can Opportunity Zones catalyze business development and business investment in low income communities?

Steve Nson is founder of AnySizeDeals, a conference organizer with a focus on real estate innovation. Their upcoming AnySizeDeals Festival of Real Estate Innovation event will focus on the innovation that is transforming the real estate industry.

Listen to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 18, 2021

Demand, Supply Fundamentals Are in Muni Bond ETFs' Favor.

Long-term fundamentals could support municipal bond exchange traded funds as investment demand could fall short of new muni issuances.

About 21% of outstanding tax-exempt debt will mature or be called by the end of 2024, Bloomberg reports. The amount rises to 31% by the end of 2026.

Matt Fabian, partner at Municipal Market Analytics, warned that the amount of money maturing or set to be called is higher than that which is experienced historically, and could prove challenging for those trying to reinvest their payments, especially as new dollars continue to flow into the space with an aging population.

Meanwhile, on the supply side, issuers have sold $289 billion in long-term municipal debt so far in 2021, which was slightly higher than the $267 billion over the same period last year. Additionally, while the federal infrastructure bill could stimulate greater sales of new debt, it's unclear if it will be "enough to offset the giant sucking sound of the pending maturity schedule," Fabian told Bloomberg.

"We need to see a material increase in new money projects, if only for the market to stand still," Fabian said.

The difference between supply and demand in the muni market has helped this pocket of the fixed income space turn a positive return in 2021, even as other areas of the debt markets are down for the year. Additionally, investors have been targeting the tax-exempt debt as President Joe Biden's administration seeks to hike income tax rates on high earners and stimulus packages have helped ease the negative impact from the coronavirus pandemic on local government borrowers.

Investors have so far funneled a record $69 billion into municipal bond funds for the first seven months of the year, according to Refinitiv Lipper US Fund Flows data.

Looking ahead, Fabian warned that the demand for muni funds and those trying to redeploy principal payments will keep spreads tight.

“This is a context in which spreads are not going to widen absent some kind of surprise,” he added. “We need some big city to file for bankruptcy, or some kind of major reversal of revenue trends.”

ETF investors who are interested in the munis space can also consider targeted ETF strategies, such as the popular iShares National Muni Bond ETF (NYSEArca: MUB), Vanguard Tax-Exempt Bond ETF (NYSEArca: VTEB), and SPDR Nuveen Bloomberg Barclays Municipal Bond ETF (NYSEArca: TFI).

ETF TRENDS

AUG 23, 2021

Michigan’s Overlapping Property Tax Limitations Create an Unsustainable Municipal Finance System.

- States generally limit growth of property tax burdens in one of three ways – rate limit, assessment limit, or levy limit. Michigan uses all three, making it among the strictest property tax limitations of the states. Statutory tax rate limits, the Headlee Amendment’s assessment limit, and the taxable value system created by Proposal A all work to limit the growth of tax burdens and constrain year-to-year changes.
- The Great Recession and its impact on property values led to the overlapping tax limits having a mitigating affect, keeping the tax base from declining further than it could have. Since the Great Recession, which was a unique event, tax bases have been growing at relatively slow rates.
- The property tax system is not sustainable. Local government tax revenues are constrained in their growth unless they add new development to their tax bases or increase tax rates. Land is finite and cannot continue to be developed. Tax rates are statutorily limited. Local governments need revenue that can grow with their economies.

Download Report.

AUGUST 10, 2021

Barring California Taxpayers from the Courts.

Big government interests – and by “big government interests” we mean elected officials, bureaucrats, public sector unions and private corporations that live off taxpayer dollars – do everything they can to erect barriers to taxpayers seeking to vindicate their rights.

As this column has previously addressed, those barriers include making it difficult to vindicate rights at the ballot box by consistently changing election laws – often in the middle of an election cycle – in a manner designed to protect the existing political power structure.

But there is an equally virulent set of hurdles placed before taxpayers consisting of procedural barriers to obtaining relief in the courts. Just a few examples are short statutes of limitations, requirements that taxpayers must "exhaust administrative remedies" before filing a legal action, requirements that taxpayers must first pay the disputed tax in full before filing suit, and severe restrictions on the use of class actions that preclude meaningful tax relief when entire communities are hurt by an illegal tax.

Another example is the requirement that challenges to certain tax increases be brought exclusively as "validation actions." Such actions may be brought by government entities to "bulletproof" their tax or fee increases from any future legal attack. Typically, the lawsuit will be filed against "All Persons Interested" in the legality of a bond issuance or other public finance matter and, once filed, taxpayers have only a very limited time to respond.

The short time to respond to a validation action, however, isn't the biggest headache for taxpayers. Specifically, if the government entity doesn't file its own action, then the validation action must be filed by citizens (any "interested party") within 60 days of the resolution authorizing a bond or tax. The citizens' failure to do so results in the bond or tax becoming automatically "validated" through inaction, and forever insulated from judicial review. This puts the costs of litigation on the shoulders of those having to pay the tax. And those costs include the very expensive price tag of having to "publish" a summons in the local newspaper over several days.

Ordinary taxpayers rarely have the expertise or financial wherewithal to initiate a "validation" action in court and must rely on advocacy groups such as the Howard Jarvis Taxpayers Association, which has been involved in numerous such lawsuits. But even with that expertise, there remains much wrong with expanding the circumstances where the law requires that challenges must be brought as a validation action as opposed to more traditional legal actions such as taxpayer injunctions, declaratory relief or money damages.

Validation actions may make sense in the limited area of protecting municipal bonds from legal attack well after the bonds have been issued. There is arguably a public interest in protecting the "marketability" of public bonds so that government entities have access to capital markets in order to construct public projects such as schools.

However, a bill currently pending in the California Legislature, Senate Bill 323, would hijack the validation statutes and apply them to preclude ratepayers from challenging unlawfully high rates for water or sewer – essential public services that no one can live without.

Simply stated, this expansion of the validation statutes is an unfair denial of due process that can have the effect of cementing into law illegal government acts that are then insulated from judicial review. Even the state Supreme Court has taken notice, writing in City of Ontario v. Superior Court that some applications of the validation statutes are "of doubtful constitutionality." Not surprisingly, the Howard Jarvis Taxpayer Association opposes all attempts to enlarge the universe of government actions that are subject to the validation statutes. And we are not alone.

Even a couple of water agencies in Orange County see a problem with this expansion. While generally supportive of the bill's aims, they also recognize the importance of providing adequate notice to ratepayers "in recognition of public water and sewer agencies' Constitutional responsibility to guarantee that ratepayers – particularly economically disadvantaged residents and marginalized communities – know their rights."
What ratepayers should really know about their rights is how Senate Bill 323 takes them away. The validation statutes were never meant to insulate water, sewer, or other agency rates and fees from legal challenge. If such rates are imposed in a manner contrary to the constitutional protections guaranteed to taxpayers by Proposition 13 and other laws, ratepayers must not have the courthouse

door slammed in their faces by a burdensome process that makes such challenges difficult, if not impossible.

PE.COM

By JON COUPAL

August 16, 2021

Jon Coupal is president of the Howard Jarvis Taxpayers Association.

High-Yield Munis Remain Sturdy Despite an Uptick in Defaults.

The federal government heaped billions of dollars on states to help them tidy up their balance sheets in the wake of the coronavirus pandemic.

However, municipal default rates ticked higher in 2020 and to this point this year. Yet that's not damping the case for high-yield municipal bonds and the VanEck Vectors High Yield Muni ETF (HYD), one of the dominant exchange traded funds providing exposure to junk-rated munis.

The $4 billion HYD follows the Bloomberg Barclays Municipal Custom High Yield Composite Index and turns 13 years old next February. As of Aug. 12, it yields 2.17% on a 30-day SEC basis. These days, that's elevated in the municipal bond universe, but it's not cause for alarm. As Tamara Lowin, VanEck senior municipal research analyst, points out, investors should dig into where exactly the muni defaults are coming from.

"While default rates increased in several sectors, the healthcare sector is responsible for most of the spike, doubling its five-year average," she said in a recent note. "The healthcare sector is known as one of the riskiest sectors historically, mainly due to the senior-living sub-category, which includes nursing homes, assisting living facilities, and continuing care retirement communities. This category was directly impacted by the pandemic and hit harder than any other municipal sector. The nation saw occupancy levels fall, broken supply-chains, and a loss of employees, which devastated them financially."

HYD has a 19% weight to healthcare munis – its largest segment allocation. That exposure isn't hindering the ETF this year. Year-to-date, HYD is higher by 3.35% while the widely followed S&P National AMT-Free Municipal Bond Index is flat on the year.

That's a sign that the concentration of muni defaults in one corner of the market isn't denting the thesis for this asset class in general.

"The concentration of defaults in one sector affirms our belief in the strength of high yield municipal bonds overall," adds Lowin. "The shock to the system did not result in widespread staggering defaults, but instead targeted borrowers most vulnerable to a sudden health-event shift. It is no surprise that the sector most directly impacted by the Coronavirus continues to struggle through instability. However, the size and brevity of the disruption in the remaining sectors speaks to the continued strength of high yield municipal bonds."

Of HYD's top four state exposures – California, Illinois, New York, and New Jersey – only Illinois appears somewhat financially strained at the moment. California, the ETF's largest state exposure, is doing well when it comes to tax collection and is running a massive budget surplus.

ETF TRENDS

TOM LYDON AUGUST 16, 2021

Illinois to Sell Bonds After First Ratings Increase in Decades.

- **State plans to offer $500 million in debt over next two months**
- **First batch, $130 million in tax-exempt bonds, slated Aug. 24**

Illinois is returning to the $4 trillion municipal bond market after winning credit rating upgrades for the first time in more than two decades.

Why It's Noteworthy

The state, which still has the lowest credit designation in the nation, plans to sell $130 million in junior obligation tax-exempt securities through a competitive auction for its Build Illinois program on Aug. 24. The bonds will help fund construction projects and are backed by Illinois sales tax revenue. The state's share of sales tax increased 13% to $10.4 billion in fiscal 2021, according to bond documents.

The offering scheduled for next week is the first of three issues slated for over the next two months. The state plans to sell $210 million taxable debt and $160 million tax-exempt refunding bonds through negotiated sales in mid-September, according to a statement.

Illinois last came to market in March. That was before the economy began reopening from the Covid pandemic shutdown and when investors were still grasping the impact of President Joe Biden's American Rescue Plan Act, which funnels $350 billion to state and local governments. Illinois is getting about $8.1 billion from the latest stimulus package.

Outlook

While S&P Global Ratings and Fitch Ratings have assigned BBB+ ratings to the $130 million sales tax bonds to be sold next week, Illinois's overall credit picture has brightened noticeably in the last six months. That's largely given higher-than-projected revenue, billions more in federal aid and some fiscal discipline shown by the state government.

After raising their outlooks on the state in March to stable from negative, both S&P and Moody's Investors Service lifted their ratings. Moody's raised its designation to Baa2 from Baa3 on June 29 and S&P boosted to BBB from BBB- on July 8. Both increases were the first for the state in more than 20 years.

Fitch raised its outlook to positive from negative on June 23, but maintained its BBB- rating, which is still one notch above non-investment grade. The state remains the lowest rated, largely because of its heavy unpaid pension liability — which currently stands at about $144 billion, lack of a meaningful rainy day fund and ongoing structural deficits.

It had faced a string of outlook and rating cuts resulting from the budget impasse from 2015 through 2017 between the Democrat-controlled Illinois General Assembly and then Governor Bruce Rauner, a Republican. Plunging revenue in 2020 due to pandemic-spurred business closures had added to the pressure and put the state on the brink of a junk rating.

Now, S&P’s stable outlook for the Build Illinois bonds reflects sales tax resilience, liquidity strength and continued economic recovery, Geoff Buswick, an analyst for S&P, said in a report Aug. 13.

Market’s View

“For the first time in a long time the state is coming to market with the momentum of positive rating actions,” said Dora Lee, director of research for Belle Haven Investments, which holds $15 billion in muni assets including Illinois debt. “It really shows what the state is capable of with a bit of financial discipline and a supportive federal aid environment.”

The state’s yield spreads are still wider than other states but are historically low, said Dennis Derby, a portfolio manager for Wells Fargo Asset Management, which holds Illinois as part of $35 billion muni assets. The sales tax bonds are also “one of the strongest financing mechanisms for Illinois” and using them for capital projects makes sense, he said.

Illinois pays 70.8 basis points more to borrow than 10-year AAA benchmark securities, according to data compiled by Bloomberg. While that is slightly more than earlier this summer, it’s far less than the 4.4% in May 2020 at the height of investors’ anxiety about financial repercussion from the pandemic.

“Illinois continues to ride positive market momentum and improved ratings outlooks,” Derby said.

Bloomberg Markets

By Shruti Singh

August 20, 2021, 6:33 AM MDT

Nuveen to Close Top High-Yield Muni Fund to New Investors.

- **Investors have flocked to muni junk bond funds for high yields**
- **Nuveen fund has gained over 14% in the past year, data shows**

Nuveen said it plans to shut its high-yield municipal bond fund to new investors after the end of next month.

The fund is the biggest focused on state and local government junk bonds, a corner of the market that’s received a massive influx of cash at a time when the pace of new debt sales has struggled to keep up.

High-yield municipal funds have drawn in new cash week after week this year as the market rallied, delivering out-sized returns at a time when yields on the safest state and local government bonds are holding not far from record lows.

Investors have added nearly $17 billion of new money to such funds since the start of the year, according to Refinitiv Lipper US Fund Flows data.

That influx has created challenges for fund managers forced to compete against each other to get in on new bond offerings. At the same time, surging economic growth and the massive federal rescue package has left local government credit ratings broadly on the rise.

Nuveen's High Yield Municipal Bond Fund, run by John Miller, is not only the market's behemoth, with more than $24 billion of assets, but one that has also consistently outperformed its rivals. It has returned more than 14% over the past year, better than all but 2% of its peers, according to data compiled by Bloomberg.

The fund is closely watched by municipal-bond investors, given its track record and size. A spokesperson said Miller was unavailable to comment.

Nuveen is also closing its California high-yield muni fund to new investors after Sept. 30, the company said in a statement and filings with the Securities and Exchange Commission. Those with stakes by then will still be allowed to keep investing.

The step follows a similar move by rival Invesco Ltd., which closed its $11 billion high-yield muni fund to new investors.

"Nuveen investment and product teams will closely monitor market conditions and other fund-specific factors and will actively look to reopen the funds when it is deemed to be in the best interest of shareholders," Nuveen said in a statement to Bloomberg News.

Bloomberg Markets

By Danielle Moran

August 19, 2021, 2:45 PM MDT Updated on August 19, 2021, 3:40 PM MDT

— With assistance by Romy Varghese

New Jersey's American Dream Megamall Is Once Again Sinking in Debt.

- **Developers hired restructuring lawyers and financial advisers**
- **Ghermezians sacrifice pieces of empire to keep project afloat**

Since its groundbreaking nearly two decades ago, the megamall built in New Jersey's Meadowlands has done little except hemorrhage cash. Now, less than two years after its much-delayed opening, the complex known as American Dream is threatening to dash the lofty ambitions of yet another developer.

The Ghermezian family, which runs some of the biggest and most successful malls in North America, can't keep up with the bills on the shopping and entertainment megaplex, which helped drive its original developer to the brink of bankruptcy and later was seized by lenders from the team that came next.

Revenue from the stores has been so scarce amid the surging pandemic that the Ghermezians have hired legal and financial advisers to help them ease the crushing $3 billion debt load, and perhaps retain some role in running the project, according to people with knowledge of the matter.

Continue reading.

Bloomberg

By Eliza Ronalds-Hannon, John Gittelsohn, Lauren Coleman-Lochner, and Martin Z Braun

August 19, 2021, 5:00 AM MDT

HilltopSecurities Strengthens Footprint, Adds Key Professionals to Public Finance Division.

DALLAS, August 18, 2021–(BUSINESS WIRE)–Hilltop Securities Inc. (HilltopSecurities) recently welcomed a pair of key financial services leaders to its Public Finance division in Florida and Minnesota. John Pellicci will serve as senior managing director, head of municipal high yield underwriting and sales, while Yaffa Rattner will serve as senior managing director, head of municipal credit in the firm's Public Finance division.

The two bring a combined 67 years of financial services experience to HilltopSecurities' team of financial professionals and will report to Todd Bleakney, senior managing director, co-head of Debt Capital Markets.

"John and Yaffa will be wonderful additions to our Public Finance division," said Bleakney. "They are both seasoned professionals and will only enhance our ability to serve our clients. I look forward to working with them."

"With the addition of Yaffa and John, we continue to strengthen our capital markets effort across our platform," said Mike Bartollota, Executive Managing Director, Co-Head of Public Finance/Debt Capital Markets at HilltopSecurities. "We are delighted to have such talented and experienced professionals join our team."

Investors Flock To Municipal Bonds For Tax Savings.

Wealthy investors are shoveling more money into municipal-bond exchange-traded funds as they seek shelter from expected higher tax rates.

Municipal-bond ETFs have already experienced $13.8 billion in net inflows this year. The current trajectory is set to outpace the $14.5 billion gathered by muni-bond ETFs for all of 2020.

The U.S. Senate recently approved a $1 trillion infrastructure spending package. That's on top of the $1.9 trillion Covid-19 relief bill passed earlier this year, plus $2.2 trillion more spending via the CARES Act in 2020. The surge in government spending has alarmed many affluent households and financial advisors who are bracing for higher income tax rates.

Income generated from municipal bonds is exempt from federal taxes and from state income taxes, so long as the bonds purchased are from a taxpayer's home state. In certain cases, income from in-state municipal bonds could be subject to state taxes.

There are 65 U.S.-listed municipal-bond ETFs with $78.5 billion in combined assets, according to ETFAction.com. The Denver-based firm is seeing a big pickup in demand for muni-bond ETFs.

ETFs that own higher yielding, lower credit quality municipal bonds have been among the biggest beneficiaries of surging investor demand. Over $1.25 billion has already flooded into high-yield muni-bond ETFs this year, which is more than 10 times greater than the $111 million of assets gathered in 2020.

The $3.9 billion VanEck Vectors High Yield Muni ETF (HYD) is among the funds within the high-yield category that's seen an uptick in asset flows. HYD carries a 30-day SEC yield of 2.18% which equates to a 3.46% taxable equivalent yield for investors in the highest 37% tax bracket. The fund distributes income payments monthly and charges 0.35% annually.

Muni-bond ETFs that are exempt from the federal alternative minimum tax, or AMT, have become another popular target for investors.

With $8.7 billion in combined assets, ETFs tied to municipal bonds with AMT-free income represents the largest segment within the overall municipal-bond ETF category. Within this group, the Invesco National AMT-Free Municipal Bond ETF (PZA) owns at least 80% of its assets in muni bonds that are exempt from the AMT.

The AMT disallows certain deductions that are permitted in the ordinary income-tax code. After calculating taxes under both ordinary income and AMT rates, taxpayers must pay whichever rate is higher. The 2017 tax law change under the Tax Cuts and Jobs Act increased the phase-out thresholds, meaning fewer tax filers are subject to AMT.

FINANCIAL ADVISOR

AUGUST 17, 2021 • RON DELEGGE

Should You Rethink Your Muni Ladders?

Municipal bond ladders are a common strategy to mitigate interest rate risk. If interest rates rise, you can reinvest bonds coming due in higher-yielding bonds. If interest rates fall, you always have a good number of bonds locked in at higher rates. The problem is that the current environment introduces a lot of uncertainties.

Let's look at why muni bond investors face a challenging reinvestment environment and alternative strategies to consider.

Demand Outstrips Supply

The municipal bond market has become a fixed-income safe-haven. After a tumultuous winter, the federal government's stimulus spending has padded state and local budgets. Meanwhile, the swift economic recovery alleviated many concerns of future budget shortfalls. These trends have eliminated the need for new muni bond issues to raise capital.

Continue reading.

dividend.com

by Justin Kuepper

Aug 18, 2021

- More Muni Issuers Are Making Banks Compete to Win Bond Deals.
- MSRB Offers Remote Municipal Advisor Principal Exam.
- Fitch: USPF Exposed to the Same Factors Pressuring the US Sovereign
- S&P: Uncovering Local-level Risk Factors for Municipal Exposures
- Pimco Veterans Look to Shake Up 'Old School' Muni Loan Market.
- MSRB Research Paper on the Taxable Municipal Bond Market.
- GFOA 2021 GAAP Update.
- And finally, Bismarck, Otto van Bismarck, is brought to us this week by *Smith v. Isakson*, in which Eric Smith was found guilty of violating a Bismarck ordinance restricting the use of public grounds without a permit after a mall and fast-food restaurant repeatedly asked Mr. Smith to remove his flags, banners, and assorted merchandise promoting the campaign of a particular presidential candidate from the property. (Don't ask us, could have been any number of presidential candidates.). The penalty for this particular infraction is $100. There exists no possibility for jail time. Nevertheless, in a move no one could have seen coming from an individual already deemed a vexatious litigant (Is there a better two-word combo in the English language? Moist Towelette?) by the Supreme Court of North Dakota, Mr. Smith sued the mall for $500k (*pro se*, natch) and managed to (once again) take his case to the state supreme court. Our deepest, deepest condolences to the DAs who will now be required to provide Mr. Smith with a jury trial. You ever deal with a *pro se* litigant? Think clown-car towing rabid monkeys barreling head-long into a tanker truck of human waste. And finally, finally, when even Chick-fil-A wants you off its property, please take this as a sign that it's time for a long dark night of political soul-searching.

EASEMENTS - CALIFORNIA

Pear v. City and County of San Francisco

Court of Appeal, Sixth District, California - July 28, 2021 - Cal.Rptr.3d - 2021 WL 3186556 - 21 Cal. Daily Op. Serv. 7667

Grantors' successors brought action regarding their uses of surface of strip of property deeded to city and county for use for underground water pipes, alleging claims for quiet title, an irrevocable license, declaratory relief, and injunctive relief.

The Superior Court granted summary judgment for city and county. Successors appealed, and the Sixth District Court of Appeal reversed and remanded. Following a court trial, the Superior Court entered judgment for successors on claims to quiet title and for declaratory and injunctive relief, and city and county appealed.

The Court of Appeal held that:

- Deed reservation allowed grantors' successors to plant grass on the property;
- Deed reservation allowed grantors' successors to place ornamental landscaping on the property;
- Deed reservation permitted roads and streets for both residential and commercial use;
- Deed reservation allowed access to commercial property's service bays which were perpendicular to the pipeline property; and
- Deed reservation did not permit parking lot use of the property as part of general access to neighboring automotive service center.

PUBLIC FINANCE - MICHIGAN

Taxpayers for Michigan Constitutional Government v. Department of Technology , Management and Budget

Supreme Court of Michigan - July 28, 2021 - N.W.2d - 2021 WL 3179659

Taxpayer organization brought action against state and state authorities to enforce state constitutional amendment requiring certain percentage of state spending to be apportioned to local government.

The Court of Appeals granted mandamus relief for organization, and the matter then came before the Court of Appeals again on motion for reconsideration. The Court of Appeals granted summary judgment in part and denied it in part for both parties. Parties' applications for leave to appeal were granted.

The Supreme Court held that:

- "Proposal A" payments should be counted as part of total state spending paid to units of local government for purposes of Headlee Amendment;
- Public school academies (PSAs) were not "school districts" as that term was used in Headlee Amendment; and
- State funding provided to units of local government had to be counted for purposes of "total state spending paid to all units of Local Government" under Headlee Amendment.

Under the Headlee Amendment requiring certain percentage of state spending to be apportioned to local government, neither specific individual units of local government nor classes of units of local government are entitled to the same proportion of the allotment for units of local government as they received in 1978–1979.

"Proposal A" payments from state sales and use tax that state directed to school districts, and state spending for state-mandated local services and activities, had to be counted as part of total state spending paid to units of local government for purposes of Headlee Amendment requiring certain percentage of state spending to be apportioned to local government.

Public school academies (PSAs) were not "school districts" as that term was used in Headlee Amendment which requires certain percentage of state spending to be apportioned to local government; although legislature authorized creation of PSAs and treated them as school districts for specific purpose of receiving aid from State School Aid Fund, PSAs were organized as nonprofit corporations by person or other entity, PSAs were not limited to defined local geographic area, governing body of PSA was made up of board of directors comprised of privately selected members, board of directors of PSA could enter into contract with education-management corporation to manage or operate PSA or to provide PSA with instructional or other services, and PSA was funded solely by state and may not levy taxes.

State funding provided to units of local government had to be counted for purposes of "total state spending paid to all units of Local Government" under Headlee Amendment which required certain percentage of state spending to be apportioned to local government to honor voters' intent neither to freeze legislative discretion to enact necessary and desirable legislation in response to changing times and conditions nor to permit state government unrestricted discretion in its allocation of support for mandated activities and services; state funding to unit of local government was state funding to unit of local government, whether that funding was tied to state mandate or was unrestricted aid for discretionary spending.

STANDING - NEW HAMPSHIRE

Carrigan v. New Hampshire Department of Health and Human Services

Supreme Court of New Hampshire - July 20, 2021 - A.3d - 2021 WL 3044342

Taxpayer-resident brought declaratory judgment action against Department of Health and Human Services and its Commissioner, alleging that they were failing to meet their statutory and constitutional duties with respect to abused and neglected children as a result of their "irresponsible" spending decisions.

The Superior Court dismissed for lack of standing. Taxpayer-resident appealed.

The Supreme Court held that taxpayer-resident lacked standing under state constitutional provision allowing declaratory judgment actions challenging unlawful spending of public funds.

State constitutional provision allowing declaratory judgment actions by taxpayer-residents challenging governmental action involving unlawful spending of public funds does not provide the judiciary with the authority to decide whether the State or a local government has invested sufficient resources to address alleged shortcomings or has properly funded the agencies with responsibility for abiding by the legal requirements enacted by the legislature at levels that facilitate legal functioning.

Taxpayer-resident lacked standing, under state constitutional provision allowing declaratory judgment actions by taxpayer-residents challenging governmental action involving unlawful spending of public funds, against Department of Health and Human Services and its Commissioner alleging that they were failing to meet their statutory and constitutional duties with respect to abused and neglected children as a result of their "irresponsible" spending policies involving poor allocation of resources, where taxpayer-resident failed to challenge any specific spending action or spending approval by Department.

MUNICIPAL ORDINANCE - NORTH DAKOTA

Smith v. Isakson

Supreme Court of North Dakota - July 22, 2021 - N.W.2d - 2021 WL 3083472 - 2021 ND 131

Defendant convicted, following bench trial, of violating city ordinance prohibiting the sale of merchandise on public grounds without a permit filed a pro se petition for writ of supervision, alleging violation of his right to jury trial.

The Supreme Court held that:

- Defendant was not entitled to jury trial under Sixth Amendment, but
- He was entitled to jury trial under North Dakota constitution.

Defendant charged with violating city ordinance prohibiting the sale of merchandise on public grounds without permit was not entitled to jury trial under the Sixth Amendment, since the offense was characterized as infraction, and carried a maximum potential fine of $1000, without any possible prison term.

Defendant charged with violating city ordinance prohibiting the sale of merchandise on public grounds without permit was entitled to jury trial under North Dakota constitution; when North Dakota constitution was adopted in 1889, laws permitted cities to comprehensively regulate sales in public places, and jury trial was guaranteed for violation of such laws because potential penalties included incarceration for up to three months and fines of up to $100, and constitution extended right to jury trial to all crimes for which the right was preserved when constitution was adopted.

IMMUNITY - OREGON

Sherman v. State by and through Department of Human Services

Supreme Court of Oregon, En Banc - July 29, 2021 - P.3d - 368 Or. 403 - 2021 WL 3204726

Former foster child brought action against Department of Human Services, alleging that the Department failed to protect her from abuse while she was a child in foster care by negligently certifying her foster parents and failing to appropriately investigate and respond to alleged abuse, and also alleging violation of the Vulnerable Person Act.

The Circuit Court granted Department's motion to dismiss, ruling that claims were time-barred by the statute of ultimate repose. Former foster child appealed. The Court of Appeals reversed and remanded, and Department appealed.

The Supreme Court, en banc, held that:

- Statutory two year limitations period for Oregon Tort Claims Act (OTCA) claims does not render statute, exempting child abuse claims from the statute of ultimate repose, completely ineffective;
- Statute, exempting child abuse claims from the statute of ultimate repose, applies to all child abuse claims, including claims for child abuse brought against public bodies; and
- Child abuse claims brought against Department should not have been dismissed.

EMINENT DOMAIN - SOUTH CAROLINA

Ray v. City of Rock Hill

Supreme Court of South Carolina - August 4, 2021 - S.E.2d - 2021 WL 3378945

Landowner brought action against city for trespass and inverse condemnation arising from city's piping stormwater under her house.

The Circuit Court granted summary for city on inverse condemnation claim, after which the Circuit Court directed a verdict for city on trespass claim. Landowner appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. City petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Factual issues about city's reconnection of city pipes to stormwater catch basin precluded summary judgment on inverse condemnation claim, but
- Statute of limitations barred recovery for damage caused by flow of water before city reconnected pipes.

Genuine issues of material fact existed as to whether city's reconnection of three city pipes to stormwater catch basin, which allowed water to resume flowing through pipe under landowner's house, was an affirmative, positive, aggressive act by city resulting in damage to landowner's property, precluding summary judgment on landowner's inverse condemnation claim.

Landowner's right of action against city for inverse condemnation was limited to three years from date she discovered, or by exercise of reasonable diligence should have discovered, she might have had a claim against city for city's piping stormwater under her house.

PUBLIC UTILITIES - TEXAS

Quadvest, L.P. v. San Jacinto River Authority

United States Court of Appeals, Fifth Circuit - August 3, 2021 - F.4th - 2021 WL 3362470

Investor-owned water utilities brought action against San Jacinto River Authority (SJRA), state entity, alleging that SJRA violated Sherman Act when it entered into and enforced contracts relating to purchase of wholesale water in Montgomery County, Texas.

The United States District Court for the Southern District of Texas denied SJRA's motion to dismiss based upon state-action immunity. SJRA filed interlocutory appeal.

The Court of Appeals held that:

- SJRA invoked state-action immunity as state entity, and therefore interlocutory appeal of denial SJRA's motion to dismiss based upon state-action immunity was proper, and
- SJRA was not entitled to state-action immunity at pleading stage.

San Jacinto River Authority (SJRA) invoked state-action immunity as state entity, in action brought by investor-owned water utilities alleging that SJRA violated Sherman Act when it entered into and enforced contracts relating to purchase of wholesale water in Montgomery County, Texas, and therefore interlocutory appeal of denial SJRA's motion to dismiss based upon state-action immunity was proper, since SJRA was active participant in market over which it purportedly exerted anticompetitive control.

Texas Legislature did not authorize entry of San Jacinto River Authority (SJRA), as state entity, into, and enforcement of, challenged provisions of groundwater reduction plan (GRP) contract with intent to displace competition in market for wholesale raw water in Montgomery County, Texas, and therefore SJRA was not entitled to state-action immunity at pleading stage of action brought by investor-owned water utilities alleging that SJRA violated Sherman Act, since statutory authority to sell surface water would not inherently, logically, or ordinarily result in displacement of competition in market for allegedly cheaper, plentiful groundwater.

TAX - MARYLAND

Mayor and City Council of Ocean City v. Commissioners of Worcester County, Maryland

Court of Appeals of Maryland - August 5, 2021 - A.3d - 2021 WL 3417685

Municipality brought action seeking declaratory judgment that tax setoff laws were unconstitutional because they treated different municipalities differently.

The Circuit Court dismissed the action. Municipality appealed. The Court of Special Appeals affirmed. Municipality's petition for writ of certiorari was granted.

The Court of Appeals held that statutes providing for mandatory real property tax setoffs did not violate uniformity requirement in Constitution.

Statutes providing for mandatory real property tax setoffs did not regulate matters of purely local concern, and therefore they did not violate Constitutional provision requiring General Assembly to act in relation to government or affairs of any municipal corporation only by general laws that in their terms and in their effect applied uniformly, since tax setoff statutes strongly affected county residents who resided outside of municipality.

Municipal CUSIP Request Volumes Slow in July, Ending 5-Month Growth Streak.

NEW YORK, Aug. 13, 2021 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for July 2021. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a significant monthly decrease in request volume for new municipal identifiers and a slight increase in request volume for new corporate identifiers.

CUSIP identifier requests for the broad category of U.S. and Canadian corporate equity and debt edged higher in July versus June totals. The monthly increase was driven largely by medium-term note and Canadian corporate issuance. On a year-over-year basis, corporate CUSIP request volume was down 1.3%.

Monthly municipal volume decreased in July, the first monthly decline in muni CUSIP request volume since January of this year. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – fell 18.7% versus June totals. On an annualized basis, municipal CUSIP identifier request volumes were up 4.2% through July. New York led state-level municipal request volume with a total of 196 new CUSIP requests in July, followed by Texas with 195 and California with 93.

"Municipalities have been busy with new debt issuance this year, and while the volume of new requests has slowed this month, it's important to note that seasonality could be playing a role in the trend. June is peak short-term notes season, so it stands to reason that we'd see a tough comparison in July," said Gerard Faulkner, Director of Operations for CGS. "With interest rates still holding at historic lows and state governments very much in need of cash flow, we expect issuance volume to stay healthy for the near term."

Requests for international equity and debt CUSIPs both declined in July. International equity CUSIP requests were down 4.6% versus June. International debt CUSIPs were down 24% on a monthly basis.

To view the full CUSIP Issuance Trends report for July, click here.

More Muni Issuers Are Making Banks Compete to Win Bond Deals.

- **So-called competitive deals are up 32% to highest since 2016**
- **Competitive sales were down a year ago following market crash**

In a stark contrast to a year ago when states and local governments hit by the pandemic had to woo skittish investors, more issuers are selling municipal bonds through competitive auctions that put the risk on underwriters.

The amount of long-term bonds sold through competitive deals has risen to $64.6 billion so far this year, a 32% increase from the same period of 2020 and the highest for the year-to-date period since 2016, according to data compiled by Bloomberg. Meanwhile, the volume of long-term bonds sold through a negotiated offering — still the bulk of the market — has gained 2.7% to about $211.8 billion, the data show.

In a competitively priced deal, underwriters bid for and buy the bonds and then have to sell them no matter the market conditions. In negotiated offerings, banks are hired in advance to set the interest rates and line up buyers for the securities.

Right now, investor demand for tax-exempt debt is so great that the extra legwork by underwriters and marketing time needed with negotiated deals to attract buyers isn't as necessary, according to Vikram Rai, a municipal analyst for Citigroup Inc. Munis have proven to be an oasis in the fixed-income universe in 2021, outperforming Treasuries.

"Negotiated deals are more popular when the market has a slightly weaker tone," Rao said. "When demand is strong we see competitive deals increase."

The rise in competitive deals is a big shift from a year ago, when negotiated sales spiked as the market coped with the impact of business shutdowns at the start of the pandemic and spooked investors pulled record amounts of cash from mutual funds. Last year through mid-August, competitive deals were down about 18% from the same stretch of 2019, while negotiated deals jumped 35%.

The supply of muni bonds expected to be issued in the next 30 days is short of the amount available for reinvestment by $14.9 billion, up 10% from a year ago, according to data compiled by Bloomberg. Mutual funds for tax-exempt bonds have seen inflows of almost $60 billion this year as investors look for income amid historically low interest rates, and there have been no meaningful outflows for almost 66 weeks.

Right now, the market is leaning more toward competitive deals than last year because "issuers, and their financial advisors, see the uneven landscape between supply and demand," said Bloomberg Intelligence analyst Eric Kazatsky. "To help drive the best deal for their clients, advisors help navigate them towards the competitive market, where they can save on costs of issuance and have many firms bid on their debt."

Also boosting the rise in competitive sales, recent rate volatility has eroded some of the benefits of refunding offerings, which are largely priced through negotiated sales, according to Kimberly Olsan, senior vice president of municipal bond trading for FHN Financial. Refunding deals are down while new money sales, which are usually sold via a competitive auction are up, she said.

Still, the surge in competitive deals may be a "temporary phenomenon," according to Citi's Rai. "If there is any letup in demand, the needle will turn toward negotiated deals," he said.

Bloomberg Markets

By Shruti Sing

August 13, 2021

— With assistance by Danielle Moran

Fitch Ratings Updates State Revolving Fund and Muni Finance Pool Program Criteria.

Fitch Ratings-Austin-11 August 2021: Fitch Ratings has published an update to its "State Revolving Fund and Municipal Finance Pool Program Criteria." This report replaces the previous report of the same title last published on March 3, 2021.

The fundamentals of these criteria remain unchanged. However, on Aug. 9, 2021, Fitch published an exposure draft for its "CLOs and Corporate CDOs Rating Criteria (CDO Criteria)" that proposes a calibration update to its Portfolio Credit Model, including probability of default assumptions, confidence intervals, and correlation.

Given the relationship of these criteria to the CDO criteria, for new ratings, Fitch will utilize a modified version of its Portfolio Stress Model incorporating similar changes as those proposed in the CDO criteria exposure draft. With respect to the surveillance of existing ratings, Fitch will utilize the existing version of the Portfolio Stress Model without modification. Following the consultation period and publication of the new CDO Criteria, this SRF criteria and the Portfolio Stress Model will be updated accordingly.

Fitch does not expect any ratings changes as a result of these updates.

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Fitch: USPF Exposed to the Same Factors Pressuring the US Sovereign

Fitch Ratings-New York-12 August 2021: US Public Finance (USPF) ratings are subjected to the same macroeconomic and structural factors that underlie the Negative Outlook on the United States' Long-Term Foreign Currency Issuer Default Rating (IDR) of 'AAA' says Fitch Ratings. Most USPF ratings are not explicitly tied to the US sovereign rating, except when bond repayment depends on federal agencies or instruments. However, federal policy actions have direct and indirect ramifications for the operating environment of states, local governments, and revenue-supported entities, which over time could influence the risk profile of the sector.

The Negative Outlook on the US sovereign rating reflects ongoing risks from fiscal deficits and real interest rates to its public finances and debt trajectory. A further meaningful increase in debt could lead to a downgrade. Deterioration in governance represents a further risk, reflecting in part a lack of bipartisanship and difficulty in formulating policy and passing laws in Congress.

Although there are numerous policy and funding links between USPF issuers and the federal government, USPF issuers benefit from the significant autonomy inherent in the US federal structure. Legal and fiscal powers enshrined in the US Constitution devolve broad powers to states, most notably fiscal powers. Government frameworks below the state level follow similar patterns, with substantial fiscal powers delegated to local governments to deliver general services and to public and not-for-profit entities to fund public services through their own revenue powers.

Future actions by the US government to rein in the nation's very high debt burden by curtailing spending could directly affect USPF credits that rely on federal funding for certain programs, particularly Medicaid, housing subsidies and grants, higher education grants and student loans, and the Highway Trust Fund. USPF ratings assume sufficient flexibility to respond to reduced federal funding, although service mandates or decisions to backfill lost federal funds with own-source resources could affect operating performance over time.

Local governments bear the added risk of absorbing both federal spending cuts and state tightening that could follow a round of federal spending cuts but their typically broad budgetary tools and high reserves help offset this constraint. Lower infrastructure investment could also affect credits longer term if states, local governments and revenue-supported entities must ultimately bear the full burden for expansion or restoration of infrastructure.

Beyond funding effects, a weakening of the US government's credit quality could have wider reverberations on USPF finances. Higher interest rates would make debt issuance costlier for USPF issuers. Weaker public finances could diminish the reach and effectiveness of countercyclical actions, leaving USPF issuers vulnerable to deeper downturns and slower recoveries.

A limited number of ratings with direct links to, or dependence on, the US sovereign credit retain the Negative Outlook on their 'AAA' rating, unless there are mitigants that reduce US sovereign exposure. These ratings with US rating links are municipal housing bonds currently rated 'AAA' and secured entirely, or predominately, by Fannie Mae and Freddie Mac mortgage-backed securities and pre-refunded municipal bonds where escrowed funds deposited with a trustee to advance refund the bonds are invested in US government obligations. Ratings on the latter bonds depend on the rating assigned to those securities, which are generally US treasuries or other bonds directly guaranteed by a US federal agency.

S&P: Uncovering Local-level Risk Factors for Municipal Exposures

The Muni Landscape

Municipal securities, or "muni bonds", issued by states, cities, counties and other governmental entities in order to fund infrastructure, schools and other projects represent an extensive marketplace. As of the first quarter of 2021, there was $4 trillion in outstanding issuance, accounting for over 50,000 issuers.

Muni bonds come in two varieties: general obligation and revenue bonds. General obligation bonds are used to finance public projects that aren't linked to a particular revenue stream. Revenue bonds, by contrast, are bonds whose interest and principal are backed by the revenues of a specific project that the bonds are funding, such as toll roads and universities.

Often, revenue bonds are issued through a conduit, which is usually a government agency or government-sanctioned entity that issues debt to raise funds for large-scale projects, such as hospitals and airports, on behalf of a borrower. Conduits typically are not responsible for the payment of principle or interest for the issue(s) in question, as this falls to the borrower. In addition, conduits are often not located in the same geographic area as the projects they are funding.

The Rise of ESG Concerns are Impacting Munis Too

Environmental, social and governance (ESG) factors are taking center stage and playing an increasingly important role in the evaluation of risks associated with investments. In March of this year, for example, the European Union's Sustainable Finance Disclosure Regulation ("SFDR") came into force requiring certain asset managers and financial advisers to make ESG disclosures to potential and current investors. This new regulation also impacts large U.S. firms that market funds in Europe.

To fully understand potential ESG risks, it is imperative to know where assets are located. This applies to muni bonds, as well, but there are three major challenges here:

1. Conduit issues are assigned to the state where the conduit issuer resides, not where the actual projects are located.
2. Revenue bond issues often represent projects that are located across numerous cities, counties and even states, but are assigned to a single state at issuance.
3. Many revenue bond issuers (e.g., hospital obligated groups, gas districts and water districts) cover multiple locations, and it is important to map these multiple entities to the issuer in question in order to effectively assess ESG risks.

To address these challenges, CUSIP Global Services (CGS) partnered with ISS ESG[2] to create a location mapping solution.

Shining a Light on Municipalities to Assess Potential Risks

CUSIPs are nine-character alphanumeric security identifiers that capture the unique attributes of issuers and their financial instruments throughout the U.S. and Canada. In the muni bond market, a CUSIP is used by investors to uniquely identify and track municipal securities and link them with the underlying issuing entity. This represents approximately 1.5 million CUSIPs today.

Working with ISS ESG, CGS has created a mapping file that links the first six characters of the unique CUSIP identifier for each municipal issue with the geographic identifier (GEOID) hierarchy for the issuer, including state, county, city and school district. The GEOID is a unique geographic identifier assigned by the U.S. Census Bureau to administrative/legal and statistical geographic areas.

ISS ESG has also developed its Muni QualityScore based on socioeconomic, environmental, health and crime data, which can be accessed through a separate mapping and is updated quarterly. The GEOID-level detail enables muni bond identifiers to be paired with these ESG scores, giving market participants insight into the level of exposure their municipal securities have to certain ESG attributes.

This new capability addresses a longstanding challenge in the U.S. muni bond market, where interested parties could not easily make the link between underlying issuer and related census, socioeconomic, climate change and crime data. Through this partnership, CGS and ISS ESG are able to deliver more transparency into the muni bond market, facilitating links to data that can be used to inform risk models and values-based investment strategies.

Click here for more information on the CGS/ISS ESG solution.

Pimco Veterans Look to Shake Up 'Old School' Muni Loan Market.

- **Alpha Ledger's blockchain-based platform offers loan auctions**
- **Firm aims to move into business of public muni debt in 2022**

After breaking new ground in exchange-traded funds for Pimco more than a decade ago, Manish Dutta and Tammie Arnold have set their sights on one of the more opaque corners of municipal finance.

Their company, Alpha Ledger Technologies, is seeking to modernize the market for direct lending to municipalities through a platform based on blockchain, the technology used for verifying and recording transactions that's at the heart of Bitcoin.

The firm's system lets cities and localities auction their loans, allowing a wide group of investors — such as regional banks — to bid, potentially reducing borrowing costs on these relatively small, private financings. The other benefit is that the system provides an online account of the bids and the deal — a novelty for localities used to maintaining paper records.

It amounts to a shift from the "old-school" process of underwriting, where the decision to pick a bank and the terms of a loan can be private, said Dutta, Alpha Ledger's chief executive officer. Fifty banks have used the platform, including community, regional and national banks, he said.

"On our platform, it's an open, direct, transparent market," he said.

In July, the Poulsbo, Washington-based company, which was founded in 2019, made further inroads when California's Coachella Valley Unified School District borrowed through its platform. It was one of five loan transactions Alpha Ledger has completed this year, after two in 2020.

Banks held about $197 billion of direct loans to municipalities as of the second quarter, according to research firm Municipal Market Analytics. Alpha Ledger wants to move into the public-debt arena — which accounts for the brunt of municipal borrowing — some time in 2022.

The muni market, with annual bond and note issuance of about $400 billion, has proved to be tough to disrupt. In one example, Neighborly, a venture that tried to sell muni bonds in smaller pieces than the typical $5,000, abandoned that effort in 2019.

Dutta, who worked on technology development at Pacific Investment Management Co., co-founded the company with Christopher Wade and brought on former colleagues like Arnold and Don Suskind, who worked on ETF products at Pimco.

'Nothing But Competition'
Traditionally with municipal loans, borrowers hire advisers who seek bids from banks. Municipalities can also approach banks directly. With direct loans, officials have found they can borrow at rates comparable to those on bonds without the fees or disclosure requirements associated with public-debt offerings.

Alan Crain, chief financial officer of Kitsap Bank in Port Orchard, Washington, said his bank joined the platform even though he knew it was "nothing but competition" in the lending market.

"My recognition was that if we don't work with them to do this, someone else will," he said. "I'd rather work with them and understand how to pivot our business, rather than be left out in the cold."

Kitsap manages a portfolio of about $280 million of municipal debt including the loans, and has participated in four transactions on the platform. Crain said that he's seen the bidding process deliver lower rates for borrowers as well as more flexible terms for them, and said it helps improve transparency around pricing.

"When banks compete, you win" as a borrower, he said.

ETFs to Blockchain

Arnold and Dutta met in 2008, when Arnold was tasked with starting Pimco's actively managed bond ETF products, an effort that she said stretched existing technology around compliance, trading and disclosure.

For example, the money manager had to address issues with pricing of ETFs, which updates instantly because the funds trade on an exchange, while mutual funds can sort out net asset values overnight if needed, she said.

Arnold's request for more help with technology led to her connection with Dutta. Both spent roughly two decades at Pimco. She says ETFs were instructive in how to make small transactions financially viable, given that they had to be available for investors at a much lower cost than mutual funds, for example.

That's now relevant to Alpha Ledger's strategy of focusing on municipal loans, which tend to be smaller. The average size of loans the company has worked on is about $3 million.

"This is an exercise in small transaction size access and economics," said Arnold, the company's head of business strategy.

Alpha Ledger charges what it calls a technology fee, that is fixed regardless of loan size and which the company declined to share. The company is working with municipal advisers and bond counsel as it seeks new business, Dutta said.

'Digitizing Everything'

David Ulbricht, director of advisory services for SDAO Advisory Services, which advises Oregon-based issuers, said he researched blockchain for two years after first meeting with the company in 2019. He wanted to make sure it would be a good product for his clients, which include special districts, cities, school districts and counties.

"It's basically digitizing everything," he said. "You realize, OK, this is kind of where things are going."

The platform helps banks hear about transactions — and as a result, the terms of the financings under the platform are "very, very" competitive and can cut out costs like bank counsel fees, something that ultimately benefits borrowers, Ulbricht said.

The platform also offers a debt-management tool, which appealed to Oregon's Port of Astoria, which operates an airport in Warrenton, Oregon. It obtained a $1.3 million loan through the platform in April, and plans to put its $14 million loan portfolio on the platform, said Melanie Howard, the port's accounting and business services manager.

The port typically monitored its loans on a spreadsheet, while the blockchain technology offered a way for both the port and the banks to have easily accessible details on the loans, she said.

"It ties a better relationship between the lender and borrower," she said.

Bloomberg Markets

By Amanda Albright

August 16, 2021, 10:00 AM MDT

— With assistance by Martin Z Braun

Schools Brace for More Cyberattacks After Record in 2020.

Reported hacking incidents have increased nearly fivefold since 2016. Virtual learning during the pandemic created even more access points for attackers.

Cyber criminals are targeting U.S. schools at an increasing rate after remote learning during the pandemic left them more vulnerable to hacks, and the risk shows no sign of abating as students and teachers head back to the classroom this month.

The number of publicly disclosed computer attacks on schools has exploded since 2016 to a record 408 in 2020, according to the K-12 Security Information Exchange, a nonprofit that tracks such incidents, and those figures are almost certainly an undercount because many go unreported. While schools are opening back up across the country for in-person instruction, many are expected to retain virtual learning as an option and that means more access points for potential intrusion with financial consequences for districts that are already facing increased costs to bring students back.

The growing frequency of hacks — averaging more than two per school day last year — has school officials worried about the potential for the theft of students' identities and the added cost to insure against attacks and repair breaches. In Del Rio, Texas, the district comptroller mistakenly wired more than $2 million to a hacker's account. About 170 miles (274 kilometers) away, a district in Live Oak, Texas, paid an undisclosed ransom amount to regain control of some computer platforms, and in Broward County, Florida, thousands of stolen files, including some confidential information, were published after district officials refused to pay a $40 million ransom, according to local reports.

Continue reading.

Bloomberg CityLab

By Nic Querolo and Shruti Singh

August 9, 2021, 12:06 PM MDT

Cut in Infrastructure Money for Communities Hurt by Highways Disappoints Advocates.

The Reconnecting Communities Initiative aimed to help cities rectify damage caused by highways built through minority neighborhoods. The bipartisan infrastructure bill cut it by 95 percent.

Shawn Dunwoody and Suzanne Mayer can remember when Democratic Sens. Kristen Gillibrand and Chuck Schumer of New York went to Rochester's Inner Loop at the end of June and emphasized the need to fund projects that reconnected neighborhoods bisected by highways.

The senators' advocacy meant the world, said Dunwoody and Mayer, who created a group called Hinge Neighbors. Their goal was to fill in the Inner Loop, a part of Interstate 490 that the federal government built after it plowed through minority neighborhoods in the 1950s, destroying hundreds of homes and businesses.

They said the words of support feel confusing now that they have seen the details of the bipartisan infrastructure bill. The Reconnecting Communities Initiative — which began as a bill written by Gillibrand and Schumer, whose offices did not respond to requests for comment — was cut from a proposed $20 billion in the American Jobs Plan to $1 billion in the recently proposed legislation.

Continue reading.

nbcnews.com

By Phil McCausland

Aug. 5, 2021

What's In the Infrastructure Plan for Rural America?

Here's a deep dive into the final bipartisan infrastructure deal approved by the Senate impacting those in agriculture.

The U.S. Senate's passage of the more than 2,700-page Infrastructure Investment and Jobs Act offers many important provisions that those in rural America were seeking. The bill provides $548 billion in additional spending. When combined with existing baseline infrastructure spending, total funding for infrastructure will be approximately $944 billion over five years and $1.2 trillion over eight years.

The House has already passed its own version of an infrastructure bill – the INVEST In America Act, also in H.R. 3684, which the Senate replaced with this plan. The House could take up the Senate's version, but it's unlikely given House Transportation and Infrastructure Chairman Peter DeFazio, D-Ore., concerns with missing provisions after he spent months on his own plan.

The Infrastructure Investment and Jobs Act represents a highlight reel of the Senate's bipartisan work. It includes several bills that have already won bipartisan action in the Senate, including a must-pass highway bill to extend programs set to expire this fall.

Continue reading.

farmprogress.com

Jacqui Fatka | Aug 11, 2021

What Works? Evidence and Evaluation Key as States and Localities Spend Aid.

The federal government is urging states and localities to study the results of their American Rescue Plan Act spending and to adopt programs with proven track records.

As state and local governments get started spending billions in federal recovery dollars, public officials are making bold predictions about how far the money will go to help their communities with issues like homelessness, upgrading infrastructure and job training.

But to know how well these investments are paying off, it will be necessary to have systems in place to assess whether they're meeting their goals. With this in mind, the federal government is pushing states and localities receiving American Rescue Plan Act funds to think about ways to evaluate the results of their spending, and also to pursue "evidence-based" programs.

"Evaluation lets us understand if something is working as intended, why and for who," Diana Epstein, who leads a team focused on evidence-based policymaking at the White House Office of Management and Budget, said during an online seminar the Treasury Department held this week to discuss program evaluation and other issues tied to ARPA's state and local aid funding.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

AUGUST 12, 2021

Public-Private Partnerships Promoted in Bipartisan Infrastructure Package: Nossaman

Yesterday, the Senate released legislative text for its highly anticipated bipartisan infrastructure package, titled the Infrastructure Investment and Jobs Act. Negotiations have been ongoing for months, and while several political and policy hurdles remain before this proposal can arrive on the President's desk for his signature, agreement on this bipartisan package is a hugely positive development. Project sponsors and practitioners have closely tracked the development of this package not only with respect to overall funding levels and policies but also with an eye towards specific provisions relevant to public-private partnerships ("P3s") and other alternative delivery methods. The bipartisan package includes three provisions, in particular, that will provide tremendous benefit to P3s if enacted.

First, Section 80403 would raise the cap on private activity bonds (commonly known as "PABs") for highway and surface freight transfer facilities from $15 billion to $30 billion. PABs allow private entities to benefit from tax-exempt bond treatment to finance certain public works improvements. However, the federal $15 billion allocation of highway and surface freight transfer facility PABs has been exhausted, eliminating the ability of private entities to access tax-exempt bonds for these projects. Increasing the cap from $15 billion to $30 billion would address current demand and lower the cost of private financing on future P3 projects.

Second, Section 71001 would provide $100 million in grants to project sponsors for technical assistance with P3 procurements. While this may seem a bit esoteric, it is incredibly challenging for a public agency with needs that outweigh resources to consider P3 delivery without technical support, especially if the project sponsor has never used this delivery method before. These grants would provide particular benefit to agencies with significant infrastructure needs but without the internal capacity or resources to engage experts to assist in P3 delivery.

Third, Section 70701 would require a value-for-money ("VfM") analysis for any project seeking credit assistance under the TIFIA or Railroad Rehabilitation & Improvement Financing ("RRIF") programs with estimated capital costs of $750 million or more. A VfM analysis evaluates the benefits of P3 delivery for a certain project against conventional delivery, looking across the spectrum of project costs during the lifecycle of the asset. While P3 delivery will not be the most efficient option for every project, this VfM requirement will ensure that projects receiving TIFIA and RRIF credit assistance evaluate whether P3 delivery would provide public benefit over conventional delivery.

While the future of this legislation is not yet clear, inclusion of these three provisions marks a positive step for federal P3 policy and would provide tremendous benefit to the industry if enacted.

By Shant Boyajian on 08.02.2021

Nossaman LLP

The Senate Infrastructure Bill's Four Interconnected Broadband Components.

In 1934, Congress mandated the newly created Federal Communications Commission (FCC) "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service"—but left it largely up to the FCC and the states to figure out how to do so. In 1996, Congress expanded that universal service goal to include access to "advanced services," meaning high-speed internet, and explicitly established a goal of "affordable" services, including to "low-income consumers." There, too, Congress declined to provide appropriations to achieve those goals.

Now in 2021, Congress has done a lot more than just set goals for access to these services—it finally provided the funding to do so.

Continue reading.

The Brookings Institution

by Blair Levin

Friday, August 13, 2021

House Expected to Return Early for Infrastructure Debate – MBFA Meets with Key House Office

Next week, the House is expected to return from August Recess early for a week-long session to debate multiple infrastructure packages' processes and potential passage. **This includes the Senate passed bipartisan 1 trillion dollar infrastructure package that includes $600 billion in new money and relies heavily on PAB financing.** The Chamber also passed a budget reconciliation resolution, an outline paving the way for an additional $3.5 trillion in infrastructure spending this year. Both items are now awaiting review in the House.

In response to a group of 9 rank-and-file Democrats demanding the House pass the bipartisan infrastructure package before advancing the budget reconciliation outline, House Leadership has taken steps to pass a rule allowing for the Chamber to take up the bipartisan infrastructure bill alongside the budget outline. It seems this is the most likely path to be followed next week, however, the Rule needed to attempt this gambit has yet to be drafted or approved.

House Leadership has set a deadline of September 15th for Committee Chairs to submit legislative priorities for the budget reconciliation infrastructure package, setting up a fall debate on the $3.5 trillion package.

The BDA and MBFA continue to press for the inclusion of key muni priorities in the budget reconciliation package. Last week, the MBFA met with Senior Staff in Rep. Terri Sewell's (D-AL) office to discuss the Congresswoman's muni package, the LIFT Act, and possible inclusion in the draft budget bill. The MBFA plans to continue meeting with key offices leading up to the introduction of legislative text promoting all muni priorities including:

- The reinstatement of tax-exempt advance refundings,

- Raise the BQ debt limit, and
- Creation of a new direct-pay bond exempt from sequestration.

The MBFA and BDA will continue to provide updates as they become available

Bond Dealers of America

August 17, 2021

[US History Shows Spending On Infrastructure Doesn't Always End Well.]

The lasting problems of infrastructure aren't of need or construction, but of overbuilding, delayed costs and the challenges of thinking ahead.

Over the past two centuries, federal, state and municipal governments across the U.S. have launched wave after wave of infrastructure projects.

They built canals to move freight in the 1830s and 1840s. Governments subsidized railroads in the mid- and late 19th century. They created local sewage and water systems in the late 19th and early 20th centuries, and then dams and irrigation systems through much of the 20th century. During World War II, massive amounts of public money were spent building and expanding ports, factories, airfields and shipyards. And after the war, highway construction – long a state and local project – became a federal endeavor.

Many of these projects did not end well. The problem wasn't that the country didn't need infrastructure – it did. And the troubles weren't the result of technical failures: By and large, Americans successfully built what they intended, and much of what they built still stands.

Continue reading.

governing.com

August 15, 2021 | Richard White

A PE Windfall from Infrastructure Package is No Sure Thing.

The US Senate this week passed a sweeping $1.2 trillion infrastructure bill, marking President Biden's biggest legislative victory to date. But it remains unclear if the bill will be a win for a US private equity industry that has raised hundreds of billions over the past decade to rebuild the country's roads, bridges, utilities and more.

Public-private partnerships, also known as P3s, have struggled to gain traction in the US, even as the country's infrastructure has slowly crumbled. The Senate bill, which totals some 2,700 pages, attempts to change that by directing states and municipalities to consider instituting public-private agreements. Part of the infrastructure bill requires local governments seeking federal funding for a project of over $750 million to run a cost analysis on a private partnership.

But the bill reportedly doesn't require local governments to actually create public-private partnerships. That means investors that have raised billions for infrastructure deals could be in the precarious position of having ample dry powder but few opportunities to spend.

And the bill still needs to pass a divided House of Representatives before being signed into law.

Investment is needed. The American Society of Civil Engineers gave the country's infrastructure a "C-" grade in a 2021 report card, reportedly estimating that it would cost almost $2.6 trillion to implement the necessary repairs and earn a "B" grade.

Some within the private equity industry have sounded an optimistic tone about the legislation. Adam Bernstein, a managing director at infrastructure and impact investor North Sky Capital, said the bill could open the door for more investment in electrical vehicle infrastructure, renewables and the electrical grid. And that could open the door for mega-deals.

"You're going to have to take some big swings," Bernstein explained. "And you would just have to think that a larger infrastructure fund would be able to participate in that."

Over the past decade, infrastructure fundraising has climbed, albeit in fits and starts, with the total raised peaking at more than $46 billion in 2018, according to PitchBook data.

Private equity firms have turned to infrastructure deals in part because they are often immune to the level of volatility seen by fixed income or equities, for instance. And the contracts can often last decades, providing steady returns regardless of broader market trends.

In 2017, Blackstone announced it would raise $40 billion for an infrastructure fund, with $20 billion coming from the Public Investment Fund of Saudi Arabia. But the vehicle has struggled to get off the ground. In Blackstone's fourth quarter earnings call, president Jonathan Gray said the vehicle had raised around $14 billion, well short of its original target.

Over the past few years, there's been growing angst about allowing private equity firms to dip their beaks into public works projects. In Bayonne, N.J., water bills spiked 28% after KKR invested in the city's public water systems, according to an analysis by The New York Times. Other cities including Missoula, Mont. have actually sued to buy back their water systems.

Private equity investments in public utilities haven't always gone well for the firms, either. In 2014, electricity company Energy Future Holdings filed for Chapter 11 bankruptcy protection, bogged down by more than $40 billion in debt after TPG, KKR and the private equity arm of Goldman Sachs took the company private in 2007 in a $45 billion deal.

At the time, The Wall Street Journal reported it was the eighth largest bankruptcy in the history of the US. And it's one of the most high-profile LBOs to ever fail, with the firms reportedly losing a combined $8 billion of their invested capital.

"Overall, a lot of money has been raised, and that's commensurate with the capital needs of the amount of infrastructure spending," Bernstein said. "That, of course, doesn't guarantee it'll end up being a good investment."

For local and state governments, it's not always easy to know whether or not to partner with PE. Governments often tap the $4 trillion municipal bond market for financing. This allows them to keep more of the profits from massive infrastructure projects to themselves, but they are then responsible for any cost overruns.

For North Sky, Bernstein sees an opportunity to pour more capital into lower-middle-market infrastructure projects, with investments ranging between $15 million and $20 million and on a shorter timeline than the typical private equity holding period, which can extend up to seven years.

"Where we see the opportunity is to really partner with those smaller counties [and] cities that may not necessarily need 100 MW solar or wind farms or electricity, but may need to refurbish a recycling facility, or a water treatment plant, or a smaller, renewable electricity facility," he said. "And those are the kinds of transactions that aren't going to get attention from some of the larger players."

Yahoo Finance

August 14, 2021

Understanding the Infrastructure Bills.

What's in them and what could happen next

By a vote of 69 to 30, including 19 Republicans and all 50 Democrats, the U.S. Senate passed a $1.2 trillion infrastructure package, known as the Infrastructure Investment and Jobs Act, on Tues., Aug. 10, 2021.1 Following passage, the proposed legislation was sent to the House of Representatives where further adjustments are expected. Should the bill pass, the House and Senate will need to consolidate their respective versions for a final bill to go to President Biden for his signature.

Tuesday's bill is one of two pieces of infrastructure legislation under consideration in the Senate. In addition to the $1.2 trillion bipartisan bill, a second $3.5 trillion Democratic proposal is in play.

On Aug. 9, Senate Majority Leader Chuck Schumer addressed this second bill in a letter to colleagues saying, "I will immediately move to the FY2022 Budget Resolution with reconciliation instructions."2 Reconciliation means the $3.5 trillion bill could pass the Senate by a simple majority vote avoiding the risk of a filibuster. And some House progressives had said they would not support the bipartisan plan unless the Senate moved quickly on the second bill.

Continue reading.

INVESTOPEDIA

By JIM PROBASCO Updated Aug 11, 2021

MSRB Offers Remote Municipal Advisor Principal Exam.

The MSRB will allow individuals seeking to qualify as municipal advisor principals to take the Municipal Advisor Representative Qualification Examination (the "Series 54 Exam") online. The accommodation is temporary and intended to address persistent COVID-19 challenges.

To schedule an online test, individuals must submit an interim accommodation request form to FINRA. Once this is processed by FINRA, individuals may schedule a test appointment online. Information on the sign-up process and exam will be published during the week of August 15, 2021, on a dedicated webpage on MSRB.org.

The MSRB will also seek to extend the relief under Supplementary Material .09 ("Temporary Relief for Municipal Advisor Principal") to MSRB Rule G-3 ("Professional Qualification Requirements") from the current compliance date of November 12, 2021.

Cadwalader, Wickersham & Taft LLP

13 August 2021

The SALT Deduction Cap Makes it Harder for Communities to Recover.

To help our communities recover from the COVID-19 pandemic and its economic fallout, Congress has a historic opportunity to rebuild our economy and create a sustainable future for all Americans by enacting President Joe Biden's full Build Back Better agenda — an agenda that will improve the lives of everyday people by investing in well-paying jobs, health care, infrastructure, public schools, higher education, child care, elder care and more.

Congress should go one step further to incentivize communities to invest in themselves by reversing former President Donald Trump's cap on deductions for state income tax and local property taxes, the so-called SALT cap, which limits these governments' ability to invest tax revenue in public schools, higher education, public health, police, firefighting and emergency medical services.

Reviving the SALT deduction is especially important for our frontline workers — firefighters, teachers, and public health workers who have helped our country survive the pandemic, keeping our schools open, our hospitals running and our communities safe — and those they serve. SALT is not just another tax break for the wealthy, as some claim; it's an opportunity for many everyday people to offset the taxes they pay for the services our communities rely on.

Here's the math: An average two-income family with a firefighter and a teacher makes between $100,000 and $200,000 annually. If they claim the SALT deduction — which more than 85 percent of families in that tax bracket do — they receive an average tax break of $15,859. When the SALT deduction is capped, those same middle-class families see a tax increase of $5,000.

That means, even as they are paying more in taxes, the budgets for their schools, hospitals and firehouses are being cut.

The SALT deduction is a tax break you receive for supporting your community: providing schools the resources necessary to meet our children's needs; ensuring that our public health system can confront a deadly pandemic; keeping us from shutting down firehouses; preparing the next generation of adults for their careers without saddling them with debt, and supporting a safety net for when people experience job loss or homelessness. The deduction helps ensure the collective funding of these programs, making it easier for state and local governments to provide these services that benefit all of us. It effectively puts money in everyday taxpayers' pockets to help keep up with the rising costs of basics like gas and groceries.

Allowing taxpayers to deduct the full amount of their state and local taxes on their federal tax returns is one of the federal government's most powerful tools for incentivizing states and local governments to invest in critical public services. Lawmakers have long recognized this: The Revenue Act of 1913 introduced the federal income tax and provided a deduction for state, county, schools and municipal taxes. Years later, the Revenue Act of 1964 specified that real and personal property, income and general sales taxes could be deducted from federal taxes. As the Government Finance

Officers Association pointed out in 2017:

"The SALT deduction reflects a partnership between the federal government and state and local governments. The deduction is fundamental to the way states and localities budget for and provide critical public services, and a cornerstone of the U.S system of fiscal federalism. It reflects a collaborative relationship between levels of government that has existed for over 100 years. Currently, the SALT deduction is an accepted part of the tax structure that is critical to the stability of state and local government finance."

As cities, towns and families continue to recover from the pandemic, Congress should be making things easier on state and local governments and the people who pay taxes to fund them. The American Rescue Plan, the American Jobs Plan and the American Families Plan are major steps in the right direction but reforming the SALT cap would go a long way toward helping working families access a more robust recovery.

THE HILL

BY RANDI WEINGARTEN AND EDWARD A. KELLY, OPINION CONTRIBUTORS — 08/09/21

Randi Weingarten is president of the American Federation of Teachers. Edward A. Kelly is general president of the International Association of Firefighters.

[The Rise of Sustainable Bonds for Affordable Housing.]

The pandemic worsened the U.S. affordable-housing crisis. Increasingly, public and private entities are tapping the bond market to finance development.

The shortage of affordable housing has long plagued low-income families in the U.S., and racial inequity is one significant factor that's contributed to the crisis. Minority groups, especially Blacks and Hispanics, suffer higher rates of housing insecurity due to homeownership discrimination—particularly in the mortgage application process—which leaves them disproportionately exposed to the increasingly unaffordable rental market, according to a recent Morgan Stanley Research report.1

The affordable housing deficit has only worsened since the pandemic. The country now lacks as many as 6.8 million homes for households with income at or below the poverty guideline, or 30% of the local median income. That's nearly double the 3.6 million shortfall in 2019, according to a recent report from the National Low Income Housing Coalition.2

"The housing affordability crisis in the U.S. has grown acute over the years, and only became more so during the pandemic, amid the spike in unemployment and homelessness," says Joan Tally, Managing Director in Morgan Stanley's Community Development Finance, which helps the firm meet obligations to lend, invest in and provide services to low- and moderate-income communities.

The long-term solution entails an obvious, if costly, solution: Build more affordable housing. One increasingly promising model of financing taps into the growing investor appetite for sustainable bonds, especially those that target projects tied to social equality. That's prompted more issuers of this debt to enter the market, including state housing finance agencies, community development financial institutions (CDFIs), affordable-housing developers and corporations.

DEMAND FOR AFFORDABLE-HOUSING BONDSThe focus on racial and economic justice during the pandemic has elevated social bonds and sustainability bonds in this space. Traditionally, allocators financed affordable housing projects through green bonds tailored to deliver positive environmental impact through LEED certification or energy-saving infrastructure to combat climate change.

Now, affordable housing is also included in social and sustainability bonds. In 2020, green, social and sustainability bonds raised more than $600 billion from investors, nearly double the $326 billion issued in 2019; the majority of growth came from an increase in social and sustainability bonds.3 In particular, robust demand came from investors who prioritized financing for social inequities exacerbated by COVID-19, such as decreased nonprofit funding, falling health-care system revenues and unequal access to resources and opportunities.

“Affordable-housing finance has been an important part of the ‘E’ in ESG—environmental, social and governance—investing for more than 15 years,” says Geoff Proulx, Managing Director and Co-Head of the Affordable Housing and Community Development Group in the Public Finance Banking Group within the Fixed Income Division at Morgan Stanley. “Now the ‘S’ is emerging as a driver of demand for those interested in investing in affordable housing.”

NEW ISSUERS IN THE SUSTAINABLE BOND MARKETSome nontraditional organizations also have started to tap capital markets to fund affordable housing. CDFIs, Treasury-certified private financial institutions, are increasingly turning to the bond market to raise money for affordable-housing projects, according to Grace Chionuma, Executive Director and Co-Head of the Public Finance Affordable Housing and Community Development Group.

Only in recent years have CDFIs issued bonds to access longer-term capital. In 2017, Local Initiatives Support Corp. issued the first-ever CDFI bond—a $100 million offering underwritten by Morgan Stanley to help fuel new businesses, jobs and large-scale redevelopment efforts. Since then, Morgan Stanley has underwritten four other bond offerings for CDFIs, totaling $332 million, as investors sought new and additional forms of sustainable investing, Chionuma says.

Other entities continue to broaden the sustainability bond market. In December, Morgan Stanley underwrote the first taxable social bond by BRIDGE Housing, a nonprofit affordable-housing developer that builds, owns and manages properties in high-cost, high-density areas on the West Coast, including San Francisco, San Diego, Los Angeles, Seattle and Portland. The proceeds of that $100 million issue will go toward developing and acquiring multifamily affordable housing, transit-oriented development, green building and energy efficiency.4

“Demand is extreme for this type of housing in areas that have average median incomes at these levels,” says Chionuma, and the goal is to help facilitate more capital to additional nonprofit affordable-housing developers like BRIDGE Housing. “Given the maturity of the sector, with the right execution, we’ll be able to enable more capital flow from public markets into these projects,” she says.

HOMEOWNER LENDING AND SINGLE-FAMILY HOUSINGSocial bonds are also starting to fund homeownership programs that extend affordable loans to first-time homebuyers, says Proulx, with many programs devoting a significant portion of lending specifically to minority homeowners. Examples of housing finance agencies that aim to help mitigate the racial homeownership gap include the Massachusetts Housing Finance Agency, Florida Housing Finance Corp. and Rhode Island’s RIHousing, he says.

In the past year, Morgan Stanley has facilitated inaugural bonds to finance single-family affordable housing by underwriting social bonds for agencies in several states, including Iowa, Florida, Massachusetts, Rhode Island and New York, Proulx says. A recent example is the Massachusetts Housing Finance Agency's first-ever social bond, which Morgan Stanley underwrote in December. Proceeds will fund new mortgages, including down-payment assistance loans to first-time homebuyers for owner-occupied, single-family affordable housing for low- and moderate-income households throughout the state.

MORE CORPORATES ISSUE AFFORDABLE-HOUSING BONDSCompanies have also issued affordable-housing bonds in response to growing investor demand, according to Cristina Lacaci, Morgan Stanley's Head of ESG Structuring in Global Capital Markets. "Investor desire, especially from younger generations, is driving the growth of sustainable investing in both mainstream funds and sustainability funds," she says.

One recent example: last August, Alphabet issued a $10 billion offering, underwritten by Morgan Stanley, that included $5.75 billion of sustainability bonds, the largest-ever corporate sustainable financing deal. A portion of the proceeds from the sustainability bonds will finance the repurposing of land owned by Alphabet to develop affordable housing across the Bay Area.

And Morgan Stanley offered its own inaugural $1 billion social bond in October to finance housing at affordable rates for low- or moderate-income individuals or families. Proceeds will support a range of affordable housing developments across the U.S., including a project for homeless veterans in Washington, D.C., and the construction of new affordable homes close to high quality public transit in South Salt Lake, Utah.

"As the recovery from the pandemic continues, our clients and our firm have a unique opportunity to address issues of systemic injustice through the capital markets," says Audrey Choi, Morgan Stanley's Chief Sustainability Officer. "Morgan Stanley is excited about our ability to both underwrite and issue innovative financial solutions like social bonds that continue to gain traction with investors demanding to address societal challenges by providing capital that makes a positive impact on a large scale."

Morgan Stanley's social bond is one of the most recent examples of the firm's decade-long leadership in sustainable finance, which includes the establishment in 2013 of the Institute for Sustainable Investing, which accelerates the mainstream adoption of sustainable investing. That same year, Morgan Stanley helped support the first corporate green bond and, in 2017, priced the first public market bond deal for a CDFI to help advance economic opportunity in underserved neighborhoods in the U.S.

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1 American Community Survey (ACS), Home Mortgage Disclosure Act (HMDA), Morgan Stanley Research.

2 https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf

3 https://www.environmental-finance.com/assets/files/research/sustainable-bonds-insight-2021.pdf

4 https://bridgehousing.com/press_releases/bridge-housing-issues-100m-in-serie--2020-sustainability-bonds/

Morgan Stanley

August 10, 2021,

Second Half Tailwinds for Municipal Bonds.

After a strong start to 2021, more tailwinds could keep the momentum going for municipal bonds and the Vanguard Tax-Exempt Bond ETF (VTEB).

The expectation of higher taxes next year could spur a flight to municipal bonds in the second half of 2021. Thus far, the threat of inflation and potentially higher rates hasn't turned investors away from municipal bond products.

"During the first half of the year, municipal bonds (munis) shrugged off the rise in long-term U.S. interest rates and crushed their taxable counterparts," an Advisor Perspectives article noted. "Expectations for higher taxes in 2022 that could be included in a potential stimulus package have kept demand high, while muni net supply was constrained the last few months."

As the stock market continues to flux up and down on Covid news, municipal bonds can provide some level of stability. Municipal bonds are traditionally less volatile than their corporate bond counterparts.

VTEB tracks the Standard & Poor's National AMT-Free Municipal Bond Index, which measures the performance of the investment-grade segment of the U.S. municipal bond market. MUB seeks to track the investment results of the S&P National AMT-Free Municipal Bond Index, which also measures the performance of the investment-grade segment of the U.S. municipal bond market.

The sampling approach means that both funds hold a subset of bonds within the index to replicate the debt's yield, duration, and credit quality. This method allows the funds to avoid trading expensive bonds that could harm performance. It also minimizes tracking errors.

Continued Strength for Munis

Passage of the trillion-dollar infrastructure could also give municipal bonds a boost. Local government infrastructure projects are typically funded by municipal bonds.

"The driving force for the rest of the year should continue to be technical demand, driven largely by the U.S. government's fiscal plan," the Advisor Perspectives article said further. "Barring a total derailment of the infrastructure and social-stimulus packages, we can expect this demand to stay high and muni yields to remain tight to Treasuries, with returns approximating muni market yields. Any strong selloff in munis is likely to quickly snap back as investors jump in to capture value."

ETFTRENDS.COM

by BEN HERNANDEZ

AUGUST 9, 2021

Munis In Focus: Jobs, Plane Hangars, Field Of Dreams (Bloomberg Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest news from the muni market. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

August 13, 2021

Big Banks' Big 2Q; Solar Heats Up; Tax Exempts Roar (Podcast)

In this week's broadcast featuring Bloomberg Intelligence analysts and their research, Alison Williams assesses the state of big bank equities trading and M&A fees, Rob Barnett breaks down the pace of solar capacity additions this year and Eric Kazatsky discusses the hot run by tax-exempt municipal bonds. Michael Halen digs into casual dining's recovery from the pandemic and Kevin Ryan explains how insurers may benefit from the cyberthreats exposed by Covid-19.

Hosts: Alix Steel and Paul Sweeney. Producer: Tim Herro.

The BI Radio show podcasts through Apple's iTunes, Spotify and Luminary. It broadcasts on Saturdays and Sundays at noon on Bloomberg's flagship station WBBR (1130 AM) in New York, 106.1 FM/1330 AM in Boston, 99.1 FM in Washington, 960 AM in the San Francisco area, channel 119 on SiriusXM, www.bloombergradio.com, and iPhone and Android mobile apps.

Bloomberg Intelligence, the research arm of Bloomberg L.P., provides in-depth analysis and data on more than 2,000 companies and 130 industries. On the Bloomberg terminal, run BI .

Listen to audio.

Bloomberg

August 6, 2021

What Will the End of LIBOR Mean for the Multifamily Industry?

Learn what's happening with the switch to a new loan index.

The multifamily housing industry is moving closer to phasing out its long-standing index for adjustable-rate loans and other financial transactions.

The London Interbank Offered Rate (LIBOR), which covers five currencies and seven tenors, is on its way out after years of being a globally accepted benchmark. The Alternative Reference Rates Committee (ARRC), a group of private-market participants convened by the Federal Reserve and the New York Fed, has identified the Secured Overnight Financing Rate (SOFR) as LIBOR's replacement.

LIBOR was supposed to be retired by the end of this year, but that date has been extended to June 30, 2023, for most U.S. LIBOR values. The one-week and two-month LIBOR will still expire at the end of 2021.

"In commercial real estate, floating interest rates are commonly indexed off LIBOR," says Steven

Fayne, principal at Align Finance Partners. “However, its uses span far more than just mortgages. Corporate loans, government bonds, credit cards, swaps, and myriad other financial products currently use LIBOR as a benchmark.”

Citi Community Capital (CCC), a leading provider of financing for affordable housing, uses one-month LIBOR swap rates for floating-rate construction loans and other community development floating-rate loans. In addition, CCC uses LIBOR swap rates to establish fixed rates for permanent period fixed-rate loans, according to Barry Krinsky, national production manager.

Despite LIBOR’s widespread use and long history, U.S. financial regulators have been pushing for the change to SOFR because it is believed to be a better and more resilient rate. One reason for this is the sample size for calculating LIBOR has been declining since the Great Recession. There’s now less than $1 billion a day in transaction volume compared with $1 trillion a day for SOFR, says Blake Lanford, managing director in the trading department at Walker & Dunlop.

Other key differences are also driving the move. LIBOR is an average of interest rates reported by major banks, and some have been accused of misrepresenting their numbers to achieve better returns. SOFR, a broad measure of the borrowing of cash overnight collateralized by Treasury securities, is based on actual transactions rather than a survey.

“LIBOR is forward-looking, so the one- and three-month LIBOR is an expectation of where it would be one or three months in advance based on a forward curve,” says Lanford. “SOFR is currently backward-looking, using a 30-day average.”

What’s Happening in Multifamily

Fannie Mae and Freddie Mac moved over to using SOFR for their variable-rate loans last September.

“There were a few months when there was some optionality, but they wouldn’t accept anything after December that was LIBOR-based,” says Lanford.

“Everything now from Fannie and Freddie is SOFR-based on new loans.”

CCC also is planning on ceasing the use of LIBOR for new loans and issuing SOFR loans in the coming months, according to Krinsky.

The firm has chosen the new index, he says, “in part because the SOFR benchmark when combined with the lending spread is expected to result in our multifamily borrowers achieving all-in borrowing rates similar to what they achieved with the LIBOR benchmark.”

In the affordable housing world, the use of LIBOR is somewhat limited. Adjustable-rate loans are uncommon in low-income housing tax credit deals because housing credit investors do not want the variable-rate exposure.

However, these loans are seen in some Section 8 transactions and during the construction phase of some affordable housing deals. Adjustable-rate loans are also seen in conventional multifamily property loans.

For the overall multifamily industry, the big unknowns are how and when will lenders transition the loans in their portfolio that use LIBOR. They’re going to have to move over to SOFR at some point.

When that transition happens there’s going to have to be a spread added to minimize any value transfer from the rate changing in favor of the investor, or borrower, says Lanford.

The good news is that many existing contracts will expire before LIBOR is phased out in mid-2023, so the parties won't have to alter the pricing methodology currently used, according to Fayne.

"For contracts that use LIBOR as a benchmark and expire after 2023, the reference rate will need to change," he says. "However, it's highly likely that those contracts include 'fallback language' prescribing how the loan will be priced in the event LIBOR rates are no longer available."

The next big action is expected to take place this month. "The big banks are being asked to switch over to SOFR at least on the interdealer interest-rate swaps by July 26," says Lanford. "Once that happens, there's going to be more progress."

This step will cause trading activity among swap dealers on these platforms, which account for a substantially large share of trading in the interest rate swap markets, to switch from LIBOR to SOFR.

That's going to create a more robust market, and that will be necessary to build a forward-term rate like there is for LIBOR. "We have a one-month and a three-month LIBOR," Lanford says. "They're trying to develop the same thing for SOFR. Right now, there's plenty of transactions on the front end, but not as much as on longer-term futures and swaps contracts. The switch on July 26 will change that."

Looking ahead, it's important for developers to know what their variable-rate exposure is. "There may be some borrowers that have a schedule of real estate that's 100% fixed rate, and they don't have much to worry about," he says. "For those who have some variable-rate exposure, planning in advance and matching up their loans along with any other derivatives is going to be a priority. Unfortunately, there's not much that we know yet as far as timing, but try to anticipate that switch."

Walker & Dunlop will provide lots of notice to the loans in its portfolio, and Fannie and Freddie will work to give as much lead time as possible as well, according to Lanford.

With representatives of the Federal Reserve and ARRC saying that SOFR should be used, developers should be cautious about loans that use a different benchmark. "I think the recommendation will soon be to think hard before using LIBOR or alternative indexes other than SOFR," Lanford says.

Affordable Housing Finance

By Donna Kimura

July 12, 2021

Public Pension Looters Need Not Fear FBI And Law Enforcement.

The FBI's investigation into alleged false investment performance at the $67 billion Pennsylvania Public School Employees' Retirement System may suggest law enforcement is finally focused upon public pension shenanigans. That's not likely.

If you want to understand how pension looters and high-level investment scammers frequently escape prosecution, begin with studying the legal and regulatory structure of the money management industry. Successful scammers know: (1) which laws or regulations they can skirt, or break; (2) who, i.e., which agencies may come after them for their bad behavior; and (3) the limitations of different regulators and law enforcement.

A "security" is a broad term that includes many types of investments, such as municipal bonds, corporate stock and bonds, bank notes, investment contracts and more. Securities fraud occurs when someone involved with one of these investments lies, cheats, or steals in an attempt to gain a financial advantage.

Continue reading.

Forbes

by Edward Siedle

Aug 16, 2021

MSRB Research Paper on the Taxable Municipal Bond Market.

New MSRB research paper studies the evolution of the taxable municipal bond market over the last decade and reviews the market dynamics of two years when taxable municipal bond issuance was particularly high—2010 and 2020.

Read the MSRB research paper.

Florida's Brightline Train to Resume Service in November.

- **Brightline suspended operations in March 2020 due to pandemic**
- **Train hopes to boost ridership with new stations, Disney plans**

Brightline Holdings, the Florida luxury rail company backed by Fortress Investment Group, will resume running trains in November after suspending service in March 2020 because of the coronavirus pandemic.

In a briefing Tuesday, Brightline President Patrick Goddard said schedules and fares would be similar to those before the suspension. Among new features, riders, who must wear masks on board, will have the option of booking a car, shuttle or electric golf cart to get to the stations. The company will also require Covid vaccines for its employees. The state is reporting a three-day average of 18,795 new Covid cases, according to the Florida Department of Health, ranking it among the highest rates in the country.

With Florida drawing tourists and new residents, vehicle traffic has increased and the company anticipates demand for its service between Miami and West Palm Beach, Goddard said.

"As long as Florida continues to grow, we feel very resolute in our optimism for the future of the business," Goddard said.

The country's first new privately financed intercity passenger rail in a century, launched in 2018 along Florida's east coast, missed passenger and revenue forecasts even before the onset of the Covid-19 outbreak. But over recent months, the company has notched several wins to boost ridership, such as reaching an agreement with Walt Disney World Resort to develop a station on its property. Brightline is also working on commuter rail initiatives with Miami-Dade and Broward counties.

New stations in Boca Raton and Aventura will come online next year, while the expansion to Orlando will wrap up construction at the end of 2022, Goodard said.

Municipal-bond investors have welcomed the developments. A bond due in 2049 traded Wednesday at an average yield of 5.3%, compared with a high of 7.75% in January, according to data compiled by Bloomberg.

Meanwhile, Brightline is pressing ahead with a plan to lay train tracks to Las Vegas from southern California. In July, it said it purchased a site in the gambling hub for its station.

Bloomberg Business

By Romy Varghese

August 10, 2021, 9:22 AM MDT Updated on August 10, 2021, 10:02 AM MDT

— With assistance by Nic Querolo

Defaulted California Plant Gets OK to Borrow More.

- **CalPlant wins bid to sell $18 million of new debt securities**
- **Company says it's making fiberboard from rice straw, a first**

A defaulted California company trying to produce a unique kind of sustainable fiberboard won approval from the state to issue as much as $18 million of new debt.

California's Debt Limit Allocation Committee, which provides access to the low-cost financing intended for private ventures serving the public interest, on Wednesday approved the request by CalPlant I LLC. The company has already borrowed $344 million since 2017 through sales of unrated tax-free debt, most of which is in default.

After years of delay and setbacks including the pandemic and a fire, CalPlant finally finished building a facility last year that it says is producing the world's first medium-density fiberboard made from a rice-cultivation byproduct called rice straw. The company has equity backing from entities including a subsidiary of the Teachers Insurance & Annuity Association of America.

The plant, which began making panels in November, needs more money to fully scale up to commercial operations. Despite the dubious distinction of having the third-largest high-yield muni default of the past decade, according to Municipal Market Analytics, the company is likely to sell most of the new securities to existing bondholders.

"This allocation is the final piece of the puzzle for this plant," said Nancee Robles, interim executive director of the debt committee, before the board approved the request.

Bloomberg Markets

By Romy Varghese

August 11, 2021

[Opportunity Zone Redevelopment Areas Still Reaping Benefits Of National Home-Price Boom In Second Quarter 2021.]

Median Values Again Rise Annually By At Least 15 Percent in Half of Zones; Opportunity Zone Price Spikes Remain on Par with Those Outside of Zones

IRVINE, Calif., Aug. 12, 2021 /PRNewswire/ — ATTOM, curator of the nation's premier property database, today released its second-quarter 2021 Opportunity Zones report analyzing qualified low-income zones established by Congress in the Tax Cuts and Jobs Act of 2017 (see full methodology below). In this report, ATTOM looked at 5,236 zones across the United States with sufficient sales data to analyze, meaning they had at least five home sales in the second quarter of 2021.

The report found that median single-family home prices increased from the second quarter of 2020 to the second quarter of 2021 in 75 percent of Opportunity Zones and rose by at least 15 percent in about half of them. Price patterns in Opportunity Zones continued to roughly track trends in other areas of the U.S., even surpassing them in some ways, much as they did in the first quarter of this year.

Home values in Opportunity Zones did continue to lag well behind the national median of $305,000 in the second quarter of 2021. About three-quarters of the zones with enough data to analyze had typical second-quarter prices below the national figure. Some 39 percent also still had median prices of less than $150,000 in the second quarter of this year. But that was down from 47 percent a year earlier as values inside some of the nation's poorest communities kept surging ahead with the broader national housing market, despite the Coronavirus pandemic remaining a threat to the U.S. economy.

Even as the national economy was gradually recovering during the Spring of 2021 from the economic damage that came after the pandemic hit early last year, the impact continued to hit hardest in lower-income communities that comprise most of the zones targeted for tax breaks designed to spur economic redevelopment. Nevertheless, Opportunity Zones largely kept pace with national home-price trends as increases roughly paralleled the nationwide boom now in its 10th year.

Opportunity Zones are defined in the Tax Act legislation as census tracts in or along side low-income neighborhoods that meet various criteria for redevelopment in all 50 states, the District of Columbia and U.S. territories. Census tracts, as defined by the U.S. Census Bureau, cover areas that have 1,200 to 8,000 residents, with an average of about 4,000 people.

"Housing markets kept chugging along in some of the nation's poorest neighborhoods during the second quarter of this year in another sign that the decade long home-price boom across the nation knows pretty much no boundaries. Values kept rising inside specially designated Opportunity Zones at around the same rate as they did in other areas even as the Coronavirus pandemic continued causing economic hardship," said Todd Teta, chief product officer with ATTOM. "For sure, property values in Opportunity Zones remain depressed. But the price spikes there not only suggest that those communities are a very viable option for households priced out of more-upscale neighborhoods. They also indicate the ongoing potential for the economic revival that underpins the Opportunity Zone tax breaks.”

High-level findings from the report include:

- Median prices of single-family houses and condominiums rose from the second quarter of 2020 to the second quarter of 2021 in 2,901 (75 percent) of the Opportunity Zones with sufficient data to analyze and increased in 2,916 (64 percent) of the zones from the first quarter to the second quarter of this year. By comparison, median prices rose annually in 81 percent of census tracts outside of Opportunity Zones and quarterly in 70 percent of them. (Of the 5,236 Opportunity Zones included in the report, 3,850 had enough data to generate usable median prices in the second quarters of both 2020 and 2021; 4,577 had enough data to make comparisons between the first quarter of 2021 and the second quarter of 2021).
- Measured year over year, median home prices rose at least 15 percent in the second quarter of 2021 in 2,011 (52 percent) of Opportunity Zones with sufficient data. Prices rose that much during that time period in 51 percent of other census tracts throughout the country.
- Opportunity Zones did even better when comparing areas where prices rose at least 25 percent from the second quarter of 2020 to the second quarter of 2021. Measured year over year, median home prices rose by that level in 1,366 (35 percent) of Opportunity Zones but in only 30 percent of census tracts elsewhere in the country.
- Typical home values in four of every 10 Opportunity Zones increased annually in the second quarter of 2021 by more than the 22-percent increase in the overall national single-family median home price during that time period.
- Among states with at least 20 Opportunity Zones, those with the largest percentage of zones where median prices rose, year over year, during the second quarter of 2021 included New Hampshire (median prices up, year over year, in 95 percent of zones), Massachusetts (94 percent), Idaho (91 percent), Utah (90 percent) and Arizona (89 percent).
- Of all 5,236 zones in the report, 2,021 (39 percent) still had median prices in the second quarter of 2021 that were less than $150,000 and 914 (17 percent) had medians ranging from $150,000 to $199,999. The total percentage of zones with typical values below $200,000 was down from 65 percent in the second quarter of 2020 to 56 percent in the second quarter of 2021.
- Median values in the second quarter of 2021 ranged from $200,000 to $299,999 in 1,081 Opportunity Zones (21 percent) while they topped the national median of $305,000 in 1,183 (23 percent).
- The Midwest continued in the second quarter of 2021 to have the highest portion of Opportunity Zone tracts with a median home price of less than $150,000 (63 percent), followed by the South (45 percent), the Northeast (41 percent) and the West (6 percent).
- Median household incomes in 88 percent of Opportunity Zones were less than the medians in the counties where they were located. Median incomes were less than three-quarters of county-level figures in 56 percent of zones and less than half in 16 percent.

Report methodology
The ATTOM Opportunity Zones analysis is based on home sales price data derived from recorded sales deeds. Statistics for previous quarters are revised when each new report is issued as more deed data becomes available. ATTOM compared median home prices in census tracts designated as Opportunity Zones by the Internal Revenue Service. Except where noted, tracts were used for the analysis if they had at least five sales in the second quarter of 2021. Median household income data for tracts and counties comes from surveys taken the U.S. Census Bureau (www.census.gov) from 2015 through 2019. The list of designated Qualified Opportunity Zones is located at U.S. Department of the Treasury. Regions are based on designations by the Census Bureau. Hawaii and Alaska, which the bureau designates as part of the Pacific region, were included in the West region for this report.

About ATTOM
ATTOM provides premium property data to power products that improve transparency, innovation, efficiency and disruption in a data-driven economy. ATTOM multi-sources property tax, deed, mortgage, foreclosure, environmental risk, natural hazard, and neighborhood data for more than 155 million U.S. residential and commercial properties covering 99 percent of the nation's population. A rigorous data management process involving more than 20 steps validates, standardizes, and enhances the real estate data collected by ATTOM, assigning each property record with a persistent, unique ID — the ATTOM ID. The 20TB ATTOM Data Warehouse fuels innovation in many industries including mortgage, real estate, insurance, marketing, government and more through flexible data delivery solutions that include bulk file licenses, property data APIs, real estate market trends, and more. Also, introducing our latest solution, that offers immediate access and streamlines data management – ATTOM Cloud.

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U.S. 'Opportunity Zones' Use Tax Breaks for Developers to Help Poor Neighborhoods - But Are They Really Helping?

By most accounts, Beaverton, part of Oregon's Sunset Corridor, is a desirable American suburb. It's 15 minutes from downtown Portland, home to Nike headquarters and has a median household income of around US$50,000 range.

Why, then, are American taxpayers subsidizing developers to build in Beaverton, along with dozens of other economically robust communities just like it?

The answer lies in an ambitious public-private partnership initiative known as opportunity zones. Embedded in the U.S. Tax Cuts and Jobs Act of 2017, aimed at incentivizing private investors to develop real estate in low-income communities and spur local business growth, the program has attracted billions of dollars in projects from Beaverton to Boston.

Continue reading.

theconversation.com

August 12, 2021

QOFs Tracked by Novogradac Surpass $17.5 Billion in Equity Raised.

Qualified opportunity funds (QOFs) tracked by Novogradac raised $17.52 billion in equity as of midyear, according to the Novogradac Opportunity Zones Investment Report: Data Through June 30, 2021, which was released today. The semiannual report includes information on the geographic and investment-type focus of more than 1,000 QOFs and includes the top 20 states and top 40 cities for planned investment, as well as the number of QOFs in each of several ranges of equity raised. The report also features a historical section, where trends are examined over time. Michael Novogradac published a blog post on the data and the report is the subject of today's Tax Credit Tuesday podcast.

The report will part of the discussion at the Novogradac 2021 Fall Opportunity Zones Conference, Oct. 21-22 in Cleveland.

August 10, 2021

GFOA 2021 GAAP Update.

November 4, 2021 | 1 p.m.-5 p.m. ET

Details:

Government Finance Officers Association (GFOA) will offer its 2021 GAAP Update on November 4, 2021, with encore presentations on December 9, 2021, and January 13, 2022, using GFOA's online learning management system (LMS).

Participate in interactive exercises to test your knowledge of the material being presented. Receive immediate feedback to your questions during the program from GFOA's Technical Services Center staff.

Key topics* that will be covered during this year's session include:

New GASB pronouncements:

- GASB Statement No. 98, *Annual Comprehensive Financial Report* (anticipated)
- GASB Implementation Guide No. 2021-1, *Implementation Guidance* Update-2021

Updates on GASB projects on:

- Compensated Absences
- Accounting Changes and Error Corrections
- Omnibus – 202X
- Disclosure Framework

Special segment – Implementing GASB 87, *Leases*, first effective for fiscal years ending June 30, 2022

Update on new developments impacting audits of state and local governments, including implications of CARES Act and ARPA assistance

Common deficiencies seen in applications for GFOA's Certificate of Achievement for Excellence in Financial Reporting

Current Implementations:

- GASB Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*
- GASB Statement No. 90, *Majority Equity Interests*
- GASB Statement No. 92, *Omnibus 2020*
- GASB Implementation Guide No. 2020-1, *Implementation Guidance Update-2020*

**Topics are subject to change*

Learning Objectives:

- Prepare to implement new pronouncements including GASB 87, *Leases*, arguably the most complex new standard since the postemployment benefits standards
- Understand the implications of proposed guidance for which GASB has sought comments; and
- Become familiar with:
- Other new accounting standards and implementation guidance recently issued by GASB
- Current issues affecting financial statement audits and federal funds Single Audits of state and local governments
- Reporting shortcomings frequently seen by GFOA

REGISTER

ESG Related ETF Filings Flourish.

The summer has seen a wave of ESG-related filings, with the focuses ranging from traditional environmental, social and governance (ESG) to political affiliations to alternative energy to female empowerment.

Roughly 100 new filings were made for ETFs or ETF families since the end of May, and at least 25 of those have an ESG element.

Climate Change Funds Emerging

The largest group of these funds are focused on climate change and carbon emissions, with the most notable being FlexShares' family of five "ESG & Climate" ETFs covering various core asset classes and tracking in-house indexes. That family includes the following funds:

Continue reading.

etf.com

by Heather Bell

August 16, 2021

Municipal Bonds Are Still a Solid Summer Bet for Retirees.

Municipal bond yields aren't exactly thrilling these days, but the asset class remains an important income-generator and risk-reducer for investors in retirement.

While yields are broadly low today in the municipal bond space, there are some positive points for retirement investors to consider, and the asset class is proving sturdy even as the delta variant of the coronavirus vexes investors.

"Municipals maintained their seasonal trend and posted strong performance throughout the month of July. The market benefited from a favorable supply-demand backdrop and rallying interest rates due to excess liquidity, short covering, and Delta variant fears," according to BlackRock research.

More recently, longer duration munis and those with lower credit ratings delivered upside for investors as muni market participants sought to embrace credit and duration risk. A recent decline in supply could be another factor supporting municipal bonds.

"Supply moderated from the robust levels experienced in June and trended more in line with historical expectations. Issuance of $35 billion was down -26% month-over-month but just 5% above the 5-year average, bringing the year-to-date total to $255 billion," notes BlackRock.

While yields are low within the broader municipal bond universe, investors are still displaying enthusiasm for this form of debt, with flows to related funds, including exchange traded funds, poised to hit records this year.

"Demand remained firm with the asset class garnering continued inflows. While fund flows slowed slightly into month end amid lower absolute yields, 2021 remains on pace to eclipse 2019 as the best fund flow year on record," continues BlackRock.

The asset manager recommends underweighting munis tied to "speculative projects with weak sponsorship, unproven technology, or unsound feasibility studies," as well as senior and assisted living facilities in markets that already have plenty of those establishments. However, BlackRock is bullish on munis issued by states in strong fiscal positions as well as munis issued by cities and school boards with robust property tax bases. The fund issuer also likes some high-yield munis.

ETF TRENDS

TOM LYDON | AUGUST 16, 2021

[Strategies to Deal with Potential Capital Gains Tax Increases.]()

President Biden's proposal to raise taxes on capital gains has many investors concerned. But before you make any rash decisions with your own portfolio, it's important to understand whether you'll be among those affected — because not everyone will be — and if so, what steps you can take to help minimize the impact.

In addition, if you own investments you're looking to leave to your heirs, you should also be aware of a possible change in estate tax treatment that could mean a higher tax bill for your loved ones that could be somewhat avoidable if you take action.

Managing Your Capital Gains Taxes

Before digging into the possible changes, it may be helpful to recap what capital gains taxes are. Capital gains taxes simply are taxes levied on profits from selling an investment. So, if you buy $10,000 in stock and sell those shares five years later for $20,000, you will likely owe taxes on your

$10,000 capital gain, unless the investment is held in a tax-deferred account, such as a 401(k) or an IRA.

Under President Biden's proposal, the highest tax rate for capital gains would increase to 39.6%, up from a top rate of 20% currently. But because the higher tax rate as proposed would only impact investors earning more than $1 million a year, most people wouldn't be affected. Also, it's important to note that the proposed changes may evolve as they move through the legislative process.

Still, if you would be impacted by this change, or are just looking to reduce your potential capital gains tax exposure, consider these actions:

- **Invest in municipal bonds.** These are generally exempt from federal income tax, and they are also exempt from state income taxes if the bond issuer is from the investor's home state, making them appealing to investors in high-tax states. Still, be sure to also consider out-of-state municipal bonds, which provide portfolio diversification and can provide higher after-tax yields.
- **Max out what you contribute to your tax-deferred retirement accounts**, including your 401(k) and IRAs. Any capital gains you earn from investments in these accounts will be tax-deferred until you begin withdrawing the funds in retirement.
- **Utilize tax-loss harvesting to help lessen the tax bite from capital gains.** Under this strategy, you can sell an investment that's fallen in value and use that loss to reduce any taxable gains. If you'd like, you can then reinvest your proceeds into a similar type of investment to maintain your asset allocation but beware of the Wash Sale Rule if you reinvest within 30 days of the sale because the loss may be disallowed. Note that only $3,000 of capital losses can be used to offset ordinary income over and above offsetting any capital gains in the same tax year –any remaining losses can be carried forward to any future tax year, indefinitely, until exhausted. So, for example, if you sell a stock that's declined in value by $20,000, that loss can reduce a $10,000 capital gain to $0 and help lessen your overall tax burden. In addition, $3,000 of unused capital losses can be used to offset your ordinary income. Finally, the remaining $7,000 in unused losses can be carried forward and used to offset future taxable gains and up to $3,000 in ordinary income.
- **Consider investing in separately managed accounts** (SMAs) as an alternative to mutual funds. Fund investors are often surprised to receive taxable gains statements at the end of the year, even when they didn't sell any shares of the funds. SMAs do not have embedded capital gains, unlike mutual funds. And because an investor who invests in an SMA owns the portfolio's securities directly, they can take advantage of tax-loss harvesting.

Managing the Potential Elimination of Step-Up in Basis for Inherited Assets

Another potentially important change to be aware of is the proposed elimination of the step-up in basis for inherited assets. Currently, the step-up provision means that the cost basis of the inherited asset is adjusted (stepped-up) to reflect the fair market value of the asset at the time of the owner's death. For example, if you inherited shares worth $100,000 from a deceased loved one and then sold those assets, you wouldn't owe capital gains on that sale, even if the stock appreciated in value from an original purchase price of say $10,000.

Under President Biden's proposal, when someone passes away, their death would trigger capital gains taxes on appreciated assets for their heirs, either at the time of death or when their heirs sell the assets. So, as with the previous example, if you inherited shares worth $100,000 that had been purchased for $10,000, you'd owe capital gains on the $90,000 worth of appreciation.

Buy-and-hold investors who own assets that have appreciated considerably in value may want to speak with an attorney or tax adviser to shrink the size of their estate. You may simply choose to realize the gains at the current lower capital gains tax rates and re-establish the basis by purchasing the same security again if the goal is to continue to hold the investments and pass them to your heirs. When repurchasing the security, be careful of the wash-sale rule, which may affect your ability to claim a deduction if you sold at a loss.

In addition, possible strategies you may want to consider include:

Annual gifting of assets to heirs. You can give up to $15,000 per person during the year without having to pay any tax, and if you are married, your spouse also can give $15,000 to the same person, for a total of $30,000 per beneficiary per year.

- Donating appreciated assets to charity.
- Placing assets into a trust.
- Purchasing a life insurance policy. The funds from a life insurance policy can help replace the loss of funds from an estate due to estate taxes or capital gains if the step-up in basis is eliminated.

Note that you should discuss your particular situation with a trusted accountant or tax adviser.

Revisit Your Plan with Your Financial Adviser

Tax laws are always evolving, and what's proposed is often not the same as what becomes law. It's important to add that these are proposals made by the administration, but also need to be passed by Congress. Regardless of what happens with taxes, consider meeting with your financial adviser. The past year has brought many developments, and it's worth revisiting your overall plan in light of any changes COVID-19, a new administration or your personal situation may mean to your financial plan.

Yahoo Finance

Chuck Cavanaugh, Head of Wealth Planning

Sun, August 15, 2021

Webinar: Driving Investment into Texas' Rural Opportunity Zones.

September 7, 2021 – 1:00 PM – 2:30 PM

Attracting investors to rural Opportunity Zones is a well-known challenge. Federal reserve data show that at least 60% of opportunity zones in Texas are at least partially in a rural census tract. In order to attract investment in these rural Opportunity Zones, local leaders must be able to identify priority projects and businesses and build a local investment strategy. During this webinar, expert panelists will provide best practices and tips for economic development practitioners on driving investments into rural Opportunity Zones in Texas.

Click here to learn more and to register.

The Infrastructure Plan Could Boost N.J.'s Opportunity Zones.

The U.S. Senate this week moved closer to passing President Biden's $1 trillion infrastructure bill —

the biggest investment in America's rails, roads, broadband and electrical grid in decades. New Jersey political leaders hope the landmark legislation will help fund critical state projects like the Gateway Tunnel.

One of the hallmarks of the Infrastructure Investment and Jobs Act is channeling investments to under-served communities, including those in New Jersey, positioning them as hubs for next-generation jobs and innovation. The White House aims to "revitalize manufacturing, secure U.S. supply chains, invest in R&D, and train Americans for the jobs of the future." This goal has eluded presidential administrations for much of the 21st century. Yet a convergence of factors makes the next few days a particularly favorable window to make progress — though perhaps not in the way policymakers expected.

One way the Biden administration plans to pay for the infrastructure bill is by nearly doubling the tax rate wealthy Americans pay on profits from their sale of stock. This capital gains hike would have major financial impacts, and observers are debating what it would mean for economic fairness and federal revenue. The increase could also have a surprisingly powerful effect on jobs and business growth in low-income areas by pivoting investors toward Opportunity Zones.

Continue reading.

nj.com

By Charles Meyer

Aug 10, 2021

Best Practices for Rural Development Finance Agencies: CDFA Rural Development Finance Webinar Series

August 31 | 2:00 PM – 3:00 PM Eastern

There are hundreds of development finance agencies working in concert to support rural communities. They exist at all levels of government, in communities of all sizes, and provide financing programs to address multiple capital needs. How do you find a development finance agency that is the right fit for your rural community? During the third installment of the CDFA Rural Development Finance Webinar Series, discover best practices of development finance agencies to help you identify the right partner for your projects.

Click here to learn more and to register.

Treasurer Fiona Ma Announces First Sale of Revenue Bonds for Community College Housing.

California State Treasurer Fiona Ma and Chair, California School Finance Authority (CSFA), announced the successful completion of a $68.31 million College Housing Revenue Bond sale through the CSFA to finance first-ever student housing on the campus of Santa Rosa Junior College (SRJC). The Bonds priced on Thursday, July 15, 2021, and closed on July 29, 2021. This financing marks the inaugural issuance of community college student housing bonds by CSFA. This reflects Treasurer Ma's commitment to bringing affordable housing to community college students and to bridge California's resource and equity gaps.

"There is an urgent need for housing community college students," said Treasurer Ma. "I am so pleased that the California School Finance Authority could find an innovative way to help by providing low-cost financing for this much-needed housing project at Santa Rosa Junior College. We see this sale as a model that could help other community colleges throughout the state."

Santa Rosa Junior College serves over 20,000 students in nearly 300 degree and certificate programs on 80 acres on their Santa Rosa and Petaluma campuses. The housing project on the Santa Rosa campus will be SRJC's first on-campus student housing, and it will provide safe, affordable, and accessible housing to the culturally and economically diverse SRJC student population. This 95,281-square-foot project will offer 352 total beds and will include living room and common areas; common kitchens with grab and go options; public restrooms; activity lounges; game rooms; study areas; quiet study areas; co-ed restrooms; 24-hour security; and a 92-space parking lot – all conveniently located on campus.

"Our service area suffered devastation from wildfires that destroyed thousands of homes and impacted many of our students and their families. Currently, one out of five Santa Rosa Junior College students are experiencing housing insecurity and homelessness. We are delighted to have access to this financing solution that will allow us to provide affordable on-campus housing for our students", Dr. Pedro Avila, Assistant Superintendent at Santa Rosa Junior College District.

The bonds are rated 'BB' by S&P. Stifel, Nicolaus & Company served as the underwriter for this limited offering to Qualified Institutional Buyers and Institutional Accredited Investors. The bonds sold at an all-in true interest cost of 3.16%. The tax-exempt Series 2021A bonds consisted of 4 percent term bonds maturing in 2031, 2036, 2041, 2051, and 2055 yielding 2.01 percent, 2.18 percent, 2.32 percent, 2.45 percent, and 2.52 percent, respectively. A final term bond was added in 2060 that incorporated an extraordinary call provision and sold at a discount with a 2.75 percent coupon, yielding 2.9 percent. The extraordinary call will enable SRJC to prepay the bonds without penalty should it receive an external grant or charitable funding to offset the cost of the new student housing project. The taxable Series 2021B bonds consisted of a 3.50 percent term bond maturing in 2026, priced at par. The National Campus and Community Development Corporation, a non-profit corporation, serves as the borrower on behalf of the SRJC.

Conduit revenue bonds issued by CSFA are special, limited obligations payable solely from payments made by the underlying borrower pursuant to the transaction documents and from funds and accounts established under the transaction documents, and CSFA shall not be directly or indirectly or contingently or morally obligated to use any moneys or assets of CSFA for all or any portion of payment to be made pursuant to the bonds.

For more information about CSFA's conduit financing program for student housing, please visit CSFA's webpage at: https://www.treasurer.ca.gov/csfa/financings/index.asp.

August 10, 2021

Las Vegas Train Bonds Will Go To California Housing.

- **California had set aside $200 million for rail that's delayed**

- **Company plans to request debt for tourist train next year**

California reallocated $200 million of tax-exempt private activity bonds formerly reserved for Fortress Investment Group's Las Vegas tourist train to be used instead by affordable housing projects.

In January, the state's Debt Limit Allocation Committee set aside that portion of California's limited financing resource in anticipation that the firm's Brightline Holdings would request it later in the year. Instead, the venture said in June it will seek an undisclosed amount of debt next year. The committee's three-member board on Wednesday unanimously approved moving the bonds to housing.

This is the second time California had expected the train to use the bonds, only to give the resource to housing, with demands from housing developers far outstripping what's available. Last year, California had given Fortress the ability to sell $600 million of private activity bonds, which are meant for ventures for the public interest that are capped annually in each state by the federal government.

But Fortress was unable to get enough investors on board for an unrated bond deal that would have financed construction for a 169-mile (272-kilometer) line connecting Las Vegas to the desert town of Apple Valley, 90 miles away from downtown Los Angeles. After the firm pulled the deal in October, California reallocated Fortress's award to affordable housing needs.

In the latest iteration of the project, the line would move closer to Los Angeles by extending to Rancho Cucamonga, which is located along an existing commuter rail called Metrolink. In July, Brightline said it purchased a site in Las Vegas for its station.

Bloomberg Markets

By Romy Varghese

August 11, 2021, 2:11 PM MDT

Novogradac 2021 Fall Opportunity Zones Conference.

Hilton Cleveland Downtown & Online | October 21, 2021 – 8:30am to October 22, 2021 – 5:30pm

Introducing the Novogradac 2021 Fall Opportunity Zones Conference.

Develop your professional relationships and reconnect with others active in opportunity zones (OZ) investment in Cleveland, a city that is benefiting from more than $250 million of OZ investment. Learn from qualified opportunity fund (QOF) managers, investors, developers and Novogradac accountants who will discuss the state of the marketplace, types of project trends, plus structuring and operational considerations of QOFs.

For those unable to join us in Cleveland, we invite you to join us online, where you can view our panels, chat with both in-person and virtual attendees, plus watch online-only content of the event.

Click here to learn more and to register.

Fitch: Midwest Metros Drive Job Growth While Other Regions Lag

Fitch Ratings-New York-12 August 2021: Metros in the Midwest drove employment growth during a flat month for the country overall, according to the latest U.S. Metro Labor Markets Tracker from Fitch Ratings.

The Midwest's median recovery rate for major metros rose to 71% in June from 66% in May, with eight of nine major metros in the Midwest seeing employment recovery rates above 50%.

"Cleveland and Chicago were the only Midwestern major metros where recovery rates declined month-over-month from May to June," said Senior Director Olu Sonola.

Additionally, Cleveland again saw the largest month-over-month decline among Midwestern major metros at 0.5%. While the Midwest's median Fitch-adjusted unemployment rate fell to 7.8% in June from 8.8% in May, the same figure rose in three Midwestern metros in June: Indianapolis, Milwaukee, and Minneapolis.

Elsewhere throughout the country, the median share of jobs recovered by major metros in the West was 62% in June, the lowest regional median. Salt Lake City is the first major metro to have reached 100% of pre-pandemic employment since February 2020, having now regained 104% of pre-pandemic payroll figures by June.

The median jobs recovery rate for major Metropolitan statistical areas (MSAs) in the Northeast rose to 64% in June from 63% in May. A closer look at the region shows that New York City finally reached a recovery rate of 50% of jobs lost at the start of the pandemic. Hartford and Rochester are the only two major Northeastern MSAs to see a decline in recovery rates in June.

Fitch's latest "U.S. Metro Labor Markets Tracker" is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

The Conclusion of a Long Running Pay-to-Play Case.

Many of the cases brought recently by the Commission have been either offering fraud or microcap issuer cases with the latter often centered on pump-and-dump manipulations. These cases typically fleece unsuspecting investors who purchase what appear to be inexpensive securities based on some type of guaranteed return or assurance against lost in the case of offering fraud actions or the lure of quick profits from an about to increase stock in the case of the manipulations. The outcome in all of these cases is the same – the investors lose their hard earned savings.

Some cases follow a different pattern. For example, some cases involve public officials taking a bribe in return for steering business to others. In those cases the pattern is different but for investors it is the same, they lose although it may not be as apparent. Once such case is *SEC v. Webb*, Civil Action No. 17-8685 (N.D. Ill.), a pay-to-play case.

Defendant David Webb is the mayor of the City of Markham, Illinois. In connection with a 2012 municipal bond offering designed to fund city capital projects, Mr. Webb engaged in a pay-to-play scheme. The mayor approached a contractor involved in the city capital projects and solicited a bribe. In return Mr. Webb agreed to steer a multi-million construction project to the contractor. The project would be funded from the offering proceeds of the municipal bond offering.

The complaint alleges violations of Securities Act Section 17(a) and Exchange Act Section 10(b). To resolve the action Mr. Webb consented to the entry of a permanent injunction based on the Sections cited in the complaint in late 2017. This week the Court entered the final judgment after determining monetary remedies. The Court entered permanent injunctions based on the Sections cited in the complaint. The mayor was also barred from participating in further municipal bond offerings. In addition, Mr. Webb was directed to pay disgorgement of $85,000 and prejudgment interest of $32,849.35. Those amounts were deemed satisfied by the restitution order entered in the parallel criminal case. *See* Lit. Rel. No. 25160 (August 9, 2021).

SEC Actions – Thomas O Gorman

August 12 2021

Port of Miami to Sell $1.4 Billion in Muni Bonds.

Miami-Dade County will sell debt backed by revenue from Port of Miami, a pandemic high and a sign of investors' demand for local-government debt

Florida officials announced the largest pandemic-era municipal-bond sale backed by port revenue, hoping to tap into investor demand for local-government debt tied to recovering sectors of the U.S. economy.

Miami-Dade County said Monday it is selling around $1.4 billion of bonds due 2050 and backed by revenue from the Port of Miami, or PortMiami—the county's largest municipal bond sale ever. That is also the largest sale tied to a port since last March, beating a $1.1 billion bond issued by the Port Authority of New York and New Jersey during July 2020.

Miami is home to the largest port in Florida. It processed more than $45 billion worth of cargo during the fiscal year ending September 2020 and in normal times is home to over a fifth of the world's cruise traffic.

The offering's size is a sign of the strength of the overall municipal market. A stimulus- and vaccine-fueled recovery has sparked a rally in bond prices, dropped yields toward record lows and left many state and local governments flush with cash. Those improvements, plus increased prospects of a federal tax increase, have prompted more investors to buy municipal bonds, analysts say, after coronavirus fears sparked a sharp selloff last spring.

Investors, meanwhile, have been receptive to assets that benefit from a global shipping crunch, leading municipal bonds tied to ports to outperform other local debt. The S&P municipal-bond port index has returned over 2.4% to investors this year through Aug. 4, including price changes and interest payments. That compares with a 1.9% return on municipal bonds broadly and 0.2% on U.S. investment-grade corporate bonds.

Still, the Miami sale, which is being led by Wells Fargo, WFC -1.52% will occur against a backdrop of growing fears related to rising Delta variant infections. Questions remain about the cruise industry's recovery following canceled cruise voyages over the past year. PortMiami officials are forecasting around 3.8 million cruise passengers during the next fiscal year starting in September, below pre-pandemic totals above six million.

So far, between fiscal years 2019 and 2020, cruise revenue at PortMiami has fallen more than 35% to $34 million, based on the port's most recent audit. Other passenger fees such as parking revenue have declined by nearly half to around $6 million.

Recent support from the federal government has helped PortMiami make up lost revenue. The port received over $66 million through the American Rescue Plan, the second-largest recipient among ports in Florida, behind Port Canaveral.

Increased demand for shipping goods globally has also helped soften the blow from stranded cruises. Cargo volume at PortMiami this fiscal year is running at an annualized pace of 1.25 million 20-foot-equivalent units, or TEUs, port officials say. That is on pace to beat the port's previous volume record from 2019 by 11%. Cargo revenue during the fiscal year ending September 2020 rose over 20% to $28.7 million.

Despite the challenges, analysts are optimistic about the offering's prospects. While PortMiami relies more on cruise revenue than other U.S. ports, investors in search of yield have been willing to lend to shipping and travel-related municipal borrowers looking to refinance debt, said Howard Cure, director of municipal bond research at Evercore Wealth Management. "The market is pretty receptive to giving some relief as long as there's a faith things will return to normal," he said.

Cruise operators and port officials are expecting passenger volumes at PortMiami to recover as the world reopens. Construction of new boat-berthing spaces and ship terminals is expected to increase yearly passenger capacity to around 8.5 million people, officials say.

Moody's Investors Service recently raised the credit outlook for PortMiami to stable from negative. It expects cruise operations will increase over the next year and that the port has sufficient liquidity to manage that transition.

The new bond will refinance most of PortMiami's $1.6 billion in outstanding debt, some of which will be used for new construction. The deal will also extend the maturity of about $600 million in short-term debt, helping lower yearly interest costs.

Demand for municipal bonds has made such refinancings attractive to local officials. "Now is the right time to take advantage of historically low interest rates," said Juan Kuryla, chief executive of PortMiami.

Daniella Levine Cara, mayor of Miami-Dade County, said the bond sale could have an added benefit: increasing confidence among county officials about the government's ability to tap debt markets for future financing needs.

"We can take this to the bank," she said.

The Wall Street Journal

By Sebastian Pellejero

Aug. 10, 2021 7:00 am ET

The HYD ETF: Elevate Your Municipal Bond Income

Yields are low across the fixed income spectrum and municipal bonds aren't being spared. The positive is that bond prices are appreciating, but when yields get too low, investors are often compelled to embrace riskier fixed income assets.

Investors looking for high yields with some protection and tax benefits in the municipal bond universe have a friend in the VanEck Vectors High Yield Muni ETF (HYD). HYD, which tracks the Bloomberg Barclays Municipal Custom High Yield Composite Index, sports a 30-day SEC yield of 2.17%. That's not the high yield investors are accustomed to with junk-rated corporates, but it's well in excess of standard muni benchmarks.

HYD isn't just about yield. More speculative munis are outperforming their investment-grade counterparts, and improving state finances support the case for this asset class.

Continue reading.

etftrends.com

by TOM LYDON

AUGUST 10, 2021

PSE Confirms Plans for Public-Private Partnership to Finance New Buffalo Bills Stadium.

Pegula Sports and Entertainment told Mayor Byron W. Brown this week that it will seek a "public-private partnership" with state and local government to build a new stadium for the Buffalo Bills in Orchard Park.

A PSE executive late Friday confirmed Brown's account of his conversations over the past few days with officials "at the highest levels" of the company that indicated Bills ownership will not seek a deal totally financed with public money.

Ron Raccuia, executive vice president of PSE, offered his first public comments on the stadium proposal late Friday. He said "the Pegulas purchased the Bills with a commitment to build a championship caliber organization."

"They want to win, and they have continued to provide the resources necessary to do so," Raccuia said. "When it comes to the future new home of the Bills, they have always known that, like virtually all NFL stadiums, this will ultimately be some form of a public/private partnership."

The mayor said he periodically speaks with the team about their plans, even though any public financing for a new facility would stem from state and county sources.

“They made it clear to me they are willing to be a financial partner in a new stadium and expect to be,” Brown said. “I’m sure they expect a public partnership as well. They see it as a public-private partnership.”

Multiple sources told The Buffalo News for an Aug. 1 story that the proposal centered around 100% public financing. The sources spoke on condition of anonymity due to the high sensitivity of the early stages of negotiations, noting that the Bills were seeking at least $1.1 billion in taxpayer assistance – grants, tax breaks and other possible funding streams. Sources later confirmed to The News that the actual amount the team offered in its first proposal was $1.4 billion.

The idea of total financing of a new stadium produced concern among Albany lawmakers, with several labeling the idea a “non-starter.” Assembly Majority Leader Crystal D. Peoples-Stokes, D-Buffalo, was among those dismissing the original plan as outlined to her. Late Friday, she reiterated that she always understood the PSE proposal involved total public financing, adding she was encouraged by the mayor’s comments.

“The way it was intimated to me by the governor’s people is that they wanted to build a new stadium, but there was no reference to a public-private partnership,” she said, adding that Brown’s version of the team’s position “was not the way it was given to me originally.”

The mayor, meanwhile, said he believes that the public-private relationship was “their position all along.” Brown said he spoke to PSE representatives because he was “concerned” about the situation.

“So we have the Pegulas and their representatives clarifying that they certainly will be a financial partner in this,” he said, “and that definitely made me feel good about this prospect.”

Representatives of New York State and Erie County, the main public entities expected to finance a new stadium, were not available for comment.

The News reported earlier this month that PSE had floated to the state and county officials an initial ask that the public pay for a new facility to be built in Orchard Park adjacent to the team’s existing facility. The proposal would negate any need to temporarily relocate to another city during a multi-year construction effort.

The team’s current lease for the county-owned Highmark Stadium expires in 2023. As a result, sources told The News that negotiations between PSE, the state and Erie County are taking on a more serious tone in recent weeks.

The concept also carries broad implications for the entire state beyond just financing. Other areas of New York could be expected to make their own proposals for Albany dollars to pay for new minor league baseball stadiums or downtown hockey arenas, as has occurred in the past whenever major league projects have been proposed for New York City or Buffalo.

All of this also occurs as Gov. Andrew Cuomo prepares to leave office following his announced resignation stemming from sexual harassment allegations. He will be succeeded by Lt. Gov. Kathy Hochul, who said this week that keeping the Bills in Buffalo is a “high priority.”

The Buffalo News

by Robert J. McCarthy

Aug 14, 2021

- S&P: USPF Enterprise Sectors Treatment Of Operating Leases Under FASB's ASU 2016-02 (ASC 842)
- MSRB Proposes Amendments to Annual Customer Notification Requirements.
- A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund – A Case Study: Squire Patton Boggs
- Transaction Costs During the Covid-19 Crisis: MSRB White Paper
- The Use Of A Crisis To Create Opportunity In The Muni Market.
- BDA Fixed Income Insights Digital Magazine – Summer 2021
- *City and County of San Francisco v. All Persons Interested in Matter of Proposition G* – Court of Appeal holds that, although the constitutional provision requiring two-thirds vote of qualified electors to approve special taxes, requires governmental entities to gain approval of supermajority of voters before imposing a special tax, it does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative, and to do so by majority vote.
- And finally, Is There, Like, A Test For Performance De-enhancing Drugs, Dude? is brought to us this week by *State ex rel. Schmitt v. Bridgeport*, in which no less an authority than the Supreme Court of Ohio was called in to untangle a workplace farce in which William Schmitt wandered into the offices of Bridgeport Village in order to drop off a citizen initiative petition. Mr. Schmitt walked into cheerful-bizarro-alternate-bureaucracy-land that he was uniquely unqualified to navigate. (*e.g*. "An unknown person directed Schmitt to the mayor's office, and when he arrived at that office, he asked a woman at the desk if she was the 'clerk.' She responded affirmatively. Later in that conversation, she clarified that she was merely a 'volunteer clerk.'" *See, also*, "The fiscal officer is Mary Lyle, not Carole Lyle. (The record does not disclose whether the two Lyles are related.)" Then again, Mr. Schmitt was there "to place an initiative on ballot to enact an ordinance limiting the penalty for the possession or cultivation of certain quantities of marijuana or hashish within the village to a fine of $0." But if the fine is, like, zero dollars, is that really, like, a fine, man?

EMINENT DOMAIN - COLORADO

North Mill Street, LLC v. City of Aspen

United States Court of Appeals, Tenth Circuit - July 27, 2021 - F.4th - 2021 WL 3163952

Property owner, whose property was located within area of city zoned for industrial use, brought action against city after council adopted ordinance that removed free-market residential units as permitted conditional use within such zoning district and refused to rezone property to mixed use zoning district, seeking declaratory judgment that ordinance was invalid and unenforceable and injunction against enforcing ordinance, and alleging, inter alia, a § 1983 regulatory takings claim under the Fifth Amendment.

The United States District Court granted defendants' motion to dismiss. Property owner appealed.

The Court of Appeals held that:

- Finality rule, under which a regulatory takings claim is not ripe until plaintiff has received final decision, is prudential, and not jurisdictional;
- Owner's claims were constitutionally ripe for review;
- City retained discretion to approve free-market residential unit development, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review; and
- It was not reasonably certain that city would deny application for variance, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review.

Finality rule, under which a regulatory takings claim is not ripe until the plaintiff has received a final decision regarding the application of the challenged regulations to the property at issue from the government entity charged with implementing the regulations, is prudential, and not jurisdictional.

Property owner, whose property was located within industrial zone, adequately alleged that it suffered economic injury that was fairly traceable to city's adoption of ordinance that removed free-market residential (FMR) units as permitted conditional use within property's zoning district and denial of owner's rezoning application, so as to satisfy injury-in-fact requirement for Article III standing, and thus owner's claims were constitutionally ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; owner alleged that ordinance made it more difficult to find suitable tenants, and that it was not able to build FMR units unless it pursued planned development application for a variance.

City retained discretion to approve free-market residential unit (FMR) development on property owner's property, which was zoned for industrial use, through the planned development application process, supporting determination that city's decision was not final, so as for claims to not be prudentially ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; city retained discretion to approve a use variation from the zoning regulations through the planned development application process, and city was merely required to consider earlier findings made in course of rezoning application in considering such a variance.

It was not reasonably certain that city would deny property owner's application for variance from zoning regulations through the planned development application process, in order to permit free-market residential unit (FMR) development on property zoned for industrial use, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; relevant zoning ordinance did not definitively determine type of development permitted on property specifically, and owner had only submitted an application for re-zoning as opposed to variance.

ZONING & PLANNING - MAINE

[Hill v. Town of Wells]

Supreme Judicial Court of Maine - July 13, 2021 - A.3d - 2021 WL 2932349 - 2021 ME 38

Property owner sought judicial review of the decision of town's zoning board of appeals (ZBA) denying his request for setback variances.

The Superior Court rejected ZBA's denial of the variances. Abutting landowner, as intervenor, appealed.

The Supreme Judicial Court held that:

- In considering whether the essential character of the locality within which property owner sought a setback variance would be altered if variance was granted, "locality" included a wildlife sanctuary and the abutting undeveloped Refuge and wetlands, and
- Property owner failed to show that his proposed residence with the variances would conform to the "essential character of the locality," and would not degrade the significant value of surrounding environmental resources, thus, supporting denial of owner's variance request.

BALLOT INITIATIVES - OHIO

[State ex rel. Schmitt v. Bridgeport]

Supreme Court of Ohio - August 3, 2021 - N.E.3d - 2021 WL 3376105 - 2021-Ohio-2664

Initiative proponent sought a writ of mandamus to compel village clerk to certify to the elections board the sufficiency and validity of an initiative petition, or to compel the elections board to place the initiative on the November ballot.

The Supreme Court held that initiative proponent failed to comply with the requirement that he file a signed initiative petition with the village clerk.

Initiative proponent failed to comply with the requirement that he file a signed initiative petition with the village clerk, and thus he was not entitled to mandamus relief compelling village clerk to certify to the elections board the sufficiency and validity of the initiative petition, or compelling the elections board to place the initiative on the November ballot; proponent attempted to file the petition with mayor and unpaid volunteer clerk in the mayor's office, however statute required proponent to file the initiative petition with the village clerk, whose duties had been consolidated with the village treasurer into an appointed position called "fiscal officer," and proponent never attempted to file initiative petition with fiscal officer.

PUBLIC MEETINGS - OHIO

[Ison v. Madison Local School District Board of Education]

United States Court of Appeals, Sixth Circuit - July 7, 2021 - 3 F.4th 887

Four attendees of school board meetings, who were interrupted or prevented from speaking for failing to comply with board's public participation policy, filed § 1983 action asserting that board's policy violated First Amendment facially and as applied to them, and they sought compensatory damages, declaratory relief, and an injunction.

The United States District Court for the Southern District of Ohio granted summary judgment in favor of board. Attendees appealed.

The Court of Appeals held that:

- Policy constituted impermissible viewpoint discrimination in violation of the First Amendment;
- Policy violated First Amendment as applied to attendee who was interrupted and removed from

meeting;
- Board had significant governmental interest supporting policy’s in-person preregistration requirement, as necessary for requirement to be valid time, place, or manner restriction;
- Preregistration requirement was narrowly tailored to that significant governmental interest, as necessary for it to be valid time, place, or manner restriction;
- Individuals who could not comply with preregistration requirement had ample alternative channels to communicate with board, and thus requirement was valid time, place, or manner restriction;
- Preregistration requirement did not violate First Amendment as applied to three attendees who were prevented from speaking; and
- Policy was not void for vagueness under the First Amendment.

PROCUREMENT - PENNSYLVANIA

U.S. Venture, Inc. v. Commonwealth

Supreme Court of Pennsylvania - July 21, 2021 - A.3d - 2021 WL 3073379

Distributor of fuel products petitioned for review of Board of Claims’ order, No. 4180, dismissing distributor’s contractual claims arising out of Commonwealth’s nonpayment of two alternative and clean energy (ACE) grants that distributor obtained to add compressed natural gas fuel pumps to existing fuel stations.

The Commonwealth Court affirmed. Distributor petitioned for allowance of appeal, which was granted.

The Supreme Court held that ACE grants were “grants” that were not subject to limited waiver of sovereign immunity under Procurement Code.

Commonwealth’s award of Alternative and Clean Energy (ACE) grants to fuel products distributor to support distributor’s plans to add compressed natural gas fuel pumps to two existing fuel stations were “grants” that were not subject to limited waiver of sovereign immunity under Procurement Code, and thus Board of Claims did not have jurisdiction to resolve distributor’s contractual claims arising from nonpayment of grants, despite argument that grants were awarded with a primary purpose to procure construction, where Commonwealth had no ownership, control of, or interest in the privately-owned fuel pumps located on privately-owned property, and Commonwealth received nothing from the deals other than advancement of its desire to promote ACE program and reduce harmful emissions.

LIABILITY - WASHINGTON

Norg v. City of Seattle

Court of Appeals of Washington, Division 1 - July 19, 2021 - P.3d - 2021 WL 3030524

Husband and wife filed suit against city, alleging that city was negligent in responding to wife’s 911 call while husband was having heart attack.

City filed motion for summary judgment, and husband and wife filed motion for partial summary judgment. The Superior Court granted husband and wife’s motion and struck city’s public duty doctrine defense. City appealed.

The Court of Appeals held that public duty doctrine did not apply to bar husband and wife's claim.

City's duty to respond to 911 call was not public duty owed to general public at large but was instead common law duty to exercise reasonable care in providing emergency medical services, and therefore public duty doctrine did not apply to bar claims brought by husband and wife alleging that city was negligent in responding to wife's 911 call while husband was having heart attack.

BDA Fixed Income Insights Digital Magazine – Summer 2021

The BDA's quarterly digital magazine, Fixed Income Insights, is now available right here by clicking here.

It can also be viewed on the new BDA app, which can be downloaded in the Apple store, Google play store, and Amazon app store.

This month's edition contains articles by the industry's top contributors and relevant topics:

- **Cover Story** – A conversation with US Senator Roger Wicker (R-MS) on Infrastructure and Municipal Bonds
- **Municipal Markets** – Articles from DPC Data and Hilltop Securities
- **Taxable Markets** – Kevin McPartland of Greenwich Associates
- **BDA Member Profile** – Ted Karn, President and Founder of The Karn Group

If you are unable to access the online version, a pdf can be found here.

If you have any questions or about the magazine or the new app, please contact Rebecca Rodriguez at rcrodriguez@bdamerica.org

Bond Dealers of America

August 6, 2021

A Municipal Finance Tool to Avert Another Deadly Condo Collapse.

Local governments could turn to special assessment districts to cost-effectively assure safety improvements, bypassing occupants' foot-dragging and dysfunctional homeowners' associations.

Experts have yet to determine the precise causes of the June 24 collapse of a Surfside, Fla., condominium tower in which 98 residents died. But policymakers don't need to wait for engineering reports to tell us what is painfully obvious: Condo ownership associations and their volunteer boards are ill-equipped to tackle serious safety deficiencies in high-rise buildings. Of the 160,000 condominium buildings in the U.S., tens of thousands are precariously underfunded.

The public finance profession has long understood the "tragedy of the commons," in which everybody enjoys the benefits of community property but their self-interested collective neglect leads to its demise. In the Surfside property, the homeowners' association had been delivered a clear warning that structural defects were mounting and collective remedial action was required. Yet the building's HOA board became so frustrated with securing unit owners' consent that many of its members resigned, and costs kept mounting. A problem that might have been solved a few years ago expanded — "exponentially," in the words of an inspector — to the point of no return. The Champlain Towers South disaster goes down as one of American history's most horrific and insightful examples of the tragedy of the commons.

Finger-pointing and blame-laying will go on for months, and undoubtedly there will be new laws to require more frequent safety inspections. But where local governments also need to focus their policy reforms is on the remediation process itself, to provide a cost-effective mandatory protocol for timely funding of structural repairs in isolated cases when private ownership fails.

Anybody who's lived in a residential community with HOA fees knows how much carping goes on over dues assessments to advance-fund repairs and replacements of common facilities. "Why should we pay now for benefits that will be enjoyed by future owners?" is the all-too-familiar complaint of the tightwads and procrastinators. Even if an HOA is able to borrow money for necessary repairs and bill the owners through installments, there will be defaults and delinquencies. In the Champlain Towers case, the cost per unit for remediation was estimated to be six figures, a staggering cost for some occupants. Would you want to serve on an HOA board facing such opposition and likely litigation from all ends?

A SAD Opportunity

Fortunately, there is a legal and financial tool that can be adapted to solve the problem of the tragedy of the condominium commons: special assessment districts. In California, they are known as Mello-Roos districts, and most states have laws on the books that authorize municipalities to levy a special charge on properties for a wide variety of public improvements that benefit the owners within a designated district, or in some cases even a single building. The bill can be per owner or (in some states) ad valorem based on property values. The municipality that establishes such SADs, as they are known, can take out bank loans or sell bonds, often at lower tax-exempt interest rates, to finance the improvements that are secured by the liens on the properties. In the case of condos, the special financing bonds would have to be secured by a senior tax lien on the underlying land, and in some states, new laws may be needed for single-building districts.

Few condo boards can ever hope to attain long-term financing at such low costs. Most importantly, the SAD tax collections are liens on property and payable by installments so that owners don't have to cough up the full cost of repairs immediately. When a unit is sold, some states and escrow companies require that the entire assessment be paid off to remove the lien, and the new owner essentially absorbs that cost in the mortgage. But however they are structured, SADs can accomplish what HOAs sometimes cannot.

Of course there are drawbacks. For municipal finance departments and property tax collectors, administering these special districts poses a thankless task. Most assessment districts are relatively small and clutter the books, so many localities charge modest administrative fees to compensate for the staff work they require. Unless consolidated into an annual debt issue, the litter of small individual SAD debt issues can become a fiscal management nuisance — but nothing in comparison with the resources demanded of a municipality that suffers a building collapse. It's important to retain perspective here and put safety before bureaucracy.

When Lives Are at Risk

This brings us to the implementation process, which will require thoughtful policy design. In some localities, existing laws and policies may require tweaking. One example is how timely intervention could be triggered proactively by the municipal governing body, either upon recommendation of the building inspection department or the HOA board. Usually such municipal actions require a public hearing, but the authority ultimately resides with the municipal governing body. Typically the project work is performed by the local government by contract, which raises questions about eminent domain, indemnification, property access and possibly private activity bond tax rules that may require updated laws and local policies.

Those laws and policies should establish criteria for declaring a demonstrable and documented public safety interest in mandatory improvements to a privately owned building. Doing this without stigmatizing the property is an issue to address. By state law, an intervening local government should be indemnified, given the legal jeopardy and certified structural risks. Statutory or written criteria could provide a checklist for local officials to follow before instigating public intervention.

Perhaps every new high-rise building's land-use permit and periodic recertification should require creation of a dormant special assessment district that can be activated and invoked immediately upon certification of major structural remediation requirements. If time allows and depending on the severity of defects and risks, the HOA could be given a short grace period to undertake repairs on its own. But the community interest should not be hamstrung by time-wasting protocols or stalling tactics, especially when lives are at risk. In some cases, precautionary evacuations may be necessary, with temporary housing allowances added to an owner's amortized project assessment.

This financial tool is no panacea, and should be used only in rare cases. But its availability will provide a safety net. Municipal attorneys, along with policy and professional organizations, can guide the way for precautionary enabling legislation and local risk management policies.

governing.com

August 3, 2021 • Girard Miller

Quick Thoughts: Are You Pricing in Water Risk?

Our Chief Market Strategist, Stephen Dover, believes that water risk is global now—devastating floods, unseasonal hurricanes, droughts, megafires, and more demonstrate this. The economic implications of risks related to water are significant and should be considered when investing.

Devastating floods, unseasonal hurricanes, excessive droughts, megafires, and more demonstrate how extreme water risk is global now. From an investor's perspective, the economic implications of risks related to water are significant and should be a consideration when investing.

- By 2030, the global population will likely exceed nine billion and the world will require 40% more fresh water than it does today.1 The global supply of accessible freshwater accounts for less than 1% of water supplies.
- In my view, risks associated with water affect economic policies, constrain economic growth, and should be incorporated along with other climate-related market risks. Critical investments in water purification, reuse, efficiency, and delivery infrastructure are required on a global scale and could provide opportunity to investors.
- The projected declines in freshwater availability will likely affect gross-domestic-product (GDP) growth, present wide-ranging risks for investors across all asset classes, and encompass a broad range of sectors, from those with logical connections, like agriculture and utilities, to those that may not be so apparent, like packaging and semiconductors.

- Communities and companies must consider how to plan for and mitigate water risk. Companies that lack a full understanding of water risk, lag in disclosing water risk, or postpone adjustments to regulatory reforms, present long-term risks for both the communities and investors that invest in those companies.
- Infrastructure investment opportunities may be found globally as governments and municipalities prioritize managing water risk. China's Maritime Silk Road and Russia's Ice Silk Road expand their water infrastructure. The US bipartisan infrastructure proposals include investment in sewage systems, water supplies, and replacing lead pipes.

There are also opportunities in identifying companies that can provide solutions to deal with water scarcity, water sanitation, and water efficiency. Water impacts the day-to-day operations of companies and how they think through their business models. For details on water risk and investing, read "Water Disruption: Investment Risk From Multiple Angles," a 2020 research epitome from Franklin Templeton and K2 Advisors. In "Muni Market View on the American Jobs Plan," Jennifer Johnston, Director of Research, Franklin Templeton Municipal Bonds, discusses how infrastructure funding could filter through the US municipal bond market.

What Are the Risks?

All investments involve risk, including possible loss of principal. The value of investments can go down as well as up, and investors may not get back the full amount invested. Stock prices fluctuate, sometimes rapidly and dramatically, due to factors affecting individual companies, particular industries or sectors, or general market conditions. Special risks are associated with foreign investing, including currency fluctuations, economic instability and political developments; investments in emerging markets involve heightened risks related to the same factors. To the extent a strategy focuses on particular countries, regions, industries, sectors or types of investment from time to time, it may be subject to greater risks of adverse developments in such areas of focus than a strategy that invests in a wider variety of countries, regions, industries, sectors or investments.

China may be subject to considerable degrees of economic, political and social instability. Investments in securities of Chinese issuers involve risks that are specific to China, including certain legal, regulatory, political and economic risks.

Important Legal Information

The views expressed are those of the investment manager and the comments, opinions and analyses are rendered as at publication date and may change without notice. The underlying assumptions and these views are subject to change based on market and other conditions and may differ from other portfolio managers or of the firm as a whole. The information provided in this material is not intended as a complete analysis of every material fact regarding any country, region or market. There is no assurance that any prediction, projection or forecast on the economy, stock market, bond market or the economic trends of the markets will be realized. The value of investments and the income from them can go down as well as up and you may not get back the full amount that you invested. Past performance is not necessarily indicative nor a guarantee of future performance. All investments involve risks, including possible loss of principal.

by Stephen Dover of Franklin Templeton, 8/5/21

Fitch: U.S. Labor Market Job Loss Mismatch to Persist Through 2022

Fitch Ratings-New York-04 August 2021: Employment recovery is far from complete and largely unequal, with a new Fitch Ratings report pointing to how the pandemic is disproportionately hitting relatively lower-wage service jobs where human interaction is essential.

There are early signs of this labor market mismatch in some states. For instance, while the labor market is very tight in Vermont and New Hampshire, the labor market is showing more slack in Hawaii, California and New York. Relatively low wage service jobs in the leisure and hospitality sector are accounting for a disproportionate share of these job losses, a disconnect that will likely remain in place at least through the end of next year.

“It would be hard to design a labor market shock that more drastically targeted low-wage workers. We’re seeing widening of existing inequalities and a rise in the risk of long-term labor force detachment and economic scarring in the most affected states,” said Fitch Senior Director Olu Sonola. ‘The segment of the population that has been unemployed for an extended period of time is most at risk for the impending government support cliff.’

This mismatch shines more of a light on the employment to population ratio (EPR), which Fitch views as a more holistic measure of disequilibrium than the unemployment rate because it combines the impact of both labor force participation and unemployment. South Dakota, Kansas and Mississippi are the only states that are now back to pre-pandemic EPR levels. However, despite significant recovery, Mississippi, West Virginia and New Mexico have the lowest three EPR levels. This suggests that that the long-term economic growth trajectory of these states will likely continue to be slower, relative to other states, absent offsetting productivity gains. ‘U.S. States Labor Market: Disparities in Pandemic Job Losses to Persist Beyond 2022’ is available at ‘www.fitchratings.com’.

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Fitch: Coronavirus Aftershock to Widen Ratings Divide for U.S. NFP Hospitals

Fitch Ratings-Austin-03 August 2021: U.S. vaccination efforts have placed early coronavirus fears in the rear-view mirror, though Fitch Ratings' latest median report for the sector says operational stress will still likely be felt by healthcare providers for the foreseeable future, and there is looming concern over the rise of the Delta variant.

Medians were mixed for U.S. not-for-profit hospitals and health systems amidst the fallout of the global pandemic, yet proved the sector's resiliency. That said, expenses are still quite high for NFP hospitals. "Capital spending post-pandemic will increase slightly seeing as organizations necessarily curtailed capex during the height of the pandemic," said Fitch Senior Director Kevin Holloran. "Higher expenses are likely here to stay, as is an emerging credit split between stronger and weaker hospitals, which could spur more M&A and expansion activity."

"That said, hospital finances would have taken a more serious drubbing were it not for stimulus relief and re-bounding elective procedural volumes," said Holloran.

2021 median operating margins and operating EBITDA decreased incrementally to 1.5% and 7.3%, respectively, from 2.3% and 8.7% in the prior year. Yet days cash on hand improved to 241.4 days, compared with 219.8 in the prior year.

The 2021 medians largely reflect the direct coronavirus shock to hospitals and health systems. "Health organizations continue to be hampered by traditional fee-for-service reimbursement due to their experience during the coronavirus pandemic, which resulted in "no services and no fees," said Holloran.

Fitch's '2021 Median Ratios: Not-for-Profit Hospitals and Healthcare Systems' is available at 'www.fitchratings.com'.

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Fitch: ESG-Labelled Debt Can Address Climate Funding Gap in Infrastructure

Fitch Ratings-Hong Kong/New York-02 August 2021: Issuance of green infrastructure and project finance bonds is expected to rise as more governments adopt a net-zero carbon emission target by 2050, says Fitch Ratings in a new report. This will be supported by strong investor demand for ESG-labelled bonds. We believe the bulk of financing required to address climate transition and adaptation will be allocated to sustainable infrastructure assets, such as renewable energy, and to upgrade existing assets to function in a 2°C temperature increase scenario.

The achievement of net-zero emissions by 2050 will require a plunge in fossil-fuel consumption. This will affect infrastructure associated in the production, transport and use of fossil fuels and could constrain medium- to long-term profitability and capital access for infrastructure asset owners. Fitch considers oil production and refining, liquids transportation, oilfield services and coal-fired power generation to be highly vulnerable to climate-related financial risk.

Climate change mitigation could require investment upwards of USD13 trillion by 2030, but the International Energy Agency estimates that current investment levels are one-third of that required. Infrastructure also faces adaptation costs for the physical risks caused by climate change. Changes in precipitation, temperature, sea levels and more extreme weather events can affect the operation and performance of infrastructure assets. Roads, railways, airports, seaports as well as coastal and urban infrastructure are among the most exposed sectors.

There has been consistent demand for high-quality green bonds in recent years. Green project finance bonds can limit an investor's exposure to non-green activities compared with green corporate bonds, where the issuer may have carbon-intensive operations outside of the bond's specific use of proceeds. As banks increasingly impose negative screening policies on fossil-fuel related activities, reallocation of capital towards sustainable investments can meet requirements under new climate-focused financial regulations.

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Bipartisan Infrastructure Package Set to Pass Senate – Bill Includes Expansion of PABs

By tomorrow, the Senate bipartisan infrastructure bill is expected to pass the Senate, setting up a September fight to get the package through the House prior to the Highway Trustfund running out of funding on September 30th. While the American Infrastructure Bond amendment did not receive a vote during the prolonged debate, the package includes multiple bond financing provisions that expand the usage of PABs, including:

- The Rural Broadband Financing Flexibility Act (S.1676) is the template for adding broadband as an allowable use for private activity bonds (PABs). This would allow states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have access to broadband.

- Carbon Capture Improvement Act (S. 1829) allows carbon capture and direct air capture (DAC) technologies to be eligible for PAB financing. Private activity bond financing encourages commercial deployment, which is essential for bringing costs down and developing these technologies to scale. **These bonds would be outside the volume cap.**
- The bill increases the current cap of tax-exempt highway or surface freight transfer facility bonds from $15 billion to $30 billion as proposed by the bipartisan BUILD Act (S.881). Currently, $14,989,529,000 billion of the $15 billion caps has been issued or allocated. Increasing the cap will allow state and local governments to enter into additional public-private partnerships to supplement future surface transportation projects with private investment.

Budget Reconciliation–Additional Opportunities for Munis

Later today Senate Budget Chairman Bernie Sanders (I-VT) is expected to release the $3.5 trillion dollar budget outline, setting up the next infrastructure fight for later this fall in the House. The Senate is expected to pass the bare budget outline this week prior to adjuring for August recess, without policy detail included. This package will provide additional opportunities for the passage of key muni priorities.

The MBFA and BDA have learned through conversations with senior Administration staff and key Capitol Hill contacts that muni provisions remain a priority for Congressional tax writers as Democrats eye the next spending opportunity this fall.

These muni provisions under consideration include:

- The restoration of tax-exempt advance refundings;
- Raising the BQ limit; and
- The direct-pay American Infrastructure Bond.

The MBFA and BDA will continue to provide updates as they become available.

Bond Dealers of America

August 9, 2021

Transaction Costs During the Covid-19 Crisis: MSRB White Paper

MSRB publishes new research paper analyzing the evolution of transaction costs in the municipal and corporate bond markets during the COVID-19 liquidity crisis and the subsequent recovery.

Read the paper.

What Is in the New Bipartisan Infrastructure Bill?

State and local governments are set to receive billions if the legislation passes, including funding to support cybersecurity, broadband, transit, roads, water and more. Here are the details.

A bipartisan infrastructure bill now under debate in the U.S. Senate promises more than $500 billion in new spending — including massive programs that will benefit state and local government.

The spending, contained in a 2,700-page bill passed by the House of Representatives and going through amendments in the Senate now, covers a wide range of programs but delivers the bulk of the funding to roads, bridges, transit and water. Here are the broad funding areas, as outlined in a White House fact sheet:

Continue reading.

governing.com

August 6, 2021 • Ben Miller

Direct Pay Amendment Introduced in Senate.

Today, Senator Roger Wicker (R-MS) introduced an amendment to the bipartisan infrastructure agreement that would create a new direct-pay bond, the American Infrastructure Bond. The AIB's would have a flat 28% reimbursement rate. While not exempt from sequestration, the text provides the ability to increase reimbursement rates to offset any potential negative impacts in the case of sequestration. The Infrastructure Financing Authority provision in the original agreement was removed after an outcry from muni advocates, including the MBFA and BDA before the text was released. At this time, there was no amendment to reintroduce the federal government bond bank that has been submitted.

At this time it is unknown which amendments will receive consideration.

The MBFA and BDA will continue to provide updates this week as the legislation and amendments debate develops further.

Bipartisan Infrastructure Agreement

Last week, the Senate voted 67-32 to move the bipartisan infrastructure agreement to debate without full legislative text-a a key step in advancing the 1 trillion dollar package. This vote sets up an extensive debate process, kick-starting a week's worth of debate and more compromise, to get the package across the finish line in the Senate before sending across the Capitol to the House for an early fall vote. While this is an important first step in the legislative process, expect many hiccups to arise over the next few weeks.

The updated agreement includes multiple private activity bond provisions. These provisions include:

- The Rural Broadband Financing Flexibility Act (S.1676) is the template for adding broadband as an allowable use for private activity bonds (PABs). This would allow states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have broadband access.
- Carbon Capture Improvement Act (S. 1829) allows carbon capture and direct air capture (DAC) technologies to be eligible for PAB financing. Private activity bond financing encourages commercial deployment, which is essential for bringing costs down and developing these technologies to scale. **These bonds would be outside the volume cap.**

- The framework increases the current cap of tax-exempt highway or surface freight transfer facility bonds from $15 billion to $30 billion as proposed by the bipartisan [BUILD Act (S.881)](). Currently, $14,989,529,000 billion of the $15 billion caps has been issued or allocated. Increasing the cap will allow state and local governments to enter into additional public-private partnerships to supplement future surface transportation projects with private investment.

Update on Other Muni Provisions

The original bipartisan agreement included a provision that would create a new direct-pay bond the American Infrastructure Bond. The provision was removed as a way to find needed revenue to ensure the package would be "revenue neutral." This offer was publicly rejected by both Republican and some Democratic negotiators, and we continue to work with our partners on the Hill and in the Administration promoting these key financing options. The next steps for the package at this time remain murky, with portions of the upcoming August recess likely to be cut short.

The MBFA and BDA have learned through conversations with senior Administration staff and key Capitol Hill contacts that muni provisions remain a priority for Congressional tax writers as Democrats eye the next spending opportunity, the likely $3+ trillion-dollar budget reconciliation package later this summer.

These muni provisions under consideration include:

- The restoration of tax-exempt advance refundings;
- Raising the BQ limit;
- The direct-pay American Infrastructure Bond;

Bond Dealers of America

August 3, 2021

TAX - CALIFORNIA

City and County of San Francisco v. All Persons Interested in Matter of Proposition G

Court of Appeal, First District, Division 4, California - July 26, 2021 - Cal.Rptr.3d - 2021 WL 3140071 - 21 Cal. Daily Op. Serv. 7511

Following amendment to California Constitution, which required that any special tax adopted by a local government entity take effect only if approved by a two-thirds vote of the electorate, city and county brought action to establish that initiative measure entitled "Parcel Tax for San Francisco Unified School District," was validly enacted.

The Superior Court granted summary judgment in favor of city.

The Court of Appeal held that:

- Constitutional provision does not repeal or abridge by implication the people's power to raise taxes by initiative;
- Constitutional provision did not constrain initiative power;
- Constitutional provision cannot prevent the people, exercising their initiative power, from adopting an identical tax; and

- State initiative qualified for ballot measure through method in which voters could propose measure by initiative petition.

Although the constitutional provision requiring two-thirds vote of qualified electors to approve special taxes, requires governmental entities to gain approval of supermajority of voters before imposing a special tax, it does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative, and to do so by majority vote; any such partial repeal by implication is not favored by law, which imposes a duty on courts to jealously guard, liberally construe and resolve all doubts in favor of exercise of the initiative power.

Constitutional provision requiring two-thirds vote of qualified electors to approve special taxes adopted by a "local government" did not constrain initiative power for the same reasons that supermajority vote requirements did not apply to citizens' initiatives; the text of the constitutional provision did not reach the electorate, as the electorate was not an "agency."

Just as the State Constitution does not prohibit local government from adopting a special parcel tax with voter approval, so it cannot prevent people, exercising their initiative power, from adopting an identical tax.

State initiative measure entitled "Parcel Tax for San Francisco Unified School District," qualified for ballot measure based on city charter recognizing two ways to put measures on the ballot, and specifically method in which voters could propose measure by initiative petition; city's evidence showed that initiative qualified for the ballot showing that initiative qualified for ballot, including evidence of a declaration from director of elections and copies of the material submitted to director by three citizen proponents of initiative.

A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund – A Case Study: Squire Patton Boggs

This is the second in a series of posts about neutral principles that make for "good" tax-advantaged bond legislation.

We pick up our series as the Senate prepares for a final vote on a bipartisan infrastructure bill in the coming days. In the last post, we stated the general rule that a good piece of tax-advantaged bond legislation tells issuers how and when they can refund bonds issued under any new bond program. Here's an example in current law to illustrate the point.

In 2005, Congress created a new category of tax-exempt "exempt facility" private activity bonds for highway facilities and surface freight transfer facilities.[1] These bonds are exempt from the typical private activity bond volume cap[2] but are subject to a special volume cap administered by USDOT. Unlike the typical PAB volume cap (which is apportioned among the states annually based on population), the special volume cap for these bonds is a national $15 billion cap that is available indefinitely, although all of it has now been spoken for.[3]

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on August 6, 2021

How Governments Can Best Manage Federal Relief Funds.

There are a lot of challenges to spending the $350 million allocated to states and localities, but effective centralization and standardization can better ensure economic recovery.

Across the nation, grant dollars are playing a vital role in fiscal recovery and delivering impact to those who need it most–from getting PPE to hospitals, equipping homeless shelters with more beds, to helping local businesses stay afloat. While the Covid-19 pandemic has emphasized its urgency, the focus on grant funding as a revenue source has been steadily growing. Just over the last five years, federal grant spending grew from $576 billion in 2014 to more than $800 billion in 2020.

In the latest federal stimulus package, $350 billion has been allocated to state and local governments. All those extra grant dollars sound great, right? While the funds and the possibilities they bring are welcome, they also pose many challenges for local governments. Lower head count, remote work environments and existing grant management responsibilities (including those involving previous Covid-19 relief funds), complicate already tedious efforts to ensure funding is well managed and has the desired impact.

Ensuring that funding is spent transparently and according to federal requirements laid out in Uniform Grant Guidance is a feat in itself. According to the Government Accountability Office, one in every six grant dollars is mismanaged.

While the challenges are many, so are the possibilities when it comes to delivering impact through grants. Yet, those possibilities can only be realized if local governments master a few critical areas: planning ahead as much as possible, ensuring cross-departmental coordination, agreeing upon priorities, carefully tracking project finances, and creating a system of accountability. Here's how:

Centralizing With Priorities and Targets

Whether it's a large team of 15 or more, or a small but mighty team of two, cities should aim to have at least one grant manager overseeing all grant portfolio activities. This person should know the details of funding requirements and help to ensure compliance. If possible, teams can bring in a senior procurement officer to help stay on top of procurement regulations and processes while supporting purchasing contracts and subawards. In addition, an internal auditor can be essential to helping the team establish and monitor a clear audit trail and stay on top of all grant activities to ensure compliance.

It's also important to align grant funding with the priorities that matter most to target communities by ensuring prioritized, data-driven projects and programs actually meet community needs in advance of receiving funds. One way cities and local jurisdictions can get ahead is by holding comprehensive preplanning and kickoff meetings for all staff across departments before funds start arriving. This will help the grant team to know where to focus incoming funding and where it will deliver the most impact.

To effectively execute current and new emergency grant programs, grant teams must also understand how much has been spent by creating a system of internal controls to help track future spending. To accomplish this, teams should separate budgets into two groups: Covid-19 relief funding and reallocation of previous awards for other projects. This will help teams track grants better while staying ahead of new federal guidelines and reporting requirements.

Once these two groups are identified, it's important to document expenditure data to support cost allocation plans and indirect cost rates on an ongoing basis. This will inform teams so they know how much has already been spent before executing any emergency grant programs. Then, teams can prepare additional appropriation and spending plans in order to respond quickly to new emergency appropriations, contingency appropriations, and special appropriations.

Standardizing Through Digitization

In addition to a sound strategy that standardizes grant management processes, local governments need the proper tools to execute their plans. Many are turning to cloud-based grant management tools to help aggregate data, increase visibility throughout their organizations, support remote collaboration, and ensure compliance with federal grant requirements.

A digital grant management solution can help government administrators, grant managers and staff save time, reduce redundancies, streamline data entry, and mitigate compliance risk. Rather than spending time on the administrative work of grants, teams can focus on tracking where grant dollars are going and ensure they are meeting departmental goals, mayoral goals, and identified needs in the community.

Delivering Economic Recovery and Real Impact

Ultimately, there are many challenges for grant management, but the possibilities that come with innovating these processes are even greater. If governments start the important work of centralizing, standardizing, and digitizing their grant processes now, they will better ensure economic recovery for the future while streamlining grant dollars to quickly get them into the hands of those that need it the most.

Route Fifty

By James Ha

AUGUST 6, 2021

How Should Cities Spend Billions in Aid? Ask People Who Live There.

Some state and local governments are turning to Zoom and Survey Monkey polls to ask residents how to use their federal Covid relief aid.

As America's states and cities decide how to spend their share of the $350 billion in Covid relief funds they're getting from the federal government, some are asking residents for ideas. Richmond, Virginia, turned to Survey Monkey.

Through a web page using the popular survey tool that can be accessed via a QR code, Richmond has found plenty of ideas to choose from, with about 750 people responding in its first two days online. The results aren't public yet. "This should be an exciting question to answer," said Sam Schwartzkopf of the city's Office of Public Information and Engagement. "People really seem to be taking interest in it."

Government officials across the U.S. have set out to gather ideas from citizens on how to spend the money that's part of the $1.9 trillion American Rescue Plan. The ideas, both big and small, speak to the unusual position that cities and states find themselves in after the federal government provided them with an unprecedented amount of cash. The funds will help local governments take an active role in the recovery and avoid the municipal budget cuts that weighed on the economy after the 2008 recession.

Continue reading.

Bloomberg CityLab

By Amanda Albright and Skylar Woodhouse

August 5, 2021, 8:13 AM PDT

Munis In Focus: Recovery Winners (Bloomberg Radio)

Eric Kazatsky, Senior Municipal Strategist for Bloomberg Intelligence, discusses muni market news. Hosted by Paul Sweeney and Matt Miller. (Renita Young fills in for Matt Miller)

Listen to audio.

August 6, 2021

What are Build America Bonds or Direct-Pay Municipal Bonds?

Interest on many municipal bonds issued by local and state governments and some non-profits is exempt from federal income taxes. As a result, investors, mainly high-income individuals, are willing to lend money to issuers at a lower interest rate than they would demand if the bonds were taxable. Build America Bonds (known as BABs or direct-pay bonds) were created by the American Recovery and Reinvestment Act of 2009 as an alternative way for the federal government to subsidize local and state government borrowing. Instead of making the interest on those bonds exempt from federal income taxes, the federal government provided a subsidy directly.

The BABs program ended in 2010, but the concept has been part of the 2021 debate over financing increased federal infrastructure spending. Here is a primer on these bonds.

HOW DID BABS WORK?

Because the interest investors earn on municipal bonds is generally exempt from federal income taxes, an investor in the top income tax bracket can earn the same after-tax return on a lower-yielding municipal bond as on a higher-yielding taxable bond. For example, for an investor in the top tax bracket, the after-tax return on a 1.3% tax-exempt bond is the same as on a 2.15% taxable bond.

Continue reading.

The Brookings Institution

by Nasiha Salwati and David Wessel

August 4, 2021

Munis In Focus: Water Parks & Infrastructure (Bloomberg Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest news from the muni market. Hosted by Paul Sweeney and Matt Miller.

Play Episode

July 30, 2021

IRS Notice Provides Population Figures for Disaster-Zone LIHTC Allocation.

Internal Revenue Bulletin 2021-31 provides state and territory low-income housing tax credit (LIHTC) allocating agencies with population figures to calculate disaster LIHTCs they can allocate under the Taxpayer Certainty and Disaster Tax Relief Act of 2020. Notice 2021-45 identifies the counties and parishes eligible for the disaster LIHTCs along with their combined populations. The disaster LIHTCs are equal to the lesser of $3.50 multiplied by the population in the disaster zones or 65% of the state LIHTC ceiling for calendar year 2020. California's 23.1 million residents in disaster zones was the largest of the 11 states plus Puerto Rico eligible for the credits.

The 2021 edition of the Novogradac Low-Income Housing Tax Credit Handbook is an essential resource for affordable rental housing owners, developers, managers and investors.

Novogradac

Monday, August 2, 2021

MSRB Proposes Amendments to Annual Customer Notification Requirements.

The MSRB proposed amendments to narrow the scope of the annual customer notification requirements under MSRB rules on delivery of investor brochures and transactions with sophisticated municipal market professionals.

The MSRB filed with the SEC amendments that would narrow the scope of the annual customer notification requirements under MSRB Rule G-10 ("Delivery of Investor Brochure"). The amendments would limit the persons dealers would have to notify to only those who either (i) have effected municipal securities transactions or (ii) hold a municipal securities position.

The proposal also includes amendments to MSRB Rule G-48 ("Transactions with Sophisticated Municipal Market Professionals") that would except dealers from making such annual notifications to sophisticated municipal market professionals, so long as the required information is available on the dealer's website.

Comments on the proposal must be submitted within 21 days of its publication in the Federal Register.

Cadwalader Wickersham & Taft LLP

August 3 2021

S&P: USPF Enterprise Sectors Treatment Of Operating Leases Under FASB's ASU 2016-02 (ASC 842)

Background

S&P Global Ratings is updating the market with its views on the Financial Accounting Standard Board's (FASB) new standard, Leases (ASC-842), and its impact on audited financial statements of rated entities in the not-for-profit health care, higher education, charter schools, and public power and electric cooperative sectors, which S&P Global Ratings collectively refers to as enterprise sectors. With the standard now in effect for a greater number of rated entities that report under FASB standards, we are providing additional information on the treatment of operating leases under our enterprise sectors criteria. We had published an FAQ, "How New Accounting Rules Will Affect U.S. Enterprise Sectors," on March 11, 2019, on RatingsDirect and this update supersedes that commentary.

We will continue to review our approach to incorporating lease liabilities into our analysis of enterprise sectors pursuant to our criteria, particularly as governmental issuers in the enterprise sectors implement lease updates through the Governmental Accounting Standards Board (GASB) Statement No. 87-Leases after a substantial delay in the required implementation date (see last section, titled "How will GASB No. 87 impact our analytical approach to leases?") to fiscal years beginning after June 30, 2021. Since GASB No. 87 changes how leases are classified, effectively no longer recognizing the operating lease distinction, we will expect to maintain consistency and comparability across the two accounting standards, to the extent possible given nuances associated with each standard, as the enterprise sectors have entities that present financial statements under both FASB and GASB standards.

Not all of our rated FASB entities have incorporated the new lease standard, yet. In response to concerns of the impact that the Coronavirus (COVID-19) pandemic could have on stakeholders, the FASB released ASU 2020-05 in June 2020, which delayed the effective implementation dates for ASC 842 for certain public not-for-profit entities which had not yet issued financial statements reflecting adoption of the standard, which includes obligors that use conduit issuers, and all other not-fo--profit entities. Early adoption continues to be permitted. While a number of entities we rate have adopted the standard, certain entities have not yet adopted the standard due to FASB's delay of the effective implementation date.

Frequently Asked Questions

Will the lease accounting requirements result in rating changes?
Lease accounting requirements enhance transparency and add to robustness of disclosures, but are generally not expected to result in rating changes, nor have they in the past for rated entities that have adopted the standard. While the financial statement presentation under ASC 842 provides more clarity on the actual value of the lease liability, the actual lease obligations incurred by rated

entities largely have remained unchanged; therefore, the accounting standards update has not been viewed as a new credit factor. We believe the financial effect of existing operating leases has been incorporated into our credit ratings and related analyses prior to the ASC 842 update.

How do we incorporate lease usage into our analysis of enterprise sector obligors?
We will assess lease usage by the following measures:

Health care. Operating lease liabilities are typically not included in our calculation of long-term debt and related ratios, and we continue to believe that our lease-adjusted maximum annual debt service (MADS) coverage metric appropriately captures lease utilization within our assessment of the financial profile. Further, as per our criteria, we retain the flexibility to make an analytical judgment as to whether a negative consideration is warranted for the entities where liabilities or off-balance-sheet financings, including operating leases, materially bring added risk to the financial profile when not fully captured in debt to capitalization or other financial metrics. While we recognize that in certain cases the audited presentation of operating lease expense may now encompass additional expenses, such as variable lease costs, in most instances we are able to adjust for this such that operating lease expense remains comparable with prior periods, which typically consisted solely of operating and short-term lease costs. To date, there have been no rating changes driven by the change in accounting for operating leases among rated not-for-profit health care entities that have adopted ASC 842.

Higher education. While our criteria treats capital leases as debt, we have not generally treated operating leases as debt and have not included them in our MADS burden or total debt ratios. However, we review an institution's operating leases and in cases where we deem those operating leases significant compared with debt, we have assessed them in some capacity (e.g., either by including them in the MADS burden or in total debt calculations). Pursuant to our criteria, we reserve the right to adjust aspects of the financial profile assessment in order to adequately capture the risk associated with elevated operating lease usage. Since implementation of FASB ASC 842 (applicable to private colleges and universities, independent schools and some public universities that elect to follow FASB accounting standards), none of our ratio definitions and their applications have changed and, related to this matter alone, there have not been any changes in our opinion of an institution's underlying creditworthiness.

Charter schools. Pursuant to our criteria, operating lease liabilities are typically not included in our calculation of long-term debt and related ratios. However, for charter schools, we have consistently incorporated the use of operating leases into our rating analysis through our use of lease-adjusted MADS when calculating key financial ratios, such as debt service coverage (DSC) and debt burden. For example, we calculate lease-adjusted MADS coverage as earnings before interest, depreciation, and amortization plus facility lease expense/MADS plus facility lease expense. Lease-adjusted MADS coverage is generally the heaviest weighted component of our financial profile assessment for rating charter school bonds. We reserve the right to adjust aspects of the financial profile assessment when we deem the lease-adjusted MADS coverage and debt burden to insufficiently capture the risk associated with elevated lease usage.

We will continue to analyze the effect of implementation on all entities that use operating leases and update our view of the underlying creditworthiness accordingly.

Public power and electric cooperatives. Our long-standing practice has been to treat lease agreements as having debt-like attributes irrespective of whether accounting standards dictate classifying power purchase agreements as finance or operating leases. We reflect these adjustments in our fixed-charge coverage calculations, which we perform in addition to our DSC calculations. Our fixed-charge coverage focuses on payments utilities make to utility suppliers to reserve generation capacity and to their retail customers. Because we are already capturing the dominant lease and lease-like payments in our fixed-charge coverage, we believe that the changes in accounting standards do not affect coverage ratio analysis for public power and electric cooperative utilities.

When do we consider operating lease usage to be significant and compel additional adjustments to our standard ratios?

The analytic decision to make an additional adjustment within the financial profile assessment of an obligor could reflect various lease factors such as our view of the magnitude of the operating lease liability relative to the capital structure, structural elements of the leases, and the perceived strategic risk of the leasing strategy. In those instances where we believe these lease factors are not fully captured in our ratios, we reserve the flexibility in our criteria to apply a negative adjustment in the financial profile section of the criteria. While rare, there have been instances where we have applied a negative adjustment within the financial profile section of our criteria.

How do we expect accounting for leases to differ under FASB ASC 842 compared with GASB No. 87?

Based on our initial understanding of GASB No. 87, we expect that after its implementation, most lease arrangements previously classified as operating or capital leases, will be considered finance leases, which we typically include in long-term debt. Therefore, we believe this difference in lease accounting reporting requirements under GASB compared with FASB complicates the ability to separate lease liabilities from long-term debt. However, the underlying economics of lease arrangements are unchanged solely due to the new accounting standard, so we generally do not anticipate rating changes associated with the GASB No. 87 standard. We will review whether the presentation of GASB No. 87 requires us to revisit the details of how we incorporate operating leases into our criteria–specifically as it relates to debt and coverage-related ratios.

How will GASB No. 87 affect our analytical approach to leases?

We expect to maintain analytical consistency in our approach to evaluating lease obligations and to maintain comparability across rated entities within sectors regardless of whether the rated entities follow GASB or FASB accounting standards, to the extent possible given the incongruity of the two accounting pronouncements. While early adoption is permitted, to date, S&P Global Ratings has not seen the specifics of how GASB No. 87–applicable to most public colleges and universities, community colleges, hospital districts, public transportation, public housing, local governments, and public power entities–will present on financial statements.

More broadly, since the GASB update on leases will affect all USPF credits, we will update the market on our views regarding leases beyond the enterprise sectors, including all government entities in USPF.

This report does not constitute a rating action.

30 Jul, 2021

The Use Of A Crisis To Create Opportunity In The Muni Market.

The Coronavirus pandemic has led to death, tragedies and social and economic disruptions. Most of the disruption was unavoidable and unknowable and some individuals actually saw opportunities to create services and products that would be welcomed in this environment. Others, however, saw opportunities to use the economic disruption to achieve gains by playing on the publics' fear. The municipal bond market is highly vulnerable to fear based abuse because of its mediocre performance in public disclosure and a weak secondary market.

While the municipal market is no stranger to abusive practices in bond issuance and secondary market pricing, its greatest vulnerability is in its failure to police ongoing disclosure compliance. The Municipal Securities Rulemaking Board, or MSRB, has been given the responsibility for overseeing disclosure practices, but has little enforcement power or staff to maintain order in this massive and unregulated market. The SEC can step in to curb abuse since they do have a broader mandate, but they appear to have priorities elsewhere.

My concern today is that large investors in existing issues are using their ability to manage the information flow about a specific project to discourage smaller investors and motivate them to sell their bonds which they can then buy up at below their true value. Remember that the municipal secondary market is not a truly competitive market and even less so when the required public information filings are not being made. Their motivation for this are as diverse as:

- A need to restructure the bonds. Buying up other holders' bonds reduces their haircut on their holdings.
- Seeing the need to provide additional funding to the project which would benefit others as well.
- Seeing a high coupon long maturity bond issue which can be re-purposed for a more viable project.
- An opportunity to profit from investors fearing the worst as they tend to do when the information flow is not there.

So how does one hold back on the information flow and create an information vacuum:

- Own or gain control of 25% or more of the bonds. Trustee's, who are the main enforcers of the disclosure and payment requirements love to obtain guidance from such a proportion of bondholders in order to avoid being liable for anything they do or fail to do.
- Stop interest payments and maturity redemptions even if there are reserve funds available. This is usually justified as being done to preserve funds for legal actions or other contingencies.
- Reach a standstill agreement with the project owner whereby he too comes under the control of the majority bondholders who can then manage his information flow and other actions.
- Stop public reporting of the projects status and keep bondholders informed by teleconference where there is no written record of what was said.
- Minimize the information any non-current bondholder can see in order to make a competing price offer.
- Let the brokerage firms, who make a market in specific bonds, know you are a buyer and at what price.

You would think that the bond trustee would exercise some professional responsibility here when he senses what is happening. More likely is that he will resign from the account if he feels vulnerable or is removed if he starts to act responsibly. Note that I have never seen a notice of a trustee resignation or removal that gave a cause. This can be need-to-know information, but good luck with that.

Bank trustees' loyalty is first to themselves, next to the obligor who pay them their annual fees and then to the bondholders representing 25% or more of an issue. And don't expect any help from the bond issuing authority who are lending their name and provenance to the bonds. They will go out of their way to tell you that they have absolutely no liability on the bonds, which translates into also having no concern with how bad a bond issue is from inception.

Forbes

by Richard Lehmann

Aug 9, 2021

OZ Exit Plans and Structural Risks: Podcast

What are the advantages of a Qualified Opportunity Fund that is structured as a REIT instead of a partnership? How does the level of diversification in a fund impact its risk/return profile?

Peter Ciganik is Managing Director at GTIS Partners, a global real estate investment firm based in New York.

Episode Highlights

- How the REIT structure may be advantageous for real estate investments with extended holding periods.
- Why exit strategy planning is important in determining the bottom line returns that OZ investors realize.
- How opportunity zone funds are attracting investors to real estate as an asset class for the first time.
- The potential benefits of diversification when investing in real estate, and the risks associated with single-asset strategies.
- The structural regulatory benefits that come with multi-asset strategies.
- Why rising costs pose challenges for real estate development in the current environment.
- How the opportunity zone program is achieving its objective of catalyzing community investment.

Listent to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

JULY 28, 2021

Tax Policy Changes & Opportunity Zones, an OZ Pitch Day Panel: Podcast

What changes to tax policy are likely coming under the Biden administration? If enacted, how will these changes impact the appeal of Opportunity Zone funds and the returns available to investors? Several Opportunity Zone experts provided their insights on a live panel recorded on July 27, 2021 during OZ Pitch Day, titled "Tax Policy Changes & Opportunity Zones."

Today's podcast episode is the audio version of that panel. Moderated by OpportunityDb founder Jimmy Atkinson, the panel featured Shay Hawkins of the Opportunity Funds Association, Kunal Merchant of CalOZ, and John Sciarretti of Novogradac.

Episode Highlights

- A crash course in Opportunity Zone basics.
- The tax policy changes that are likely coming down the pipeline, on both the regulatory and legislative sides.
- How the Opportunity Zone program is winning support in Congress, even among some of its one-time critics.
- The likelihood of changes to the Opportunity Zone program, including transparency and reporting requirements via the IMPACT Act.
- Why an increase in capital gains tax rates may do little to diminish the appeal of Opportunity Zone incentives.
- The potential to give preferential treatment to Opportunity Zone investments in any new tax legislation.
- The role that Opportunity Zones can play in the economic recovery from COVID-19.
- How the trend towards increased state and local incentives may be a boon to projects located in Opportunity Zones.
- Why the rumored changes to 1031 exchanges may never materialize.
- What is likely to be included in a comprehensive Opportunity Zone expansion bill.
- The possible permutations of a reconciliation bill in the current Congress.
- Technical discussions of the tax advantages of different QOF structures.

Listen to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 4, 2021

Building an Inflation Strategy With Munis.

Back in March, Warren Buffett warned that fixed-income investors "face a bleak future.". A few months later, inflation is starting to rear its ugly head, and fixed-income investors feel the pain. The bond market has recovered from the pandemic and yields remain low, but rising inflation means that bond yields could move higher over the coming years.

There are many ways to shield a portfolio from inflation, but investors that rely on a fixed income cannot always avoid bonds. Fortunately, municipal bonds may provide an attractive safe haven from inflation, particularly for high net worth investors maximizing their tax advantages. The challenge is finding the right opportunities in a highly competitive market.

Let's look at the current state of inflation and how muni bonds may help protect your portfolio.

Continue reading.

dividend.com

by Justin Kuepper

Aug 04, 2021

HYD: I Feel Comfortable Buying High Yield Munis

Summary

- State and local governments saw much stronger fiscal performance coming out of the pandemic than many might have expected.
- Part of the reason we have not seen many credit downgrades has been because of massive federal support. This has improved the outlook for general obligation bonds, and also revenue bonds.
- High-yield munis tend to perform well in a rising rate environment since that correlates with a strong macro environment. As I expect higher rates in 2022, high-yield munis are helping me prepare.
- This idea was discussed in more depth with members of my private investing community, CEF/ETF Income Laboratory.

Continue reading.

Seeking Alpha

Aug. 08, 2021

American Dream Mall Draws on Reserves to Make Bond Payment.

- **Complex drew $9.3 million from reserve fund to service debt**
- **Coronavirus outbreak delayed American Dream's opening**

American Dream, a $5 billion super mall in New Jersey's Meadowlands, had to tap into a reserve fund to make a bond payment as it copes with a cash flow crisis exacerbated by the coronavirus.

The 3.3 million-square-foot behemoth, which features an indoor ski slope, amusement park and water park, used the reserves to make a $9.3 million Aug. 2 payment on about $290 million of debt, according to a securities filing. American Dream has about $9.3 million left in the fund, enough to make its next debt payment on Feb. 1.

American Dream issued the municipal bonds, supported by a 75% pledge of sales tax receipts from purchases at the mall, in 2017. Developer Triple Five Group also sold $800 million of debt backed by payments the developers agreed to make to bondholders instead of paying property taxes, known as PILOTs.

Lisa Washburn, managing director at Municipal Market Analytics, said it "seemed inevitable" that American Dream would need to tap reserves on debt tied to mall sales.

"The economic shut-down and travel disruptions related to the pandemic could not have come at a worse time for the project, which had only partially opened and was already contending with a shifting retail landscape," Washburn said in an email. "Now it needs to overcome concerns about congregating indoors with strangers."

American Dream sales tax bonds due in 2024 last traded June 9 at 105 cents on the dollar, indicating that the cash crunch hasn't fazed investors.

Nuveen LLC, the biggest holder of American Dream's muni debt, wrote in a July note to investors that it expected reserves to fund a majority of the interest payment on the sales tax bonds. Triple Five Group is challenging its tax assessments for 2019, 2020 and 2021.

"Given space completion and tenant occupancy delays (18 to 24 months behind initial developer projections), sales tax receipts are anticipated to miss projections for the near term," the Nuveen note said.

American Dream, located across the Hudson River from New York City, opened the doors of its entertainment complex in October 2019, almost two decades after a mall on the site was first proposed. Five months later, Covid-19 tore through New York and New Jersey, spurring lockdowns to contain the public health emergency and postponing the opening of the mall's retail stores until October 2020.

American Dream also borrowed more than $1 billion in construction loans. As cash flow problems hit American Dream, senior construction loan holders seized minority stakes in Triple Five's Mall of America and West Edmonton Mall, which were used as collateral for the American Dream loan.

This month American Dream reported $78.1 million in second quarter gross sales, a 27.4% increase compared with the first quarter, according to a securities filing. The mall was 76% leased for the three months ending June 30.

Bloomberg Markets

By Martin Z Braun

August 4, 2021, 3:26 PM PDT Updated on August 5, 2021, 5:24 AM PDT

Boarding School Attended by Tucker Carlson Joins in Muni Market Sales Boom.

- **St. George's School selling tax-exempt debt to refinance bonds**
- **Exclusive schools are among issuers seizing on low rates**

Elite boarding schools are getting in on the boom of debt sales in the $4 trillion municipal-bond market.

Rhode Island's St. George's School, with a campus that overlooks the Atlantic Ocean and $66,950 annual price tag for boarding students, is planning to sell about $43.4 million of tax-exempt bonds to refinance higher interest-rate debt and fund new projects at the alma mater of Howard Dean, Billy Bush and Tucker Carlson. The offering with preliminary maturities ranging from 2026 to 2051 comes shortly after New Jersey's Lawrenceville School sold bonds in July for a field house complex complete with a hockey rink and pool.

The boarding schools are among a plethora of borrowers that are seizing on ultra-low yields in the muni market, with the one-year AAA benchmark hovering at 0.04%, the lowest since at least 2015, according to Bloomberg BVAL. Long-term debt issuance has climbed nearly 9% year-over-year, according to data compiled by Bloomberg. Debt sales by private and religious schools are up 73% year-over-year, the data show.

Other K-12 schools are also tapping the market with sales to seize on low interest rates for capital projects or refinancing. Charter school bond issuance has also surged, with about $2.7 billion of debt sold, the data show.

St. George's and other elite boarding schools typically have high credit ratings, which helps them easily raise money in the muni market. St. George's School is selling bonds rated AA- by S&P Global Ratings, a credit ranking that's in line with schools like George School in Pennsylvania and the Taft School in Connecticut.

St. George's, founded in 1896, "ranks with the best private schools in the country," bond documents say. Enrollment totaled about 380 students in the 2020-21 academic year, and has met or exceeded its budgeted target for the last decade. The school's endowment had a market value of $209.3 million as of June 30.

St. George's is known for its weeks-long sailing program on a 70-foot vessel, Geronimo, where students learn seamanship skills while taking a marine science course. That program helps in the school's marketing to would-be students, bond documents note.

And the Lawrenceville School gave St. George's some idea of what to expect in the bond market given the school had a similarly-high credit rating that was rated two steps below AAA by Moody's Investors Service. It sold tax-exempt bonds that priced to yield 1.83% in 2051, about 48 basis points above AAA rated borrowers, according to data compiled by Bloomberg. The sale received about $325 million in orders from 17 different institutions, helping lower yields on the sale, according to Ben Hammond, the school's chief financial officer.

St. George's bond sale will be used in part to refinance debt sold in 2014, some of which has an effective interest rate of 3.11%, bond documents say.

Independent schools, which includes day schools, rated by S&P Global Ratings were able to reopen either fully in person or with hybrid learning in fall 2020, which helped them keep enrollments fairly stable and weather the pandemic, said Bobbi Gajwani, a director at S&P.

St. George's received a record amount of applications for the upcoming school year and it expects the year to be its most selective in at least 20 years, with a selectivity rate of 21%. The school recorded a surplus in fiscal 2020 and another one expected in 2021.

Gajwani said St. George's financial performance during the pandemic contrasts with initial expectations.

"We did expect most schools to see declines in operating margins given expected revenue impacts, particularly from boarding and international enrollment, and increased Covid-related expenses, but St. George's is expecting surpluses — particularly impressive given its high percentage of boarding and some international enrollment," she said.

Bloomberg Markets

By Amanda Albright

August 2, 2021, 10:30 AM PDT Updated on August 2, 2021, 10:56 AM PDT

— With assistance by Matthew Begley

Major League Baseball Visits Iowa's Field of Dreams.

- **White Sox play Yankees at 1989 movie's filming site on Aug. 12**
- **Venue's popularity raises prospect of muni issuance to come**

Next week, life imitates art when a bunch of big-league ballplayers walk through a cornfield to get to a characteristically beautiful if comparatively secluded diamond to play baseball.

On Aug. 12, the Chicago White Sox will be the "home" team, taking on the New York Yankees at the site of the 1989 movie, "Field of Dreams" in front of 8,000 fans in Dyersville, Iowa. It'll be the first regular season Major League Baseball game in the state, and maybe not the last.

This is the kind of exposure public officials dream about when they're bitten by the economic-development bug. But the municipal market hasn't quite caught up. Not yet.

Dyersville, with a population of roughly 4,100, was incorporated in 1872. It sold $3.9 million in general-obligation bonds this week to pay for capital improvements and a new skid loader and fire truck. The unrated offering included tax-exempt bonds due in 2037 that priced 84 basis points above top-rated munis.

The only mention of the thing that draws thousands of tourists to the city each year is contained in a single sentence of the official statement to the bonds: "The City is home to the National Farm Toy Museum and the Field of Dreams Movie Site."

Such modesty is likely to fade after MLB comes to town with a national broadcast, no doubt to be filled with excerpts from the movie and swelling musical accompaniment in addition to glimpses of the charms of Dyersville's downtown. But this I only suspect. As the old banker's saw suggests, Show me a revenue stream, and I'll show you a bond issue.

`People Will Come'

The site has shown remarkable durability for the setting of a 32-year old movie. There's not exactly a lot to do there. Visitors basically follow the script as laid out in the movie by James Earl Jones's character, writer Terence Mann: "People will come, Ray. They'll come to Iowa for reasons they can't even fathom." Right now, they come to soak up the atmosphere and maybe look to the surrounding cornfield in the hopes that Shoeless Joe Jackson and the other Black Sox will emerge, as they did in the film. And then maybe tour the farmhouse and buy a souvenir.

That's it. And yet between 65,000 and 100,000 fans reportedly do this every year. That's staying power, and a testament to the movie's place in the culture.

A company called Go the Distance Baseball bought the parcel in 2011. A representative says it's now waiting to acquire and confirm funding to start to build a complex of six fields for a youth sports center on the site. We have seen lots of municipal bond deals finance these projects. Sister company All-Star Ballpark Heaven now runs youth tournaments at city facilities.

The MLB game was originally scheduled for 2020, but the pandemic intervened, and the event was postponed to next week. The game isn't being played on the actual field, but on a diamond constructed beside it, accessed by a pathway through the cornfield.

Mayor James Heavens of Dyersville has said the long-term goal is to make this an annual event, and I was curious about whether the city had tallied up the benefits of being home to the "Field of Dreams," or assessed what the impact of the big game might be.

And the answer is no. Go the Distance referred inquiries on the economic impact to the Dyersville Area Chamber of Commerce. Karla Thompson, executive director of the Chamber, said no study has been done on the site's economic impact — "would love to know that number!" she said in a Thursday email — or of the game's financial ripple effect. She did say that the city has seen an increase in tourism traffic and retail sales. Mick Michel, the city administrator, said in a Thursday email, "Next week's game being played in our community is priceless."

But some fans apparently feel you can put a price on existential joy. On Friday, pairs of tickets — sold to Iowans by lottery for $375 apiece and also distributed to the two clubs — were being offered on StubHub, starting at $1,365 for each seat.

Bloomberg Markets

By Joseph Mysak Jr

August 6, 2021, 8:00 AM PDT

— With assistance by Philip Brian Tabuas

Defaulted California Plant Turns to Burned Muni Holders for Cash.

- **Venture that turns rice straw into panels needs $18 million**
- **High board prices, surging demand for junk muni debt pave way**

In the heart of California's rice country, a project that dealt municipal-bond investors one of the biggest high-yield defaults of the past decade is about to ask them for more cash. And there's every reason to expect burned debtholders to go along.

After years of delay and setbacks including the pandemic and a fire, CalPlant I LLC last year finally finished building a facility that produces a unique type of fiberboard made from a rice-cultivation byproduct called rice straw. The company has equity backing from entities including a subsidiary of the Teachers Insurance & Annuity Association of America and has already borrowed $344 million since 2017 through sales of unrated tax-free debt, most of which is in default.

Still, the plant, which started making panels in November, needs about $18 million more to fully scale up to commercial operations. Bondholders appear to have faith, despite the missed debt payments. The company is poised to win final approval from California officials on Aug. 11 to sell that amount of new securities, most of which will likely go to the existing investors.

The quest for additional financing comes at an opportune time for the borrower: Portfolio managers have plenty of room to plow more money into a struggling venture because there's so much cash in the $4 trillion muni market seeking tax-free income with a bit of yield. There are other forces at work, too: The residential construction boom has lifted the prices of materials that go into furniture and cabinets. And investors have an incentive to lay out more money if it helps ensure the project succeeds instead of getting caught up in an uncertain bankruptcy process.

It makes sense for bondholders to keep the plant going, said Matt Fabian, a partner at research firm Municipal Market Analytics.

“They’re already educated and exposed and they have money to burn,” he said. “So why not invest it in more CalPlant if that creates a positive outcome? If they remain constructive on the project, then pricing on their bonds remains constructive as well.”

Farmer’s Dream

Leaning again on debt investors could help achieve the dream of CalPlant co-founder Jerry Uhland, who quit rice farming to bring the patented idea to fruition at a site in Glenn County, north of Sacramento. The company says it’s producing the world’s first medium-density fiberboard made from rice straw.

“I have no hair left, but other than that, things are going better than they were a year ago,” Uhland, speaking from the facility’s straw yard, told board members of a California agency in a virtual meeting in July. “I believe the light at the end of the tunnel is nearing.”

Uhland and other executives didn’t respond to requests for comment. But in updates posted online for bondholders, they describe difficulties such as worker injuries and construction disputes. And they cited cause for optimism, such as rising prices for fiberboard.

They also spell out the need for more money: Talks with more potential equity investors haven’t progressed and the company will run out of cash in November, according to recent monthly reports.

Such tribulations may be expected given the unique nature of the project, which seeks to turn the tons of debris cast off by California’s rice growers into an environmentally friendly, profitable product that the company has dubbed Eureka MDF.

The fiberboard market shows the potential for CalPlant should it finally achieve full commercial operations, which it’s anticipating by the end of 2023. Average prices in July were 27% higher than the five-year average ending in 2020, according to industry publication Fastmarkets Random Lengths.

“The market for medium-density fiberboard is very hot, and we expect it to remain that hot for at least the next 18 months to two years,” said Andy O’Hare, president of the Composite Panel Association.

Jane Abernethy, chief sustainability officer of Humanscale, a New York-based maker of ergonomic office furniture, said she’s interested in Eureka MDF. Depending on factors such as durability, it’s possible Humanscale might pay a premium for it, she said.

“They have a very good shot at ramping up and getting into production,” she said. “It sends the signal for others to see that finding innovative ways of reusing material that could be waste, that people do value it.”

Default History

The company first sold unrated municipal bonds in 2017 to build the factory, issuing $228 million of debt. Two years later, it sold about $74 million, and soon ran into trouble. It alerted bondholders in

December 2019 that it would tap reserves to make debt payments. It ultimately defaulted on those two borrowings by mid-2020. It's the third-largest high-yield muni default of the last decade, according to Municipal Market Analytics. CalPlant in October 2020 raised a third round of debt, totaling $42 million and due in 2032. It priced to yield 8.17%, at a time when rates on top-rated munis with a similar maturity were roughly 1%, data compiled by Bloomberg show.

The bid to sell more tax-exempt debt won approval on July 20 from the California Pollution Control Financing Authority. One more sign-off remains from another agency, the state's Debt Limit Allocation Committee, whose board has the same voting members and which determines what projects get access to the low-cost financing. Uhland said in the July meeting that the amount may be less than the requested $18 million as talks with the senior bondholder group, who signed a forbearance agreement, continue.

Municipal junk-bond funds pulled in a record amount of money in the first half of the year, and underwriters of new deals have often been swamped with orders that are multiples of what's available.

"The demand side is so strong that you're able to get most deals done," said Terry Goode, a senior portfolio manager at Wells Capital Management, which doesn't hold CalPlant bonds. "That includes some that have had challenging credit stories or even defaulted securities."

The top three bondholders — Franklin Resources, Invesco Ltd. and Sun Life Financial — hold a combined $162 million, according to the most recently available data compiled by Bloomberg. Spokespeople for the three firms declined to comment.

"None of us bondholders want to see the project fail," said Jim Colby, senior municipal strategist at Van Eck Associates Corp., which says it holds about $28 million of CalPlant debt.

Bloomberg Finance

By Romy Varghese

August 4, 2021, 7:00 AM PDT

— With assistance by Natalia Lenkiewicz, Philip Brian Tabuas, and Kenneth Hughes

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Complimentary GFOA Training on the CSLFRF Compliance & Reporting Guidance.

The first reporting deadline for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) is quickly approaching at the end of August. To bring CSLFRF recipients up to speed with their compliance and reporting responsibilities as well as a breakdown of each type of report, GFOA is hosting a complimentary just-in-time training next week.

Learn more.

MSRB Announces New Board Members for Fiscal Year 2022.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced four new members to serve on the governing board of the self-regulatory organization charged by Congress with protecting municipal securities investors, issuers and the public interest. The new members will serve four-year terms beginning October 1, 2021.

“We strive to build a Board that is diverse, inclusive and reflective of the wide variety of perspectives that contribute to the field of public finance,” said Caroline Cruise, Chair of the Board’s Nominating Committee. “This year’s class is outstanding, with a diversity of backgrounds and expertise that will make a lasting contribution to our market. My fellow Board members and I look forward to working alongside them to implement our new strategic plan and ensure our regulatory, transparency and data initiatives advance our long-term goal of strengthening market efficiency and transparency.”

New public members joining the MSRB Board in Fiscal Year 2022 are: Jennie Huang Bennett, Chief Financial Officer for the City of Chicago, and Katano Kasaine, Assistant General Manager and Chief Financial Officer at the Metropolitan Water District of Southern California. Joining the Board as regulated members are: Warren “Bo” Daniels, Atlanta-based Managing Director and Head of Public Finance of Loop Capital Markets, a minority-owned dealer firm based in Chicago, IL, and Liz Sweeney, President and founder of Nutshell Associates, LLC, a Maryland-based municipal advisory firm. The new Board members were selected from more than 60 applicants this year.

Congress established certain minimum requirements for Board composition, and all Board members are required to be individuals of integrity and knowledgeable of matters related to the municipal securities markets. The Board consists of four “classes” with staggered terms, with a new class elected annually in accordance with Congressional requirements and MSRB rules. Learn how the puzzle pieces come together to optimize representation on the Board.

For FY 2022, the Board will have 15 members, including eight independent public members and seven members from MSRB-regulated broker-dealers, banks and municipal advisors. The size of the Board was reduced as part of a series of governance enhancements that also tightened standards of independence for public members and established a lifetime service limit for Board members. To facilitate the transition to a smaller Board, the term of a current public member on the Board, Donna Simonetti, has been extended one year.

The MSRB recently announced that it has elected Patrick Brett, Managing Director and Head of Municipal Debt Capital Markets at Citi in New York, to serve as FY 2022 Chair of the Board. Meredith L. Hathorn, Managing Partner, Foley & Judell, L.L.P. in Baton Rouge, LA, will serve as Vice Chair.

New MSRB Board Members, Fiscal Year 2022

Jennie Huang Bennett is Chief Financial Officer for the City of Chicago, where she oversees financial strategy and policy and a $13 billion total budget, manages a $26 billion portfolio of City of Chicago debt, and directs financial policy for a number of City agencies, among other things. Prior to her service at the City, Ms. Bennett served as Chief Financial Officer for Chicago Public Schools. She began her career with Morgan Stanley’s Municipal Securities Division in New York and ultimately served as Executive Director in Chicago. Ms. Bennett has also served on the boards of directors of several organizations, including Perspective Charter Schools, Chicago Opera Theater and Women in Public Finance. Ms. Bennett earned a bachelor’s degree in political science and economics from the University of Pennsylvania.

Warren “Bo” Daniels is Managing Director and Head of Public Finance of Loop Capital Markets, a minority-owned firm based in Chicago, IL. He is based in Atlanta and has been the senior banker on over $45 billion of financings during his career and worked on numerous higher education, general obligation, sales tax, transportation, water and sewer, single/multi-family housing, and financial products transactions, as well as complex asset-backed and structured financings. He has extensive experience with sophisticated and complex financial products, hedges and variable rate products. Prior to joining Loop Capital Markets and establishing its Atlanta office, Mr. Daniels was responsible for running the Atlanta public finance office for PNC, Morgan Stanley’s Atlanta office, and Goldman Sachs’s Chicago office, having begun his career with Goldman Sachs in New York. Mr. Daniels earned a bachelor’s degree from the University of Southern California and a Master of Business Administration from the Wharton School of the University of Pennsylvania.

Katano Kasaine is an Assistant General Manager and Chief Financial Officer at the Metropolitan Water District of Southern California. In this capacity, she is responsible for directing Metropolitan’s financial activities, including accounting and financial reporting, debt issuance and management, financial planning and strategy, managing Metropolitan’s investment portfolio, budget administration, financial analysis, financial systems, and developing rates and charges. Her municipal experience spans over 26 years. In her prior role as Director of Finance/Treasurer for the City of Oakland, Ms. Kasaine managed all aspects of the City’s finance functions, including the issuance and administration of all debt financings, budgets, and financial reporting. She has served on various public boards and committees, including the Oakland Joint Powers Financing Authority, the Police and Fire Retirement System and the Deferred Compensation Committee. Ms. Kasaine earned a bachelor’s degree in business administration from Dominican University and a master’s degree in public health from Loma Linda University.

Liz Sweeney is President and founder of Nutshell Associates, LLC, a Maryland-based municipal advisory firm, where she provides public finance expertise, debt advisory, and analytical tools and data to lenders, investors, and borrowers to improve access to capital and informed business decisions. Ms. Sweeney also serves on the board of directors of the University of Maryland Medical System. In addition, as a member of the Standard Government Reporting Working Group, she provides subject-matter expertise and market education in support of the development and adoption of machine-readable data standards for municipal and nonprofit disclosure. She began her career as a rating analyst with S&P Global Ratings, ultimately leading credit policy and risk management initiatives as Managing Director and Criteria Officer. She earned a bachelor’s degree in finance from Georgetown University and a Master of Business Administration from NYU Stern School of Business.

Date: August 4, 2021

Contact: Leah Szarek, Chief External Relations Officer
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- Frequently Asked Questions About MSRB Form G-32.
- MSRB Issues Guidance on Primary Offering Disclosure Form.
- Buckle Your Seatbelts: Tax Ramifications of the LIBOR Transition – Arent Fox
- SIFMA Supports Legislation Addressing Transition Away from LIBOR.
- SIFMA Joint Trades Letter on the Adjustable Interest Rate (LIBOR) Act.
- And finally, We Put The “Husband” In “Animal Husbandry!” is brought to us this week by *Matter of Title , Ballot Title and Submission Clause for 2021-2022 #16*, in which the Supreme Court of

Colorado was faced with a ballot initiative that expanded the state's current statutory definition of "sexual act with an animal." (Oh, I see that we have your full attention.) We regret to inform you that the ballot initiative is not a euphemistic reference to your ex-husband, but rather about, uh, exactly what it sounds like it's about. Rather than subject you to the delightful details of the current and proposed statutes, we invite you to speculate on the (nubile) elephant in the room: What in god's name is going on in Colorado? Keep an eye out for the state's new tourism initiative, "Colorado! We Put the "Best" in "Bestiality!"

PUBLIC UTILITIES - CALIFORNIA

BullsEye Telecom, Inc. v. California Public Utilities Commission

Court of Appeal, First District, Division 5, California - July 6, 2021 - Cal.Rptr.3d - 66 Cal.App.5th 301 - 2021 WL 2801926 - 21 Cal. Daily Op. Serv. 6845

Local carriers filed petitions for writ review of decisions by Public Utilities Commission (PUC), first, finding that local carriers discriminated against long-distance carrier with respect to rates charged for switched access services and, second, denying local carriers' request for rehearing but modifying earlier decision.

Petitions were consolidated and writ of review was issued.

The Court of Appeal held that:

- PUC was not required to conduct new evidentiary hearing when granting request for rehearing;
- PUC's determination that switched access was monopoly bottleneck service was not novel;
- PUC's determination that switched access was monopoly bottleneck service allowed it to revisit prior holdings that disparity in rates was justified;
- PUC did not shift burden of proving unlawful discrimination to local carriers;
- Any deviations from scoping memorandum did not prejudice local carriers; and
- Statutes prohibiting discriminatory reparations and refunds of rates on file with PUC did not preclude PUC from ordering refund as reparation for rate discrimination.

When granting request for rehearing, statute governing orders of modification did not require Public Utilities Commission (PUC) to follow procedural aspects of regular hearings, including new evidentiary hearing, before modifying and superseding its prior decision that local carriers set discriminatory rates against long-distance carrier; statutes governing proceedings before PUC did not define "rehearing" as equivalent to regular hearing, but, rather, only specified that evidentiary proceedings were required in certain situations, such as on rehearing in expedited complaint procedure for small claims, and local carriers did not demonstrate they were denied opportunity to present evidence in original evidentiary proceeding or that new factual developments required new evidentiary hearing.

Determination by Public Utilities Commission (PUC) that switched access was monopoly bottleneck service, supporting PUC's conclusion that local carriers imposed discriminatory rates against long-distance carrier, did not constitute novel determination, and, thus, did not violate PUC procedural rules prohibiting retroactive applications of novel regulatory determinations, where PUC had previously recognized, in context of incumbent local exchange carriers prior to adoption of Telecommunications Act of 1996, that switched access was monopoly bottleneck service, and given that PUC's pre-Act determination turned on nature of services, PUC was not required to state expressly that same analysis would apply to post-Act competitive local carriers before applying that analysis in case at hand.

Determination by Public Utilities Commission (PUC) that switched access service constituted monopoly bottleneck service allowed PUC, on rehearing of long-distance carrier's claims that local carriers engaged in rate discrimination, to revisit and reject its prior determinations that long-distance carrier was not willing and able to accept terms and conditions of local carriers' lower-rate contracts with its competitors and that rational basis supported rate difference; PUC's determination on rehearing, finding that carrier was willing and able to accept terms and conditions of competitors' contracts and that no rational basis supported rate difference, indicated PUC did not intend reasoning for its prior findings to the contrary to extend to monopoly bottleneck services.

In finding that local carriers failed to submit evidence of any rational basis for discriminating against long-distance carrier with respect to rates for local exchange services, Public Utility Commission (PUC) did not impermissibly shift burden of proving unlawful discrimination to local carriers rather than long-distance carrier, where long-distance carrier had already established that there was no difference in the cost of providing services, such that PUC properly required local carriers to offer other justification for rate differential.

By deviating from scoping memorandum, which gave local carriers reason to believe long-distance carrier's discrimination claim would fail if long-distance carrier were not willing and able to accept all terms of lower-rate agreements offered to its competitors, Public Utilities Commission (PUC), which held that long-distance carrier's willingness and ability to accept terms related to switched access services were sufficient, did not prejudice local carriers, where PUC considered all issues described in scoping memorandum and acknowledged that while long-distance carrier was only willing and able to meet terms related to switched access services, such willingness and ability were legally sufficient in context of monopoly bottleneck service.

Holding by Public Utilities Commission (PUC) that costs of service did not constitute rational basis for differential rates set by local carriers for long-distance carrier versus competitors, and that certain other factors were irrelevant to rational-basis analysis, was not contrary to scoping memorandum, even though scoping memorandum gave local carriers reason to believe long-distance carrier's discrimination claim would fail if there were non-cost-related considerations that supported different treatment, where PUC considered all issues described in scoping memorandum, which did not specify any particular factors that would be considered in rational-basis analysis.

Holding of Public Utilities Commission (PUC) that factors other than cost of services were irrelevant to analysis of whether rational basis existed for local carriers' setting of higher rates for switched access services with respect to long-distance carrier versus its competitors, in contrast with scoping memorandum that listed non-cost factors as possible rational bases for different rates, did not prejudice local carriers, where local carriers did not identify any evidence they would have presented had they been aware PUC would conclude factors listed in memorandum did not constitute rational bases in light of record, and memorandum did not discourage or prevent local carriers, which did not assert different costs of service supported different rates, from presenting any such evidence.

Statutes prohibiting public utilities from refunding any portion of rates on file with Public Utilities Commission (PUC) and prohibiting discriminatory reparations for discriminatory rates did not preclude PUC from ordering refund to long-distance carrier as reparation for local carriers' discriminatory offering and provision of off-tariff discounts to certain of long-distance carrier's competitors; local carriers did not establish that other long-distance customers with similar claims did not have opportunity to file complaint with PUC, as would render reparations discriminatory, refund statute did not prohibit all awards permitted by reparations statute, and refund statute allowed "just and reasonable" refunds as reparations for rate discrimination when justified by special circumstances.

BALLOT INITIATIVE - COLORADO

Matter of Title , Ballot Title and Submission Clause for 2021-2022 #16

Supreme Court of Colorado - June 21, 2021 - P.3d - 2021 WL 2645511 - 2021 CO 55

Initiative opponents petitioned for review of Ballot Title Setting Board decisions in setting title, ballot title, and submission clause for initiative proposing to amend Colorado's criminal animal cruelty statutes by ending certain exemptions for livestock, creating a safe harbor for the slaughter of livestock with various conditions, and expanding the definition of "sexual act with an animal," a type of animal cruelty, alleging that initiative spanned multiple subjects in violation of single subject requirement.

The Supreme Court held that:

- Central theme of ballot initiative was to extend animal cruelty statutes to livestock;
- Initiative's safe harbor for slaughter of livestock did not violate single subject rule;
- Initiative's expansion of definition of "sexual act with an animal" violated single subject rule.

In determining whether ballot initiative violated single subject rule, central theme of initiative was to extend criminal animal cruelty statutes to livestock; initiative would remove animal cruelty statutes' exception for accepted animal husbandry practices utilized by any person in the care of companion or livestock animals, end exemption to certain sentencing provisions for treatment of livestock and other animals used in farm or ranch production of food, fiber, or other agricultural products when the treatment is in accordance with accepted agricultural animal husbandry practices, enact a safe harbor for slaughter of livestock from animal cruelty statutes, and expand definition of sexual act with an animal, a type of animal cruelty.

Initiative's safe harbor amendment to criminal animal cruelty statutes for slaughter of livestock, clarifying that slaughtering livestock would not count as animal cruelty if animals had lived a minimum number of years and they were killed in accordance with accepted animal husbandry practices that did not cause needless suffering, did not violate single subject rule; policy preventing killing of young livestock addressed treatment of living animals, rather than livestock death, risk of logrolling was low because creating safe harbor pointed in the same direction of increasing welfare of livestock and would not have surprised voters, and proposal was not particularly lengthy or complex.

Initiative's amendment to Colorado's criminal animal cruelty statutes by expansion of definition of "sexual act with an animal," a type of animal cruelty, violated single subject rule; provision would have modified standard of care for all animals by criminalizing new conduct, regardless of whether that conduct was directed at livestock or other animals, served at least two distinct and separate purposes, was not necessarily and properly connected to measure's central focus of incorporating livestock into animal cruelty statutes, and ran risk of surprising voters with a surreptitious change.

IMMUNITY - MISSOURI

Davis v. Buchanan County, Missouri

United States Court of Appeals, Eighth Circuit - July 20, 2021 - F.4th - 2021 WL 3042232

Mother of former inmate at county jail brought wrongful death action against county, member of sheriff's department, former county jail administrator, and former county sheriff, alleging that defendants had failed during three-day incarceration period to provide appropriate medical care for inmate's endocrine disorders.

The United States District Court for the Western District of Missouri denied county's motion to dismiss on immunity grounds and its subsequent motion for reconsideration, on theory that county had waived its sovereign immunity by "purchasing" insurance. County appealed.

The Court of Appeals held that, under Missouri law as predicted, county that entered into an inmate-health-services contract that required third party provider to "procure and maintain" various liability insurance policies and "to name the county as an additional insured," thereby "purchased" liability insurance.

Under Missouri law as predicted by the Eighth Circuit Court of Appeals, county that entered into an inmate-health-services contract with third party that was to supply health care to inmates at county correctional facility, a contract that, in addition to providing for such health care services, also required the third party to "procure and maintain" various liability insurance policies and "to name the county as an additional insured," thereby "purchased" liability insurance and waived its sovereign immunity for tort claims covered by that insurance; while county did not make direct payment to liability insurer, its payment of roughly $300,000 per year to third party for services that included the acquisition of liability insurance was in nature of a "purchase" of insurance, as that term was used in Missouri waiver-of-immunity provision.

SPECIAL ASSESSMENTS - NEBRASKA

Main St Properties LLC v. City of Bellevue

Supreme Court of Nebraska - July 16, 2021 - N.W.2d - 309 Neb. 738 - 2021 WL 3008959

Property owner filed petition to appeal city board of equalization decision to place liens on the property in order to collect costs that had been assessed for the demolition and removal of a structure on the property.

The District Court dismissed the petition based on lack of jurisdiction, and property owner appealed.

The Supreme Court held that district court had jurisdiction to consider property owner's petition.

A "special assessment," within meaning of statute providing that property owner may appeal "any special assessment" to the district court where the subject property is located includes and applies to a "special assessment" levied under authority of statute providing that a city or village may levy the cost for demolishing or repairing a nuisance as a special assessment.

District court had jurisdiction to consider property owner's petition challenging special assessment which city levied to recover costs associated with demolishing a nuisance building on the property.

TORT CLAIMS - NEW JERSEY

H.C. Equities, LP v. County of Union

Supreme Court of New Jersey - July 19, 2021 - A.3d - 2021 WL 3027207

Commercial landlord brought action against county and county improvement authority, asserting claims for trade libel, defamation, and conspiracy, related to a report that contained allegedly false statements about condition of buildings it rented to the county, which allegedly thwarted landlord's settlement with county for a dispute concerning the lease.

The Superior Court dismissed the action. Landlord appealed. The Superior Court, Appellate Division, reversed and remanded with directions. County and authority petitioned for certification, and petition was granted.

The Supreme Court held that:

- Landlord's claims accrued and triggered the 90-day notice requirement under the Tort Claims Act on date of letter in which it identified county and authority as being liable for its injuries, and
- Landlord's series of letters did not establish substantial compliance with Tort Claims Act's notice requirement.

Commercial landlord's claims for trade libel and defamation against county improvement authority, and for conspiracy against authority and the county, related to report of the condition of buildings leased to the county which allegedly contained false statements about the properties and allegedly thwarted landlord's settlement agreement with the county for dispute concerning the lease, accrued, and therefore triggered the notice requirement under the Tort Claims Act, on date on date of landlord's letter, directed to counsel for the authority, in which landlord stated that it viewed county and authority to be liable for its injuries, and landlord was thereby required to present its claims to the county and authority no later than 90 days from date of the letter.

Commercial landlord's three letters, sent at different times to different recipients, did not establish substantial compliance with notice requirements of the Tort Claims Act, so as to allow claims for trade libel, defamation, and conspiracy against county and county improvement authority arising from allegedly false statements in report on condition of buildings leased to the county, since the Act clearly required one identifiable date on which the public entity received notice, the letters did not contain sufficient information to alert county and authority of claims landlord would assert, to give them time to investigate and to settle, even if letters were considered together, which would result in prejudice, and landlord provided no reasonable explanation why there was not strict compliance with the Act.

EMINENT DOMAIN - NEW YORK

Gabe Realty Corp. v. City of White Plains Urban Renewal Agency

Supreme Court, Appellate Division, Second Department, New York - June 30, 2021 - N.Y.S.3d - 195 A.D.3d 1020 - 2021 WL 2672758 - 2021 N.Y. Slip Op. 04134

Owners of some parcels of real property within an area to be condemned commenced proceeding seeking judicial review of urban renewal agency's determination to acquire their properties by eminent domain.

The Supreme Court, Appellate Division, held that authority's bare pleading of substandard conditions did not satisfy its obligation to provide an adequate basis for eminent domain condemnation of the subject properties.

Urban renewal authority's bare pleading of substandard conditions did not satisfy its obligation to provide an adequate basis for its conclusion that remediation of urban blight was a sufficient public benefit to support eminent domain condemnation of the subject properties, although the remediation of substandard or insanitary conditions was a proper basis for the exercise of the power of eminent domain, and agency completed a full environmental assessment form pursuant to the State Environmental Quality Review Act; agency relied only on conclusory assertions of blight based on a 25-year-old urban renewal plan that in itself lacked detail or documentation, and the environmental assessment failed to identify relevant areas of environmental concern.

EMINENT DOMAIN - NORTH DAKOTA

City of West Fargo v. McAllister

Supreme Court of North Dakota - July 22, 2021 - N.W.2d - 2021 WL 3083466 - 2021 ND 136

City filed quick-take eminent domain proceeding to acquire right-of-way across landowner's property for a sewer improvement project.

The District Court entered a condemnation judgment and certified judgment as final. Landowner appealed.

The Supreme Court held that trial court abused its discretion by certifying judgment as final without any analysis.

Trial court abused its discretion by certifying condemnation judgment in quick-take eminent domain proceeding as final, where court provided no analysis of factors for a request for certification, and none of the parties, nor the court, demonstrated how the case was not a standard interlocutory appeal, even though both parties argued that the only issue left to be decided was condemnee's costs and disbursements.

Strengthening Economy, Federal Aid, and Responsible Fiscal Management Helps Lead to Revenue Gains for Most States in Fiscal 2021.

Most states saw revenue growth in fiscal 2021 primarily resulting from a strengthening national economy and federal stimulus programs. The revenue gains in fiscal 2021 were in contrast to fiscal 2020, when states saw revenues decline after nine consecutive years of growth. Overall, revenues have outperformed projections from earlier in the pandemic (when most states enacted their fiscal 2021 budgets). Several factors help explain recent improvements in states' revenue outlooks, including: federal stimulus measures have put a lot of additional money into the economy, which helped to lessen state revenue losses; high-income earners have been relatively insulated from the pandemic's economic effects, which has limited impacts on personal income tax collections; the types of consumption most curtailed by the pandemic comprise a relatively small portion of states' sales tax bases; and the enabling of online sales tax collections following the U.S. Supreme Court decision in Wayfair v. South Dakota.

Fiscal 2021 revenue collections were also impacted by the shifting of the 2020 tax deadline from April 15 to July 15. According to NASBO's Spring 2021 Fiscal Survey of States, nineteen states reported that they recognized these delayed revenues due to the deadline shift in fiscal 2021 instead of fiscal 2020, depressing fiscal 2020 revenues and leading to greater growth in fiscal 2021.

As a result of the preceding factors, most states saw strong year-over-year growth in overall tax collections for fiscal 2021, with a number of states reporting double digit increases. Many states reported that revenue from all major taxes, including sales, personal income, and corporate income, experienced gains in fiscal 2021 compared to fiscal 2020. In addition, most states saw revenues exceed earlier projections leading to budget surpluses. States have begun identifying possible uses of their fiscal 2021 budget surpluses, including: bolstering rainy day funds; restoring prior spending cuts; increasing education funding; additional roads funding; increasing the Medicaid trust fund; additional contributions to retirement funds; paying down future obligations for employee and retiree health care; providing more money to cover the cost of unemployment benefits; repaying federal loans for jobless benefits; refundable income tax credits; property tax relief; and other tax reforms. NASBO's 2021 Budget Processes in the States report details states' legal requirements and policies for determining how to handle a general fund budget surplus in Table 15.

Continue reading.

NASBO

Climate Risk is Hitting Home for State and Local Governments.

Does the U.S. need a coordinated national response or will it be every city for itself?

In 1988, Congressional testimony from NASA's Dr. James Hansen helped cement the words "climate change" in the national consciousness. In 2015, nearly 200 countries met in Paris to pledge to address the problem. But 2020, the year the skies over San Francisco turned a sick shade of orange, the Earth's temperature hit its highest ever, the Atlantic hurricane season smashed records, and nearly every state west of the Mississippi suffered severe drought, may well be remembered as the year it finally hit home.

Across the U.S., state and local governments and the bond market that helps them do business are coming to grips with a situation that can't be ignored any longer. They're taking increasingly proactive, if piecemeal, steps toward making their communities ready for extreme weather and pollution scenarios that once seemed unimaginable.

"I feel like there's been a revolution in the past year in terms of thinking about climate change," said Kevin DeGood, director of infrastructure policy at the left-leaning Center for American Progress. "What's that old saying — everything seems impossible until it happens, and then it feels inevitable?"

Continue reading.

marketwatch.com

By Andrea Riquier

July 30, 2021

Bipartisan Infrastructure Package Clears First Hurdle in Senate – Current Agreement Includes Multiple PAB Provisions.

Last night, the Senate voted 67-32 to move the bipartisan infrastructure agreement to debate without full legislative text – a key step in advancing the $1 trillion dollar package. This vote sets up an extensive debate process, kick-starting a week's worth of debate and more compromise, in an effort to get the package across the finish line in the Senate prior to sending across the Capitol to the House for an early fall vote. While this is an important first step in the legislative process, expect many hiccups to arise over the next few weeks.

The updated agreement includes multiple private activity bond provisions. These provisions include:

- The Rural Broadband Financing Flexibility Act (S.1676) is the template for adding broadband as an allowable use for private activity bonds (PABs). This would allow states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have access to broadband.
- Carbon Capture Improvement Act (S. 1829) allows carbon capture and direct air capture (DAC) technologies to be eligible for PAB financing. Private activity bond financing encourages commercial deployment, which is essential for bringing costs down and developing these technologies to scale. **These bonds would be outside the volume cap.**
- The framework increases the current cap of tax-exempt highway or surface freight transfer facility bonds from $15 billion to $30 billion as proposed by the bipartisan BUILD Act (S.881). Currently, $14,989,529,000 billion of the $15 billion caps has been issued or allocated. Increasing the cap will allow state and local governments to enter into additional public-private partnerships to supplement future surface transportation projects with private investment.

Update on Other Muni Provisions

The original bipartisan agreement included a provision that would create a new direct-pay bond the American Infrastructure Bond. The provision was removed as a way to find needed revenue to ensure the package would be "revenue neutral." This offer was publically rejected by both Republican and some Democratic negotiators, and we continue to work with our partners on the Hill and in the Administration promoting these key financing options. The next steps for the package at this time remain murky, with portions of the upcoming August recess likely to be cut short.

The MBFA and BDA have learned through conversations with senior Administration staff and key Capitol Hill contacts that muni provisions remain a priority for Congressional tax writers as Democrats eye the next spending opportunity, the likely $3+ trillion-dollar budget reconciliation package later this summer.

These muni provisions under consideration include:

- The restoration of tax-exempt advance refundings;
- Raising the BQ limit;
- The direct-pay American Infrastructure Bond;
- Further consideration of expanding PABS.

Bond Dealers of America

July 29, 2021

No Muni Provisions in Latest Infrastructure Counter Offer – Bipartisan Infrastructure Talks Falter Searching for Offsets.

This weekend, bipartisan infrastructure negotiations continued with Senate Democrats and the White House presenting their "global offer," an extensive list of revenue compromises, **which includes removing all bond provisions from the agreement outline amongst other changes to the spending plan**.

The original bipartisan agreement included provisions that would raise the PABs cap for transportation purposes and create a new direct-pay bond the American Infrastructure Bond. The provisions were removed as a way to find needed revenue to ensure the package would be "revenue neutral." This offer was publicly rejected by both Republican and some Democratic negotiators, and we continue to work with our partners on the Hill and in the Administration promoting these key financing options. The next steps for the package at this time remain murky, with portions of the upcoming August recess likely to be cut short.

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These muni provisions under consideration include:

- The restoration of tax-exempt advance refundings
- Raising the BQ limit;
- The direct-pay American Infrastructure Bond;
- Further consideration of expanding PABS.

The MBFA is in the process of setting up virtual meetings with key Hill staff during August recess to discuss these and other municipal bond priorities for infrastructure. More details are expected later this week.

If you are interested in participating, please email Brett Bolton at brettbolton@munibondsforamerica.org

Bond Dealers of America

July 27, 2021

The Bipartisan Infrastructure Plan Avoids Tax Increases, Undermines User-Pay Principle, and Misses Chance to Modernize Obsolete Programs.

The Senate has begun deliberations over a bipartisan plan to provide $550 billion in new spending for a wide range of infrastructure projects, including roads, bridges, public transit, broadband, and the electrical grid. The good news is that lawmakers avoided raising taxes to cover the cost of the new spending and instead used some reasonable fees and asset sales. The bad news is that half of the offsets come from unused, debt-financed COVID-19 relief funds and the economic return on many of these investments is questionable.

Let's first review some of the budgetary offsets and then assess the economic value of the various infrastructure projects.

Continue reading.

Tax Foundation

by Scott A. Hodge

July 30, 2021

How the Infrastructure Proposal Would Fund Roads, Bridges and Public Transit.

The proposal puts $150 billion in new funding toward surface transportation and transit, but won't close the backlog in maintenance and capital costs.

Update: The Senate released the 2,700-page bipartisan infrastructure bill Sunday night. The text of the bill can be found here.

The bipartisan infrastructure package working its way through the Senate will provide nearly $150 billion in new surface transportation and transit funding, part of a broader $1.2 trillion plan the White House has called a "once-in-a-generation investment."

While the investment would rank among the largest in transportation infrastructure in the nation's history, experts say it will not uniformly close the gap in funding needed to address structural deficiencies.

Public transit systems, for example, have a $176 billion backlog in funding, according to a report by the American Society of Civil Engineers. The infrastructure package would provide $39 billion in funding for transit over five years. That's $10 billion less for public transit than was initially proposed in the initial infrastructure framework.

Continue reading.

Route Fifty

By Andrea Noble

JULY 30, 2021

Infrastructure Bill Advanced with $550 Billion in New Spending.

Vote caps weeks of negotiations, but challenges await in the House

The Senate on Wednesday voted to advance bipartisan infrastructure legislation, capping weeks of late-night negotiations and launching the next step in what has become one of President Joe Biden's key domestic priorities — even as challenges await the measure in the House.

By a 67-32 vote, the Senate moved to invoke cloture on a motion to proceed to the legislative vehicle for a bipartisan infrastructure plan with $550 billion in new spending. Seventeen Republicans, seven more than the 10 needed to invoke cloture in a 50-50 Senate, joined Democrats to vote to move forward.

Among the Republicans who voted to invoke cloture were members of the negotiating team, including Sens. Mitt Romney of Utah, Rob Portman of Ohio, Susan Collins of Maine and Lisa Murkowski of Alaska, as well as some relative surprises: Sens. Jim Risch of Idaho, Charles E. Grassley of Iowa, Shelley Moore Capito of West Virginia and Lindsey Graham of South Carolina.

The negotiators, who stood in a huddle on the floor, cheered at one surprise yes vote: John Hoeven of North Dakota. Collins grinned widely throughout the vote, while at one point, Sen. Kyrsten Sinema of Arizona, the lead Democratic negotiator, did what appeared to be a restrained happy dance.

Also voting yes was Minority Leader Mitch McConnell, who tweeted his support earlier in the day.

Doubts in House

Although Senate negotiators were celebratory in a post-vote news conference, the bill’s future is already in question in the House, where Speaker Nancy Pelosi has vowed not to take it up until after the Senate approves a $3.5 trillion budget reconciliation package that includes many of Biden’s other domestic priorities.

Democratic hopes for a package of that size dimmed a little Wednesday when Sinema said she won’t support a price tag that high.

House progressives, meanwhile, say they’re not willing to advance one without the other.

On Wednesday, Rep. Pramila Jayapal, D-Wash., the chair of the Congressional Progressive Caucus said, “Progressives have been clear from the beginning: a small and narrow bipartisan infrastructure bill does not have a path forward in the House of Representatives unless it has a reconciliation package, with our priorities, alongside it.”

The final version was $29 billion lower than the original $579 billion legislative framework agreed upon by White House and Senate negotiators in June and would be a one-time supplemental appropriation.

A source familiar with the revisions said the lower topline number resulted in part from decreasing a one-time infusion into public transit systems from $48.5 billion to $39.2 billion. Negotiators also agreed to eliminate a $20 billion infrastructure bank.

Portman, the GOP’s lead negotiator, described the legislation as a major infrastructure package that would be popular both inside and outside Washington. For weeks, 11 Republicans and 11 Democrats have been involved in the talks with White House officials.

“It’s going to help with regard to our roads and our bridges and our ports and our waterways,” Portman said. “It also helps expand the digital infrastructure of broadband.”

In a statement Wednesday afternoon, Biden said the deal “signals to the world that our democracy can function, deliver, and do big things. As we did with the transcontinental railroad and the interstate highway, we will once again transform America and propel us into the future.”

Offsets

A summary released by the White House said the spending would be "financed through a combination of redirecting unspent emergency relief funds, targeted corporate user fees, strengthening tax enforcement when it comes to crypto currencies, and other bipartisan measures, in addition to the revenue generated from higher economic growth as a result of the investments."

A list of offsets circulating among lobbyists and confirmed by congressional sources included $53 billion from some states returning unused enhanced unemployment insurance benefits, $20 billion from sales of future spectrum auctions, $56 billion in economic growth from a 33 percent return on investments and $2.9 billion from extending available interest rate smoothing options for defined benefit pension plans.

The offsets also included $49 billion stemming from a partial delay of a Trump-era rule limiting drug manufacturer rebates to pharmacy benefit managers, $8.7 billion from extending statutory sequester cuts to Medicare and $3 billion from requiring drugmakers to reimburse Medicare for certain wasted medications.

Another $205 billion would come from repurposing unused COVID-19 relief funds, although three lobbyist sources said that reportedly excludes money set aside for hospitals and medical providers.

Medical provider funds

Senate Finance Chair Ron Wyden, D-Ore., told reporters that people he spoke to, including White House staff, indicated the medical provider relief fund is off the table but stressed that wasn't totally clear yet.

"We woke up this morning in Oregon today with a headline of hospitalizations up 25 percent, so I've been very concerned about that," he told reporters.

Left out from the latest list is a ban on spread pricing, in which pharmacy benefit managers pocket the difference between what they charge insurance companies and what they paid for a drug. The provision was initially floated as a potential offset last week.

The White House summary listed spending provisions included in the deal, headlined by its $110 billion for roads, bridges and major projects.

The deal includes $39 billion for modernizing transit infrastructure and addresses a backlog of rail cars, stations and tracks that need replacement while improving accessibility, according to the summary.

The White House touted the historic nature of that spending despite the fact that some Democrats had been pushing for even higher levels. The deal also has $66 billion to address Amtrak's maintenance backlog, modernize its Northeast Corridor and expand rail service to other parts of the country.

Spending

The deal — which calls for $944 billion in new and baseline spending over five years, according to a GOP aide close to the negotiations — would devote $7.5 billion to building out a national network of electrical vehicle charging stations, a key agenda item for the Biden administration. It seeks to address climate change while creating domestic manufacturing jobs. The deal also would spend $2.5 billion each for zero-emission buses, low-emission buses and ferries.

It would spend more than $50 billion on improving the resiliency of U.S. infrastructure to protect against droughts, floods and other natural disasters, as well as cyberattacks.

It would spend $21 billion on cleaning up polluted areas, including money to reclaim abandoned mines and cap orphaned gas wells. And it would spend $73 billion on upgrading the nation's power infrastructure, emphasizing renewable energy sources.

It would provide $55 billion for drinking and wastewater infrastructure, with money specifically to replace poisonous lead service lines, and would invest $65 billion in improving access to broadband internet.

Sen. Thomas R. Carper, D-Del., the Environment and Public Works Committee chairman, voted Wednesday to take up the bill but criticized it for not going far enough in addressing environmental justice and climate change.

"That's why I will continue to fight for more to be done in our upcoming reconciliation bill and work to get assurances from the White House and Senate leadership to ensure that it includes the policy and the resources we need to take bold, transformative action to invest in climate change and environmental justice," Carper said in a statement. "There is no time to waste on this existential threat."

rollcall.com

By Joseph Morton, Jessica Wehrman, and Lauren Clason

Posted July 28, 2021 at 1:08pm, Updated at 9:29pm

Fitch: US Healthcare System to Expand, Adapt to Long-Term COVID-19 Fallout

Fitch Ratings-New York-28 July 2021: Fitch Ratings expects follow-on health implications related to COVID-19 to continue to drive elevated health system utilization long after the acute phase of the pandemic has concluded, likely leading to increasing costs and higher insurance premiums for decades. These costs will emerge from the necessary addition to mostly outpatient capacity that is expected to come on line as needed to deal with ongoing treatment of chronic conditions related to potentially permanent damage caused by COVID-19.

The magnitude of these effects is currently inestimable, and will include tangential health issues related to deferred diagnostic testing and treatment during the pandemic. As related conditions are likely to develop over time, Fitch does not anticipate these issues to directly affect the credit profile of issuers in the U.S. healthcare system.

In the near term, health insurers have been able to incorporate expanding COVID-19 claims data, estimates of infection trends and pent-up demand for previously deferred care into 2021 premium rates, which should benefit cost management and pricing this year and next. However, for healthcare providers, the expansion of the healthcare system over the long term will likely exacerbate traditional pressures on operating performance such as tight labor and wage markets for experienced staff, rising pharmaceutical expenses and supply costs in general.

Although the U.S. has glimpsed signs of the pandemic's potential end over the past couple of months, the ultimate story of the pandemic is still being told. The infection rate is once again trending up, presumably due to a combination of factors including a dramatic reduction in demand for new vaccinations, the rapid spread of the more infectious Delta variant in the U.S., as well as the reduction in mitigation measures.

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S&P Updated Activity Estimates For U.S. Transportation Infrastructure Show Recovery For Air Travel Demand Accelerating And Public Transit Lagging.

Key Takeaways

- The combination of federal stimulus aid, vaccine progress, easing mobility restrictions, strong economic growth, and pent-up demand is improving the recovery curves for our activity estimates among certain asset classes like air travel, while the prospect of a continued or permanent shift to remote or hybrid work and the growth of online shopping will limit the recovery in public transit ridership for the foreseeable future.
- The U.S. public transit and airport sectors still face the longest recovery relative to other U.S. transportation subsectors, with our current baseline activity estimates for 2021 showing public transit recapturing 45% and airports 70% of pre-pandemic activity levels.

- We see public transit ridership recovering to only 80% of pre-pandemic levels by the end of 2023 and full U.S. systemwide enplanements not returning to near pre-pandemic levels until late 2023 or early 2024, with the international component lagging the broader domestic rebound.
- The threat of coronavirus variants or weakening consumer confidence could slow or stall the recovery for certain modes of transportation, like transit or air travel. However, S&P Global Economics forecasts that U.S. economic activity and growth will accelerate in 2021 as mobility increases and business activity catches up to the reopening demand surge.
- Any upgrades to individual transportation debt ratings lowered in the past 12-18 months will depend on our assessment of the staying power of current recovery trends along with issuer forecasts demonstrating a return to sustainable financial performance metrics consistent with their pre-pandemic levels.

Continue reading.

29 Jul, 2021

Fitch: Record US Cargo Port Volumes Cause Bottlenecks, Boost Revenue

Fitch Ratings-New York-29 July 2021: Record volume at US cargo ports has led much stronger financial performance than pandemic expectations, Fitch Ratings says. However, maintaining operational efficiency is more challenging as bottlenecks increase due to pressured supply chains, mismatched rolling stock, capacity-strained logistics networks and coronavirus shutdowns at Chinese ports. Ports will continue to see congestion pressures well into the upcoming peak shipping season, with throughput patterns not expected to normalize until the beginning of 2022.

West Coast ports have seen exceptionally high volumes through the pandemic, driven by robust goods consumption. The Port of Long Beach's (POLB, AA/AA- Stable) total fiscal 2021 YTD 20-foot equivalent units (TEUs) through June have grown 33% over the same nine-month period a year prior. POLB saw a dip in its June 2021 throughput as a result of the shutdown of Yantian, one of China's key export hubs, in May. Yantian recently resumed full operations, but the ripple effects will also be seen at other ports in summer throughput as it will take time to unwind the resulting cargo backup.

Port of Los Angeles' (POLA, AA) YTD TEUs through May were up 48.2% versus the same period in 2020. Fitch-tracked West Coast port TEUs were up 37% through May 2021 from the same period in 2020, and up 17% from the same period in 2019. Port volumes generally track GDP, and Fitch expects 2021 US and China GDP growth of 6.8% and 8.4%, respectively.

Both POLA's and POLB's ability to handle larger ships, sizable local market shares and strong representation across shipping alliances continue to position them favorably amid shipping volatility. POLA showed strong financial results for the nine months ending March 2021, with operating revenues up 22% and operating expenses increasing modestly by 1% yoy. Operating income increased a robust 44% yoy.

Minimum annual guarantees accounted for 88% and 80% of POLB's and POLA's operating revenues in fiscal 2020, respectively, consistent with prior years, insulating the ports from trade-related revenue volatility. Counterparties have largely continued to honor their agreements despite coronavirus-related volatility. Volumes have heavily favored imports, generating challenges for US agricultural exports as shippers prefer to send empty containers to China rather than waiting for export loads, which are constrained by higher shipping costs. US lawmakers are drafting legislation to force ocean carriers to accept exports.

Although the San Pedro Bay Port Complex has more overall capacity than any other US port with faster routes to Asia, congestion has led some ships to be rerouted, benefiting ports such as Oakland as shippers add additional direct services. Some East Coast and Gulf Coast ports have also seen large increases in container volumes, with the Port of Savannah (GA) growing the fastest (up 31% through May 2021 versus 2020, and up 21% as compared with 2019). East Coast port TEUs were up 23% through May 2021 versus the same period in 2020, and up 16% from the same period in 2019. Cargo volume increases at these ports are constrained by capacity limitations, Panama Canal ship size restrictions and comparatively more congested inland transportation networks.

Congestion is expected to persist through YE 2021 and possibly into 2022, with peak shipping season beginning at the end of the summer with back-to-school and office shopping and continuing through the holiday season. Volume growth will ebb as supply catches up with demand toward YE 2021 and will likely continue at lower rates into 2022. Outbreaks of coronavirus variants that lead to revived restrictions and further shutdowns along the supply chain may further affect volumes. Margins could be pressured if congestion persists well into 2022 with decreases in yard efficiency and increases in labor costs.

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SIFMA Joint Trades Letter on the Adjustable Interest Rate (LIBOR) Act.

SUMMARY

SIFMA and joint trade associations provided comments to the Committee on Financial Services and Subcommittee on Investor Protection, Entrepreneurship and Capital Markets in support of the Adjustable Interest Rate (LIBOR) Act to address “tough legacy” contracts that currently reference LIBOR.

Read the Comment Letter.

[SIFMA Supports Legislation Addressing Transition Away from LIBOR.]

Washington, D.C., July 28, 2021 – SIFMA sent a letter to House Financial Services Committee Chairwoman Maxine Waters (D-CA) and Ranking Member Patrick McHenry (R-NC) expressing support for the Committee passing H.R. 4616, the Adjustable Interest Rate (LIBOR) Act, sponsored by Representative Brad Sherman (D-CA). SIFMA also looks forward to working with Congress on the legislation as the process goes forward.

"SIFMA supports H.R. 4616 because it addresses the variety of issues associated with the cessation of all tenors of U.S. dollar LIBOR and facilitates a smooth transition to alternative reference rates," said SIFMA president and CEO Kenneth E. Bentsen, Jr. "As a result of the discontinuation of LIBOR, trillions of dollars of contracts, securities, and loans that use LIBOR but lack adequate fallback language will be left outstanding. One specific subset, commonly referred to as 'tough legacy' contracts, has no clear path to amendment, thereby posing a significant risk to the financial system and the underlying borrowers and consumers, investors, and banks if such legislation is not passed. We thank Chair Waters, Chairman Sherman and members of the Committee for their work on this bill."

The letter further notes, "While the Alternative Reference Rates Committee (ARRC) has successfully developed language that was recently implemented in New York and Alabama, a variety of inconsistent, or non-existent, state legislation cannot provide the benefits of a uniform Federal law, including contract certainty, fairness and equality of outcomes, avoidance of years of litigation, and market liquidity. Such a patchwork could compromise the very intent to provide a smooth transition. The legislation would change the reference rate on certain financial contracts which reference LIBOR to the Secured Overnight Financing Rate (SOFR), or an appropriately adjusted form of SOFR. This will allow the contracts to continue to function as originally intended after LIBOR is discontinued, without the need to be amended or subject to litigation."

SIFMA also joined several other trade associations in sending a letter to Chairwoman Waters, Ranking Member McHenry, and Representatives Sherman and Huizenga which expresses broad industry support for H.R. 4616.

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What Will It Take to Defend Public Water from Cyber Attacks?

Water may be among the least cyber-defended critical infrastructure sectors. Keeping it safe may include channeling more funds and training to tiny agencies and establishing voluntary guidelines.

Public water systems are exceptionally vulnerable to cyber attack, said senators during a U.S. Senate Committee on Environment and Public Works hearing July 21.

The White House has deemed sixteen industry sectors as essential to the nation's health, safety economy and/or security. Among them, the financial services sector has emerged with particularly robust defenses, while drinking water and wastewater systems may be among the most loosely protected.

Water systems on both coasts were hit by digital tampering efforts this year, in incidents that did not ultimately harm residents but which nonetheless raised alarm bells about the utilities' cyber preparedness. Criminals broke into a Bay Area California water facility's systems to delete programs involved in treating drinking water, a former employee allegedly used remote access to shut down a Kansas water system's cleaning and disinfection processes and hackers seemingly tried to poison Oldsmar, Fla., residents by elevating the amount of the lye used during water treatment — before staff detected and reversed that attempt.

Continue reading.

governing.com

July 27, 2021 | Jule Pattison-Gordon

MSRB Issues Guidance on Primary Offering Disclosure Form.

The MSRB issued a new FAQ to clarify the process for completing the MSRB's primary offering disclosure form (i.e., Form G-32).

In the FAQ, the MSRB explains that:

- Blue Sky restrictions are not required to be identified as a Restriction on Issue;
- contractual restrictions on the sale, resale, or transfer of securities must be identified as a Restriction on Issue;
- an underwriter should provide the name of a deal participant who is acting in the role of a municipal advisor, even where a municipal advisor is identified by another term;
- the underwriter should identify municipal securities as having a credit enhancement when the form of credit enhancement does not fall into the categories of "letter of credit" or "bond insurance";
- Form G-32 allows an underwriter to indicate that obligated person(s) for municipal securities are determined by objective criteria and may change; and
- underwriters are required to complete Form G-32 for municipal securities that are not eligible for the New Issue Information Dissemination Service.

Cadwalader Wickersham & Taft LLP

July 27 2021

FERC Revises Filing Requirements for Certain Small Hydroelectric Facilities.

On July 15, 2021, the Federal Energy Regulatory Commission ("Commission" or "FERC") issued a Final Rule amending its regulations pertaining to: (1) the information required to be filed with a notice of intent to construct a qualifying conduit facility and (2) the licensing requirements applicable to major projects up to 10 megawatts (MW). The Final Rule was issued to align the

Commission's regulations with changes to the Federal Power Act ("FPA") that were made as part of the Hydropower Regulatory Efficiency Act ("HREA") of 2013.

Enacted in August 2013, the HREA amended section 30 of the FPA to create a subset of small conduit hydroelectric facilities that are excluded from the jurisdiction of the FPA. Under those amendments, any party proposing to construct a "qualifying conduit hydropower facility"—a facility that uses "only the hydroelectric potential of a non-federally owned conduit,"—must file a notice of intent with FERC, demonstrating that the proposed project meets certain qualifying criteria. In instances where a dam would be constructed as part of the facility, the Commission required an applicant's notice of intent to include a profile drawing showing that the conduit—rather than the dam—creates the hydroelectric potential. The Commission clarified this requirement in a 2015 order, Soldier Canyon Filter Plant, in which it concluded that the relevant factor in its consideration of qualifying conduit facilities is whether the facility would use water "within a conduit operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity," and that the presence of an upstream dam is not relevant to this determination, even where the head from the dam contributes to the facility's generating potential.

A separate provision of the HREA amended section 405 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), which provided that certain hydropower projects that produce 5 MW or less were exempted from the licensing requirements of Part I of the FPA. The HREA amended section 405 to increase the limit for exemptions to 10 MW.

On February 18, 2021, the Commission issued a Notice of Proposed Rulemaking ("NOPR") in which it proposed revisions to its regulations that would: (1) remove the requirement that a notice of intent to construct a qualifying conduit include a profile drawing depicting the source of hydroelectric potential, in cases where a dam would be constructed as part of the facility; and (2) extend the licensing requirements previously applicable to major projects up to 5 MW to major projects 10 MW or less, pursuant to the revised definition of a "small hydroelectric power project" enacted in the HREA 2013.

In its Final Rule, the Commission adopted the changes set forth in the NOPR. It noted that, based on the language in Soldier Canyon Filter Plant, the profile drawings of dams would no longer be required as part of the notice of intent submittal for qualifying conduits. The Final Rule also included changes to the licensing and amendment filing requirements in Parts 4 and 5 of the Commission's regulations to extend the requirements that previously applied to major projects up to 5 MW to major projects 10 MW or less, to be consistent with the revised definition of a "small hydroelectric power project" under the 2013 HREA. The Commission's Final Rule provided that such a change is appropriate to "expedite hydropower development by easing the burden of preparing an application for license and by assisting the Commission in more rapid processing of applications." As part of the Final Rule, the Commission made revisions to 18 C.F.R §§ 4.40–41; 18 C.F.R. §§ 4.50–51; 18 C.F.R. §§ 4.60–61; 18 C.F.R. §§ 4.70–71; 18 C.F.R. §§ 4.200–202.

As of this drafting, the Final Rule had not yet been published in the Federal Register. The Final Rule will be effective 60 days after such publication.

Troutman Pepper – Elizabeth J. McCormick

July 26 2021

[Federal Energy Regulatory Commission Advances Major Initiative to Overhaul Transmission Planning, Cost Allocation and Generator Interconnection Processes: Day Pitney]

On July 15, 2021, in Docket No. RM21-17-000, the Federal Energy Regulatory Commission (FERC or the Commission) issued an Advance Notice of Proposed Rulemaking (ANOPR) pursuant to its authority under Section 206 of the Federal Power Act to consider various reforms to improve the electric regional transmission planning, cost allocation and generator interconnection processes.[1] The [ANOPR] was published in the Federal Register on July 27, 2021. Initial comments are due October 12, 2021 and reply comments are due November 9, 2021.

The ANOPR is an ambitious, early-stage rulemaking that seems to be an attempt to establish the necessary groundwork for potential reforms to transmission planning, cost allocation and the generator interconnection processes. The ANOPR touches on a wide array of issues and will certainly generate a multitude of comments from a wide range of stakeholders.

Need for Reform
The Commission identifies the continuing evolution of the wholesale electric industry since the issuance more than 10 years ago of major orders on transmission planning and cost allocation (Order Nos. 890 and 1000) and generator interconnection (Order No. 2003), including the changing generation fleet, the effects of state policies, the anticipation of future generation projects, and the ability of current processes to plan and pay for the transmission and generator interconnection as major factors in the potential need for reform. The Commission notes that "regional transmission planning processes may not adequately model future scenarios to ensure that those scenarios incorporate sufficiently long-term and comprehensive forecasts of future transmission needs."[2] The Commission concludes that a system that fails to account for future scenarios does not capture economies of scale and leads to infrastructure development that may not be efficient or cost-effective and may not satisfy the Commission's statutory mandate or its policies in Order Nos. 890, 1000 and 2003.

The Commission also notes that when Order No. 2003 was issued, it was less likely that interconnection customers would be responsible for significant transmission-related upgrades associated with the interconnection of their project. "Now, however, there is little remaining existing interconnection capacity on the transmission system … that may require new resources to fund [upgrades] that are more extensive and, as a result, more expensive." The Commission questions whether these upgrades benefit more than just the interconnection customer. Given that the Commission's cost allocation precedent requires that costs be allocated on a basis roughly commensurate with benefits, failing to adequately capture the benefits of a project could lead to unjust and unreasonable rates.

Proposed Potential Reforms[3]
Generally, the ANOPR reflects the Commission's goal to "ensure the development of regional transmission facilities needed to meet the transmission needs of the changing resource mix occurs in a more efficient or cost-effective manner, at just and reasonable rates" while maintaining reliability.[4] The Commission proposes several reforms consistent with this goal and makes numerous requests for comment related to these proposals. The proposals range across three main themes: (1) regional transmission planning and cost allocation processes, (2) identification of cost and responsibility for regional transmission facilities and interconnection-related network upgrades, and (3) enhanced transmission oversight.

Regional Transmission Planning and Cost Allocation Processes

The Commission proposes reforms to plan for the future needs of anticipated generation and to coordinate between the regional transmission planning, cost allocation and generator interconnection processes. First, the Commission discusses a few potential reforms to anticipate future generation and requests comment on the following, among other issues:

- Changing the modeling scenarios for transmission planning, proposing to examine factors using a longer-term outlook and to incorporate new factors such as state and local climate and clean energy regulation.
- Requiring transmission providers in each region to establish a process to identify geographic zones that would potentially support large amounts of renewable generation and to plan transmission investment to facilitate the integration of renewable generation in those zones.
- Incentivizing the development of regional transmission facilities that may offer a solution that is more efficient or cost-effective than a local alternative.
- Increasing interregional and state-to-state coordination that may be necessary for reforming the transmission planning and cost allocation processes.

Additionally, the Commission seeks comment on coordination between the regional transmission planning, cost allocation and generator interconnection processes.

Cost and Responsibility for Regional Transmission Facilities and Interconnection-Related Network Upgrades

The Commission devotes a significant portion of the ANOPR to a discussion of cost allocation and to the participant funding and crediting policy approaches to funding interconnection-related network upgrades.

With regard to cost allocation, the ANOPR notes that an existing cost allocation approach that considers only a single category of needs (reliability, economic or public policy) may fail to consider all relevant benefits and therefore fail to allocate costs commensurate with benefits. Thus, the Commission proposes to require a more "holistic" or "portfolio" approach for regional transmission planning.[5] The ANOPR does note, however, that this type of holistic approach may produce benefits that are very difficult to quantify, and it seeks comments on how to account for these benefits while still ensuring that both transmission and interconnection customers benefiting from the facilities pay their fair shares under the cost-allocation regime.

On the issue of funding, the ANOPR focuses on the current provisions for participant funding and crediting for interconnection-related network upgrades. The Commission suggests that the participant funding model, under which the interconnection customer pays all the costs of the network upgrades, may no longer be just and reasonable. The Commission proposes eliminating or reducing participant funding for such upgrades and, correspondingly, revisiting the crediting policy (under which the interconnection customer funds the interconnection facilities and the interconnection-related network upgrades subject to reimbursement for the network upgrades through transmission service credits). The Commission proposes the following alternatives to this form of funding and seeks comment on these alternatives:

- Each transmission provider provides upfront funding for all interconnection-related upgrades on its transmission system and, once the interconnection-related network upgrade is in service, rolls the cost of that interconnection-related network upgrade into its transmission service rate base paid by all customers.
- Interconnection customers contribute to the upfront funding of interconnection-related network upgrades through payment of a fee.
- Transmission providers provide upfront funding for only higher-voltage interconnection-related

network upgrades, and interconnection customers fund the cost of interconnection-related network upgrades below the threshold and are reimbursed through transmission service credits pursuant to the crediting policy.
- The upfront costs of interconnection-related network upgrades are allocated to the interconnection customer on a percentage basis that could be less than 100%.

Enhanced Transmission Oversight
Finally, in recognition of the fact that other suggested proposals in the ANOPR could result in major transmission infrastructure upgrades, the Commission presented two potential approaches to enhance transmission oversight: (1) establish an independent transmission monitor on a regional or multiregional basis to review and provide input on transmission planning and spending, and (2) provide for an increased role for state involvement in regional transmission planning through structures like regional state committees. The Commission seeks comment on both of these proposals.

Commissioner Concurrences
The ANOPR was approved unanimously by all participating commissioners, but separate concurrences were issued.

In a joint concurrence, Chairman Glick and Commissioner Clements discussed the change in the resource mix in the United States and the pressing need for updates to the transmission planning process to accommodate renewable resources and state policies, while ensuring just and reasonable rates. Commissioner Danly wrote a separate concurrence to emphasize the potential limits of the Commission's jurisdictional authority for each of the ANOPR proposals and to bring attention to the potential effect on ratepayers. Commissioner Christie issued a concurrence emphasizing the importance of comments in this proceeding and supporting the Commission's approach in the ANOPR seeking comments on a broad range of proposals.

Conclusion
The ANOPR is an ambitious, early-stage rulemaking that has the potential to generate voluminous comments. Since the change in administration, the Commission has taken on many complex and aggressive issues, such as cybersecurity and reliability, the integration of distributed energy resources, and carbon pricing, and the priority to be placed on this issue is not entirely clear. The history of prior ANOPRs is mixed, with some not even advancing to proposed rules and others resulting in major reforms to existing rules and the creation of new rules on regional transmission planning, cost allocation and generator interconnection. Given the changing composition of the Commission and policymakers' emphasis on infrastructure, it seems more likely than not that some of this ANOPR will evolve into major rule changes for the industry.

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[1] See Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, Advance Notice of Proposed Rulemaking, 176 FERC ¶ 61,024 (2021) (ANOPR); see also 16 U.S.C. § 824e (requiring that the Commission ensure that transmission rates are just and reasonable and not unduly discriminatory or preferential). The ANOPR can be found at https://elibrary.ferc.gov/eLibrary/filedownload?fileid=15829875.

[2] ANOPR at P 31.

[3] The Commission notes specifically that it "has not predetermined that any specific proposal discussed herein shall or should be made or in what final form"; rather, it seeks comment on the proposals. ANOPR at P 4.

[4] ANOPR at P 70.

[5] ANOPR at P 86.

Day Pitney Advisory

Day Pitney Author(s) Margaret CzepielEvan C. Reese, IIIEric K. Runge

July 27, 2021

Frequently Asked Questions About MSRB Form G-32.

The MSRB is providing the following set of responses to frequently asked questions (FAQs) to enhance understanding of the process for completing Form G-32.

These FAQs do not create new legal or regulatory requirements or new interpretations of existing requirements and should not be interpreted by regulated entities or examining authorities as establishing new standards of conduct. This resource has not been filed with the Securities and Exchange Commission (SEC) and has not been approved nor disapproved by the SEC. Regulated entities, examining authorities, and others should not interpret this resource as establishing new or additional obligations for any person.

This resource should be read in conjunction with MSRB Rule G-32 and all related rules and interpretations. The full text of MSRB rules and interpretations can be found at https://msrb.org/Rules-and-Interpretations/MSRB-Rules.

1. Restrictions on Issue

Form G-32 requires information regarding when a subsequent "sale, resale, or transfer" of a municipal security is subject to certain qualifying terms or conditions (a "Restriction on Issue"). An example of a Restriction on Issue could be that a sale, resale, or transfer of a municipal security is contingent on a prospective purchaser meeting a requisite level of sophistication, as may be evidenced by investor affirmations about the investor's knowledge, experience, and capability to evaluate the merits and risks of the prospective purchase (e.g., similar or analogous affirmations as those of a 'Qualified Institution Buyer').

> **1.1 Would the state-by-state restrictions on the sale of certain municipal securities commonly referred to as "State Blue Sky Restrictions" need to be identified on Form G-32's field regarding *Restriction on Issue*?"**
> No, State Blue Sky Restrictions do not need to be identified on Form G-32 as a *Restriction on Issue*.
>
> **1.2 Would the contractual restrictions on the sale, resale, or transfer of municipal securities that are typically incorporated into the transactional documents (e.g., on the bond certificate itself and/or in the bond indenture or trust agreement) need to be identified on Form G-32 in the *Restrictions on Issue* field?**
> Yes, Form G-32 is intended to capture these types of contractual restrictions on the sale, resale, or transfer of municipal securities. Underwriters who believe the *Restrictions on*

Issue field is applicable should check the box to indicate yes, there are such contractual restrictions, as for example, in a primary offering structured to meet the exemption requirements of Rule 15c2-12(d)(1)(i) for purchase by thirty-five investors or less (as further described therein).

2. Additional Syndicate Managers

Form G-32 requires information regarding each of the other co-managers in a syndicate.

2.1 Who should be identified as a co-manager?

For purposes of the *Additional Syndicate Managers* field on Form G-32 and the determination of which firms should be identified as a senior manager or co-manager, an underwriter completing Form G-32 should identify all the other underwriting firms that it understands to be participating in the syndicate account's offering, sale, and distribution, such as, for example, those firms acting as underwriters and listed in a final pricing wire and/or by the issuer in a final official statement.

2.2 Must the underwriter identify selling group members?

No, for purposes of the *Additional Syndicate Managers* field on Form G-32, the MSRB does not expect an underwriter to identify selling group members.

3. Name of Municipal Advisor

Form G-32 requires information regarding the name of each municipal advisor.

3.1 If a municipal advisor firm is described in the issuer's official statement as a "financial advisor" should an underwriter provide the name of that firm as a municipal advisor in Form G-32?

Yes, an underwriter completing Form G-32 should provide the name of a deal participant who the underwriter understands to be acting in the role of a municipal advisor, even in instances where a municipal advisor may be identified by a different term, such as financial advisor, in an official statement or offering memorandum.

4. Credit Enhancers and LEIs

Form G-32 requires information regarding the legal entity identify or "LEI" for credit enhancers when such LEI is readily available.

4.1 For purposes of Form G-32, should the underwriter identify the municipal securities as having a credit enhancement when the form of credit enhancement does not fall into the category of a letter of credit nor bond insurance?

Yes, the *Credit Enhancement* section on Form G-32 indicates whether the municipal securities have a form of credit enhancement. In situations where the form of credit enhancement does not fall into the categories of "letter of credit" or "bond insurance," the underwriter can select the "other" option. An underwriter should select the "other" category when the offering includes a different form of credit enhancement. For example, state intercept programs,1 other guarantees (like a state guarantee), federal or state agency guarantees,2 and/or standby bond purchase agreements should be identified as “other.”

4.2 Must the underwriter attempt to provide the LEI when a municipal entity, federal agency, or other similar public entity is the entity providing credit enhancement?

Yes, an underwriter should input LEI information for credit enhancers into the *Credit Enhancement* section of Form G-32 when such information is “readily available,” in other words, easily obtainable via a general search on the internet. The underwriter should attempt to provide an LEI for entities providing a credit enhancement that falls into the “other” category (such as those credit enhancements described in the response to frequently asked question 4.1).

5. Obligated Persons and LEIs

Form G-32 requires information regarding the LEI for obligated persons (other than the issuer of the municipal securities) when such LEI is readily available.

5.1 Does Form G-32 allow for situations where obligated persons are subject to objective criteria and may change?

Yes, the *Obligated Persons* section of Form G-32 allows an underwriter to indicate that the obligated person(s) for the municipal securities are determined by objective criteria and may not be known at the time of issuance or may subsequently change in the future, such as in the case of certain pooled financings. Instances when an underwriter understands that obligated persons are subject to objective criteria (and so may change), and the official statement identifies the obligated person(s) who initially meet the stated objective criteria, then the underwriter should identify such obligated person(s) and indicate that the municipal securities are subject to objective criteria. Instances when an underwriter understands that obligated persons are subject to objective criteria (and so may change), but the official statement does not identify any such obligated persons, the underwriter need only indicate that the municipal securities are subject to objective criteria.

6. Private Placements

An underwriter must submit information about private placements on Form G-32, including when the municipal securities are not eligible for the New Issue Information Dissemination Service (“Non-NIIDS-Eligible Offerings”).

6.1 Are underwriters required to complete Form G-32 for Non-NIIDS-Eligible Offerings, like certain private placements?

Yes, underwriters are required to complete Form G-32 for Non-NIIDS-Eligible Offerings, like certain private placements. Effective as of August 2, 2021, for a Non-NIIDS-Eligible Offering, an underwriter would continue to be required to manually complete the same data fields that it currently completes on Form G-32, with the addition of three new data fields regarding: (i) the original minimum denomination, (ii) whether the original minimum denomination of the offering could change, and (iii) whether there is a Restriction on Issue. For purposes of Form G-32, the term “underwriter,” as defined by reference in Rule G-32 to SEC Rule 15c2-12, encompasses certain dealers acting as agents in the private placements of municipal securities. See File No. SR-MSRB-2020-08 (Oct. 13, 2020), at note 12 .

7. Submission Timing

Rule G-32's submission requirements depend on whether the new issuance is a *NIIDS-Eligible Primary Offering or a Non-NIIDS-Eligible Primary Offering*. See Rule G-32(b)(i)(A)(1) and Rule G-32(b)(i)(A)(2), respectively. For *NIIDS-Eligible Offerings,* the information auto-populated into Form G-32 is sourced from information submitted by an underwriter to NIIDS pursuant to MSRB Rule G-34 (which governs the content and timing of submissions to NIIDS to facilitate the timely reporting, comparison, confirmation, and settlement of transactions in a new issue). See Rule G-34(a)(ii).

7.1 For advance refundings, when must the CUSIP(s) and dollar amount(s) of the refunded securities be submitted on Form G-32?
In a primary offering generating proceeds to advance refund previously issued municipal securities (i.e., "Advance Refunded Bonds"), Form G-32 requires information regarding the dollar amount of each of the Advance Refunded Bonds being advance refunded and CUSIP information for those Advance Refunded Bonds (when applicable). This information must be submitted on Form G-32 at the earlier of either (i) the date of official statement submission or (ii) the closing date. *(Added July 30, 2021)*

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1. The MSRB understands that it is common for municipal securities issued by school districts to include a credit enhancement mechanism by which public funds in support of school district activities are redirected to satisfy debt service shortfalls.

2. The MSRB understands that it is common for municipal securities issued by housing agencies to incorporate certain guarantees or insurance provided by other federal and/or state agencies, like Ginnie Mae, Fannie Mae, or Freddie Mac.

Buckle Your Seatbelts: Tax Ramifications of the LIBOR Transition - Arent Fox

Although this article is focused on tax-exempt debt, the tax ramifications of the LIBOR transition are not limited to the municipal finance world, and the elimination of LIBOR may also have a significant impact on taxable debt, interest swap transactions and other transactions utilizing LIBOR.

For Our Complete Archive of LIBOR Analysis Click Here

General

In connection with LIBOR's impending demise, it became clear to many tax lawyers that numerous tax-exempt bond transactions face the risk of adverse tax consequences because the documents under which they were issued do not contemplate this transition and, therefore, must be amended to provide for a replacement ("fallback") index. This risk arises as a result of a basic tax principle – when a debt instrument is modified in a significant manner after it is issued, the debt is deemed exchanged for a new debt instrument. This exchange, or 'reissuance,' can trigger a tax recognition event to the borrower or bondholder (sometimes a bank or other institutional lender) and, if certain facts are present, may cause tax-exempt debt to lose its tax-exempt treatment under the Internal Revenue Code.

IRS Rev. Proc. 2020-44

General

Following the announcement that LIBOR would be phased out, the Internal Revenue Service (IRS) issued Revenue Procedure 2020-44 aiming to: (1) facilitate the use of alternative reference rates recommended by (a) the Alternative Reference Rates Committee (ARRC) and (b) the International Swaps and Dealers Association (ISDA); and (2) provide that if adequate fallback language is used in loan agreements, the result will prevent a reissuance. The Rev. Proc. attempted to achieve this beneficial outcome by providing that the change in yield that results from the effectiveness of an appropriate alternative rate index would not itself be material, thus treating the effectiveness of such a fallback index as not a taxable exchange of property for other property differing materially in kind or extent for purposes of Treasury Regulation §1.1001-1(a).

Substantially Equivalent Value Test

Tax-Exempt Bond Rule

For municipal bonds, under existing regulations, changes to the terms of a tax-exempt bond transaction are not in themselves considered significant enough to trigger a reissuance if they result in a change in the yield on the bonds of less than 25 basis points. Rev. Proc. 2020-44 increases the circumstances in which this safe harbor applies to certain changes made to accommodate the end of LIBOR.

General Debt Instruments

The general rule under Rev. Proc. 2020-44 is that implementation of certain provisions in documents to replace LIBOR with a new benchmark index will not, by itself, result in reissuance because of the resultant changes in yield without regard to the 25 basis point rule if the fair market value of the altered instrument is substantially equivalent to the fair market value of the unaltered instrument. Given that LIBOR will cease to exist and, thus, there will be no way to measure a replacement index against LIBOR, and given that SOFR and many other replacement indices have not been in existence for long enough to predict their relationship to LIBOR in all interest rate environments, it is unclear how this equivalence requirement can practically be satisfied.

Accordingly, in many transactions we have asked, on behalf of our borrower clients, that a substantially equivalent test be used in amendments to debt instruments contemplating the LIBOR transition. However, banks have been very resistant to this suggestion because of (i) market uncertainty, (ii) lack of history with SOFR and many other replacement indices, and (iii) bank desire to control the rate setting process in connection with the LIBOR transition.

Rev. Proc. 2020-44 attempts to address this problem since it provides that the fair market value may be determined by any reasonable valuation method so long as that method is applied consistently. The question will then be whether a bank's sole discretion in setting of the new interest rate is a reasonable valuation method even if it is done consistently by each bank and consistently within the financial industry.

Integrated Hedges

While Rev. Proc. 2020-44 gives some relief in municipal bond transactions, it is also important to consider how the end of LIBOR will impact transactions that utilize hedges and, specifically, 'integrated hedges.'A debt instrument may be 'integrated' with a hedge for purposes of determining the yield on an instrument for tax purposes, and the amount and timing of taxpayer income, deduction, gain or loss if certain procedures are followed. When amending debt instruments to address the elimination of LIBOR, if an integrated hedge is not simultaneously amended in the same manner, the change to the debt instrument could itself qualify for exclusion from the reissuance rule but the transaction could still lose the benefit of the integrated hedge, and thus be treated as reissued nonetheless. This could lead to potentially unfavorable tax consequences.

The key to avoiding this tax risk will be amending the debt instrument and the hedge in the same manner and at the same time to deal with the LIBOR transition. However, interest rate hedge transactions are generally governed by ISDA documentation, whereas the changes to a debt instrument are dictated by agreements of the parties to the debt instrument – typically the issuer/borrower and the bank/lender. Matching the provisions adopted in contemplation of the phase-out of LIBOR in integrated transactions may be difficult, but may also be critical to avoid adverse tax consequences.

Dichotomy of Fallback Provisions

ARRC

No Recommended Benchmark

ARRC initially announced that the Secured Overnight Financing Rate (SOFR) would be its recommended new interest rate benchmark index for formerly LIBOR-based debt. However, ARRC subsequently announced that banks could utilize any interest rate benchmark they so choose. In the face of this revised ARRC announcement, most banks that we have dealt with that have confronted the LIBOR transition issue have, so far, proposed as a fallback solution that the bank would use a replacement index chosen in the bank's sole and absolute discretion, without any input from the borrower/issuer.

In most cases, under existing regulations and notwithstanding the Rev. Proc. 2020-44 safe harbor, when banks unilaterally choose the new benchmark in a variable rate financing prepayable at any time, a reissuance event could result. Thus, these unilateral pronouncements may fail to allow the lenders to take advantage of the favorable tax treatment (avoidance of reissuance) intended to be available under Rev. Proc. 2020-44 because, absent the safe harbor treatment offered by the Rev. Proc., it is impossible to predict whether the 25 basis point safe harbor will be met now for these benchmark replacement substitutions.

No Recommended Spread Adjustment

Even when SOFR (or an alternative benchmark) is utilized as a replacement index for LIBOR (thus securing Rev. Proc. 2020-44 safe harbor treatment), it is clear that a spread must be added to SOFR for it to yield effective interest rates similar to LIBOR prior to the transition. Although it has tried several times, ARRC has not developed a recommended spread adjustment. In light of this, and absent negotiations, bank transition documentation often state that the new recommended benchmark spread adjustment to equate LIBOR with the new benchmark is to be chosen in the bank's sole and absolute discretion, without any input from the borrower/issuer. This also will likely result in reissuance.

Fair Recommended Fallback Language

ARRC has published recommended fallback language to be used in loan agreements as well as in many other commercial agreements. However, our experience has shown that very few financial institutions are using the ARRC recommended fallback language.

ISDA

Required Fallback

For swaps and derivatives, ISDA has developed what some consider to be a more robust fallback language to specify the rate to be used upon a LIBOR cessation. Although the use of the ISDA fallback may be the scenario expected by the swap counterparties, it is not automatically effective in pre-existing swaps. Therefore, issuers and borrowers must either agree to adopt the ISDA fallback in existing swaps, or amend or replace existing swaps or other derivatives with other new bilateral agreements.

Required Response

In our view, entering into a new agreement or new amendment in the case of swaps facing the end of LIBOR without built-in fallbacks (currently, silence is the most common fact pattern), rather than just agreeing to the ISDA Protocol, is highly recommended, as the ISDA Protocol leaves, at the sole and absolute discretion of the bank: (i) the determination of the new benchmark index, and (ii) the timing of the LIBOR transition. In addition, the ISDA Protocol locks in the benchmark spread adjustment as of March 5, 2021, which may (or may not) be a fair spread adjustment today, much less a year from now. Further, the ISDA Protocol strips away certain existing legal rights of borrowers. Moreover, as noted above, harmonizing these changes with changes to the underlying debt instrument (and vice versa) may also be crucial.

Further Analyses

General

As noted, reissuance, with its potential adverse tax consequences, can be triggered by: (i) changes in the benchmark index referenced from LIBOR to SOFR (or another benchmark as the banks have not eagerly adopted SOFR) together with a benchmark spread adjustment that do not satisfy the requirements of Rev. Proc. 2020-44, and (ii) changes in the other fallback provisions (e.g., interest payment and calculation periods) which are innocuously referenced to as ‘conforming changes.’

These changes could constitute an alteration of the terms of a debt instrument, be treated as a significant modification, trigger a tax realization event and, in some cases, result in a loss of tax exemption. Therefore, if borrowers and their lenders are to develop truly helpful LIBOR replacement fallback provisions, a main objective must be to avoid reissuance, which neither the ISDA nor the ARRC language achieves.

Associated Alterations

Rev. Proc. 2020-44 gives relatively broad protection from reissuance treatment for what are termed “associated alterations” done in connection with the change of the reference rate. It further permits, without causing reissuance, a one-time payment to correlate the old fair market value with the new fair market value, in the event an adjustment to the spread or to the rate is not enough to make the debt instruments economically substantially equivalent immediately prior to, and subsequent to, the LIBOR transition. Again, how this will be satisfied is not enumerated in the Rev. Proc. and remains unclear.

Conclusion

Accordingly, borrowers should take particular note of the tax risks summarized here and not merely accept bank proposed changes, particularly because in most bank documents, a change in taxes or regulatory requirements for a particular loan that have negative consequences to the bank are passed on to the borrower.

In a similar vein, in many transactions on behalf of our borrower clients, we have requested that negative implications to the end of LIBOR be retained by the bank, in no small part because (i) this LIBOR transition is taking place as a result of bank manipulations of LIBOR and not from any actions of borrowers and (ii) of the banks' insistence on unilateral decision-making on alternative index and spread selection causing tax risk not created by the borrower. As with other suggested changes to the 'industry-standard' documentation, this position has not been generally accepted by the banks, though it would keep the issuers/borrowers in a similar economic position pre- and post-LIBOR transition.

Consequently, all LIBOR transition documentation should be carefully analyzed prior to execution, even if represented as 'industry-standard,' so as to avoid, among other things, adverse tax consequences borne by the borrower.

Arent Fox, LLP

by Alyssa Gould, Les Jacobowitz & Richard Newman

July 28, 2021

House Financial Services Committee July 2021 Markup: SIFMA Comment Letter

SUMMARY

SIFMA respectfully submits this letter to the House Financial Services Committee in connection with its full committee markup on July 28, 2021. Included are SIFMA's views on H.R. 4616, the Adjustable Interest Rate (LIBOR) Act; H.R. 4617, to require the Securities and Exchange Commission to carry out a study on payment for order flow; H.R. 4618, the Short Sale Transparency and Market Fairness Act; H.R. 4619, to amend the Securities Exchange Act of 1934 to prohibit trading ahead by market makers, and for other purposes; H.R. 935, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act; and H.R. 2265, the Financial Exploitation Prevention Act.

Read the Comment Letter.

TAX - MAINE

Madison Paper Industries v. Town of Madison

Supreme Judicial Court of Maine - July 6, 2021 - A.3d - 2021 WL 2793717 - 2021 ME 35

Taxpayer, which owned paper mill and hydro-electric power plants, petitioned for review after State

Board of Property Tax Review upheld denial by town board of assessors of taxpayer's request for property tax abatement.

The Superior Court affirmed decision. Taxpayer appealed.

The Supreme Judicial Court held that:

- Two of taxpayer's arguments were subject to review for clear error;
- Board's decision to uphold town's valuation of paper mill assets based on current use was warranted;
- Board did not improperly assess mill in determining highest and best use;
- Board's finding that assessment had not involved double-counting of value of energy produced by plants was consistent with evidence; and
- Board properly applied statute in determining that town's assessment and taxpayer's appraisal were within 10% of each other.

Arguments of taxpayer, operator of paper mill and hydro-electric power plants that sought property tax abatement, that State Board of Property Tax Review committed legal error by deciding that power plant assets should have been valued based on highest and best use, but that mill assets should have been valued based on current use, and that Board committed legal error in deciding that difference between assessed property value and taxpayer's asserted value was within range designated as accurate within reasonable limits of practicality raised primarily factual, not legal, challenges to Board's decisions, and thus such arguments were subject to review for clear error, even though operator proposed de novo standard of review.

Decision of State Board of Property Tax Review to uphold town's valuation of taxpayer's paper mill assets, which were located partially in town, based on assets' current use as operating mill, rather than based on assets' liquidation or salvage value, was warranted, even though taxpayer asserted that liquidation or salvage value was assets' highest and best use; Board pointed out that, at time of property tax assessment, mill was state-of-the-art facility that operated in the black, that its owners were not in financial difficulty, and that owners had announced mill's closure without communicating cooperatively with town, and Board found that mill had been closed and its equipment and machinery sold as scrap under restrictions because owners no longer wanted to operate mill, but that owners' decisions should not have dictated mill's highest and best use.

State Board of Property Tax Review, in determining highest and best use of taxpayer's paper mill, for purpose of determining mill's just value, and thus proper property tax assessment, did not improperly assess mill; Board simply rejected taxpayer's appraisal of mill as incredible, starting with taxpayer's view of mill assets' highest and best use as being liquidation value, which was within Board's prerogative as fact-finder, and determined that taxpayer failed to prove that judgment of assessors was so irrational or unreasonable that property was substantially overvalued.

Finding of State Board of Property Tax Review that assessment of taxpayer's paper mill and hydro-electric power plants had not involved double-counting of value of energy produced by plants was consistent with evidence, even though taxpayer asserted that value had been counted once by including value of energy in valuation of plants as "merchant power plants" and again by attributing value of energy supplied to mill as "avoided cost"; while Board found that 40% of mill's energy requirement that plants provided constituted avoided cost to mill, such finding did not necessarily mean that town, in assessing property tax, factored avoided cost into assessment of mill assets, and individual who provided assessment calculations as guidance relied on cost approach, which did not count value of energy as avoided cost equivalent to income.

State Board of Property Tax Assessment properly applied statute indicating that, in proceedings related to protested assessment, it is sufficient defense of assessment that it is accurate within reasonable limits of practicality, except when proven deviation of at least 10% from relevant assessment ratio exists, in determining that town's assessment of value of portion of taxpayer's hydro-electric power plants that was within town and value offered in taxpayer's appraisal were within 10% of one another; while Board used town's valuation that excluded equipment that was exempt from taxation pursuant to Business Equipment Tax Exemption (BETE) program, such equipment was not included in protested assessment, and BETE statute required town to value and assess BETE-eligible assets only for purposes of reimbursement.

Citigroup to Take Over Atlantic City Water Park Bond Sale; Groundbreaking for Project This Fall.

ATLANTIC CITY — Citigroup Inc. will soon take over as the underwriter of the $95 million municipal bond sale that will finance the construction of a water park at the Showboat hotel, according to a report from Bloomberg.

The Atlantic County Improvement Authority, which voted 8-0 in March to authorize the issuance and sale of revenue bonds to finance the water park, will return to the issue at a meeting at 10 a.m. Thursday, according to an agenda on its website.

Jessica Prada, administrative assistant for the Improvement Authority, told Bloomberg it will hold a special session Thursday to vote on Citigroup's appointment. The previous underwriter, Janney Montgomery Scott, is being replaced after failing to sell the unrated bonds, according to the report.

Bart Blatstein, CEO of Tower investments, developer of the water park, said Tuesday the project will break ground "around this fall."

"We're super excited about it," Blatstein said. "The success of our arcade, The Lucky Snake, has shown there is a tremendous interest for nongaming and family activities in Atlantic City."

In a presentation to the Improvement Authority board in February, Blatstein said the water park would be "best in class" and the first year-round family entertainment resort in Atlantic City.

Based on the resolution passed by the authority, the authority would issue the bonds for the project; repayment of the debt service would come through revenue generated by the water park and entertainment complex.

Before voting for the bonds though, the authority asked about the possible risks and downside of issuing the bonds. Blatstein and Tower Investments attorney Jeffrey Winitsky assured the board that neither the authority nor taxpayers faced any risk, according to the minutes of the Feb. 25 meeting.

The money being sought would cover construction costs and would also fund a debt-service reserve should revenue on the project be short or delayed, Winitsky told the board.

The Casino Reinvestment Development Authority granted site plan approval for the park in early 2021. The authority also granted the project an Entertainment Retail District designation. As part of the designation, the project will receive $2.5 million per year for 20 years in sales tax rebates.

Winitsky said a new underwriter would "give the transaction a fresh perspective and marketing effort," the report said.

pressofatlanticcity.com

by Ahmad Austin

Jul 27, 2021

Munis In Focus: Water Parks & Infrastructure (Bloomberg Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest news from the muni market. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

July 30, 2021

Munis In Focus: YTD Muni Issuance (Bloomberg Radio)

Eric Kazatsky, Senior Municipal Strategist for Bloomberg Intelligence, discusses the latest news from the municipal bond market. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

July 26, 2021

CDFA Rural Development Finance Webinar Series: Best Practices for Rural Development Finance Agencies

Tuesday, August 31, 2021 | 2:00 PM – 3:00 PM Eastern

Best Practices for Rural Development Finance Agencies

There are hundreds of development finance agencies working in concert to support rural communities. They exist at all levels of government, in communities of all sizes, and provide financing programs to address multiple capital needs. How do you find a development finance agency that is the right fit for your rural community? During the third installment of the CDFA Rural Development Finance Webinar Series, discover best practices of development finance agencies to help you identify the right partner for your projects.
Moderator(s)

Click here to learn more and to register.

[CDFA-TEDC Webinar: Driving Investment into Texas' Rural Opportunity Zones]

September 7, 2021 | 1:00 – 2:30 PM Central

Click here to learn more and to register.

CDFA Federal Financing Webinar Series: The Federal Role in Financing Broadband

Tuesday, September 14, 2021 | 2:00 PM – 3:30 PM Eastern

The Federal Role in Financing Broadband

Next-generation technology will increasingly rely on 5G networks. Communities with small economies and insufficient capacity to fund and operate their own broadband networks will become underserved and left behind. Federal agencies such as the National Telecommunications and Information Administration (NTIA), the USDA, and the Federal Communications Commission (FCC) have financing programs available to help bridge the gap communities face when assembling capital to invest in their broadband networks. During this installment of the CDFA Federal Financing Webinar Series, experts will discuss how federal financing tools can be used to fund 5G broadband networks.

Click here to learn more and to register.

OZ Exit Plans and Structural Risks.

What are the advantages of a Qualified Opportunity Fund that is structured as a REIT instead of a partnership? How does the level of diversification in a fund impact its risk/return profile?

Peter Ciganik is Managing Director at GTIS Partners, a global real estate investment firm based in New York.

Episode Highlights

- How the REIT structure may be advantageous for real estate investments with extended holding periods.
- Why exit strategy planning is important in determining the bottom line returns that OZ investors realize.
- How opportunity zone funds are attracting investors to real estate as an asset class for the first time.
- The potential benefits of diversification when investing in real estate, and the risks associated with single-asset strategies.
- The structural regulatory benefits that come with multi-asset strategies.
- Why rising costs pose challenges for real estate development in the current environment.
- How the opportunity zone program is achieving its objective of catalyzing community investment.

Listen to audio.

Opportunitydb.com

by JIMMY ATKINSON

JULY 28, 2021

Evolution of Tax Increment Financing: Indiana, Kentucky, Ohio, and West Virginia - Frost Brown Todd

Tax increment finance (TIF) legislation continues to evolve in many states within the Frost Brown Todd footprint. Below are summaries of recent legislative changes in Indiana, Kentucky, Ohio and West Virginia. These changes may provide additional opportunities for local governments or developers looking to utilize TIF to complete their capital stacks. In addition, the changes may provide additional financing opportunities for existing districts and projects.

Indiana

The General Assembly of the State of Indiana passed limited modifications to the TIF statutes and related provisions during this session. Some of the more relevant amendments to TIF and redevelopment commissions were included in House Bill 1271. The bill was the omnibus legislation for the Department of Local Government Finance (DLGF). It was signed into law by Governor Eric Holcomb on April 8, 2021, and included, among many other things, the following:

Negotiated Bond Sales – The bill extended the sunset provision permitting sales of general obligation, revenue (including tax increment revenue), or special tax bonds at negotiated sales until July 1, 2023.

Allocation Areas – There were several amendments providing that one parcel may not be included in multiple allocation areas. This provision, however, does not apply retroactively to parcels currently located in multiple allocation areas.

Annual Notification to DLGF – The bill shifted responsibility for annual notification to DLGF of the amount of excess tax increment revenue from the redevelopment commission of the local governmental unit to the county auditor.

The above is a short summation of some of the legislation passed by the General Assembly that affects TIF and redevelopment commissions. The 2022 General Assembly session will likely yield more changes to Indiana's TIF statutes and related provisions.

Kentucky

During the 2021 legislative session, the Kentucky legislature passed an amendment to Section 65.7047 of the Kentucky Tax Increment Financing Act. The amendment, effective June 29, 2021, places certain preliminary requirements on cities and counties that are establishing or modifying local development areas over previously undeveloped land. The amendment requires the city or county to engage a "qualified independent outside consultant or financial adviser" to prepare a report that analyzes data related to the project and the proposed development area.

The component parts of the required report include:

1. the estimated approved public infrastructure costs;
2. an assessment of the feasibility of the project;
3. the estimated amount of local tax revenues that will be generated by the project over the term of the local development area;
4. the estimated amount of local tax revenues that will be displaced as a result of the project;
5. the estimated amount of old revenues that would have been generated in the local development area in the absence of the project; and
6. a determination that the project will not occur "but for" the existence of the local development area.

The amendment also addresses improvements to local development areas that will be financed through the issuance and sale of increment revenue bonds or "TIF bonds." Where such bonds will be issued and sold, the required report must also include projected financing costs as well as the relationship of the estimated revenues to the financing needs of the project.

Finally, with respect to the legislative approval of a local development area, the amendment provides that the ordinance approving the development area must include the estimated net positive fiscal impact as set forth in the required report.

Ohio

The Ohio General Assembly recently passed several bills that will impact the implementation and administration of TIF districts in Ohio. Below is a summary of key updates that will be of interest to local governments, developers, and other community stakeholders.

Amendments to Sections 5709.40 and 5709.41 of the Ohio Revised Code – The biennium budget bill, signed into law by Governor Mike DeWine on July 1, 2021, includes amendments to Sections 5709.40 and 5709.41 of the Ohio Revised Code, which are the tax increment provisions that govern the establishment of TIF districts in municipal corporations. The amendments incorporate the following updates:

- ***Off-Street Parking Facilities:*** A Section 5709.40(A)(8) amendment updates the definition of "public infrastructure improvement" to expressly include "off-street parking facilities" as a qualifying expenditure of TIF service payments. This update will give municipalities more certainty with respect to their participation in the financing of projects that incorporate structured parking.
- ***Exemption Period Commencement Flexibility Allowing Designated Tax Year or Value:*** A Section 5709.41(D) amendment gives municipalities greater latitude when designating the commencement date for a TIF exemption under an authorizing ordinance. Under the updated provision, municipalities may elect to have a TIF exemption commence with any tax year specified in the TIF ordinance other than a tax year that precedes the effective date of the ordinance. Alternatively, the amendment permits municipalities to refrain from designating a tax year for the commencement of a TIF exemption and to instead utilize an improvement value as the basis for commencing a TIF exemption. For projects that incorporate multiple parcels, the amendment permits a municipality to establish different commencement dates for each parcel identified in the authorizing ordinance. These updates bring Section 5709.41 in alignment with the parallel provisions under Section 5709.40.

Minimum Service Payment Obligations Under Section 5709.91 – Substitute Senate Bill 57 was signed by Governor DeWine on April 27, 2021 and will be effective on August 3, 2021. This legislation approves several updates to Section 5709.91 of the Ohio Revised Code with respect to the status of “minimum service payment obligations” as they pertain to real property located in TIF districts. “Minimum service payment obligations” are payment obligations that supplement a property owner’s obligation to make statutory service payments under Section 5709.42 and related provisions of the Ohio Revised Code. The updates to Section 5790.91, include the following changes pertaining to minimum service payment obligations:

- ***Covenant Running with the Land:*** Recorded agreements or instruments memorializing a property owner’s consent to a minimum service payment obligation shall constitute a covenant running with the land and be binding against subsequent owners of the property;
- ***Insurable Interest****:* Minimum service payment obligations constitute an insurable interest for purposes of issuing title insurance in Ohio;
- ***Collected Like Property Taxes:*** Minimum service payment obligations may be certified to the county auditor and shall be collected in the same manner as real property taxes; and
- ***Security Mechanism for Financing:*** Minimum service payment obligations may be established to ensure sufficient funds to “finance expenditures” authorized under Chapters 725, 1728, and 5709. This update provides for broad authority to utilize “minimum service payment obligations” as compared to the prior provision which limited the use of “minimum service payment obligations” to ensuring sufficient funds to finance expenditures attributable to “public infrastructure improvements” and “housing renovations.”

These changes provide greater flexibility and increased opportunity for local governments to incorporate the “minimum service payment obligations” into the financing of projects.

Payment Limitation on TIF District Extensions – Certain TIF districts in Ohio may be eligible for an extension of the exemption period. As a reminder, the ability to extend TIF districts in 2020 is gone, but TIF districts may still be extended in 2021 and beyond. For extensions after January 1, 2021, service payments may not exceed $1,500,000 for all calendar years prior to the calendar year immediately preceding the adoption of the extension amendment.

West Virginia

The West Virginia legislature continued passing amendments to the West Virginia Tax Increment Financing Act during the 2021 legislative session. The Act was previously amended during the 2004, 2014, 2016 and 2018 legislative sessions. The 2021 amendments primarily address:

1. extending the termination date of certain districts;
2. procedures to combine two districts;
3. the maturity date of certain refunding bonds; and
4. agreement for payments in lieu of taxes for properties within districts.

The amendments discussed below were effective on July 9, 2021.

Extension of Termination Date of Certain Districts – County commissions or municipalities may extend the termination date of certain districts for up to five years or to December 31, 2050, whichever is earlier. Only districts for which tax increment financing obligations were issued prior to December 31, 2020 may be extended. The extension of the term of a district may not occur simultaneously with the modification of the boundaries of the district. The local government proposing the extension is required to hold a public hearing, obtain the approval of the director of the West Virginia Department of Economic Development, and, if applicable, obtain the approval of any municipality in which a portion of a district is located.

Combining Districts – The amendments to the Act clarified: (i) the base assessed value of the property of a district resulting from the combination of two prior districts and (ii) the termination date of a combined district. The base assessed value of property in a combined district is the base assessed value of such property in each of the prior separate districts. The termination date of a combined district is the termination date of the district that had the latest termination date prior to the combination of the districts. This provides the opportunity to create a new district adjacent to an existing district, and following the combination of the two districts, the termination date would be nearly 30 years.

Payments in Lieu of Taxes – Prior to the most recent amendments to the Act, agreements for payments in lieu of taxes with respect to property in a district were required to have any such payments be equal to the property taxes that otherwise would have been due. The amendments permit agreements for payments in lieu of taxes to be negotiated among the public entity owning the property, the lessee of the property, and the applicable local levying bodies. These changes provide flexibility to provide property tax incentives for projects within a district. In addition, these changes provide for a written agreement to address the amount of property taxes to be deposited in the tax increment financing fund for the term of the agreement which eliminates assessment risk for any property covered by such an agreement.

Frost Brown Todd LLC – Carrie J. Cecil , Emmett M. Kelly, Emma H. Mulvaney, Donald L. Warner III and Beau F. Zoeller

July 28 2021

S&P Pension Brief: Single-Employer Pension Plans Are Straining Illinois Municipalities' Credit Quality

Key Takeaways

- Weak statutory funding requirements below actuarial recommendations postpone meaningful funding progress for many local governments’ individual pension plans.
- Limited revenue-raising flexibility and weak demographic trends will likely compound pension pressures for poorly funded local plans.
- The consolidation of downstate and suburban public safety plans likely will provide some savings to these plans, but minimal help to address near-term cost pressures and could add contribution volatility risk.
- Although carve-outs in the statutory funding requirements have been made to provide Chicago with budgetary relief, the city faces budgetary pressure from its large unfunded liabilities, and costs are expected to escalate.

Continue reading.

27 Jul, 202

City of El Paso’s Use of Non-Voter Approved Debt Raises Concerns, Public Finance Experts Say.

As the city of El Paso prepares to issue another multimillion dollar round of non-voter approved debt, experts say the practice raises red flags and will have long-term impacts for generations of taxpayers.

The El Paso City Council recently approved beginning the process of issuing $96 million in certificates of obligation, or debt that can be issued without voter approval if the amount does not exceed $100 million. A public hearing is scheduled for Aug. 24, when the City Council will vote on whether to approve the issuance of the debt.

The council also approved issuing about $93 million in certificates of obligation in April, and since 2019 has issued two separate $100 million rounds of the debt for a variety of city projects and included funding for emergency vehicles for the police and fire departments.

Continue reading.

El Paso Matters

by Elida S. Perez

July 28, 2021

Santa Rosa Mulls Bond Offering to Knock Down Pension Liabilities.

Santa Rosa City Council is considering selling more than $100 million of bonds to raise cash for its growing pension debt, a step that could ease budgeting in years to come but carries enough risk that some municipal financing experts warn against it.

The costs of expensive earlier pension plans and losses the California Public Employees' Retirement System accrued during the 2008 financial crisis will come to a head in the next 10 years, as annual payments Santa Rosa makes to the agency increase each year to peak at almost $43 million in 2031.

Paying off those debts affects daily life in the city. Every dollar dumped into pension debt is one less dollar city officials have for programs or for reacting to problems that range from crime to natural disasters.

To curb the payments, Santa Rosa's chief finance officer Jan Mazyck has proposed the city use an investment mechanism known as pension obligation bonds. The bonds could raise cash at low interest rates and dump that cash into pension funds — a move that both lowers pension debt and increases the funds' earning power by providing more money to invest.

At a July 20 city council study session, members expressed interest in the strategy and directed Mazyck to bring back a more specific proposal. The council will not need to go to voters with a ballot measure in order to issue the pension bond offering, which could go as high as $200 million and are likely to amount to at least $110 million, Mazyck said.

For success, the city will need the pension funds to outperform the interest rates paid to investors who buy the bonds. Given low interest rates that have persisted through the pandemic, Mazyck says chances of doing so are high. She has said the bonds could be issued at an average of 3.5% interest but well could be lower.

"It's not fail proof but it is a reasonably fail proof environment," she said in a Tuesday interview.

While interest rates are low, financial markets have been performing well. CalPERS itself raked in a 21% return on its investment portfolio over the last fiscal year.

But issuing the bonds increases the city's vulnerability to a market crash. Sustained stock market losses — from a fresh recession, for example — would leave the city owing not just the pension payments but also the interest payments on its bonds.

Failure would mean even more money going to pay off investment losses, and less money for government services.

Because of such eventualities, the Government Finance Officers Association, a trade group made up of more than 20,000 federal, state and local government public finance officers, suggests local governments stay away from pension obligation bonds.

Pension obligation bonds "are complex instruments that carry considerable risk," the trade group's committee on retirement and benefits administration said in February.

The Federal Reserve keeping interest rates at near rock bottom levels has led to a flurry of government entities issuing the bonds, prompting a written statement from government finance officers' group. The risks "remain true regardless of economic cycles," according to the statement.

The city pays around $30 million each year toward the unfunded portions of its pension funds. It pays about another $20 million annually toward the pension funds of its current employees.

Pension payments are for the most part an untouchable cost for governments — city officials can't legally reduce the retirement benefits previous employees held.

Because of efforts by CalPERS to "smooth" out the repayment of losses accrued during the 2008 recession, city finance officials say that over the next 10 years Santa Rosa will pay another $110 million, above the $30 million in annual payments, to unfunded pension liabilities.

She would like to see the city sell bonds of at least that amount, she said. The city does not have to sell $110 million worth of bonds at once, however, Mazyck said, allowing it to be strategic with interest rates.

Selling the bonds in stages, and as part of a broader strategy to confront budget woes, reassured council members worried about too much risk through a complicated financial tool.

"There's no magic solution, because if there were, other cities would be doing it," council member Tom Schwedhelm said.

THE PRESS DEMOCRAT

by ANDREW GRAHAM

July 28, 2021

[Jeffrey Baker, Municipal Bond Analyst for 43 Years, Dies at 71.]

- **Started at Chase Manhattan, retired from JPMorgan in 2015**
- **Was former chairman of two municipal-market industry groups**

Jeffrey Baker, a municipal bond analyst for 43 years who spent his entire career with one firm and its successors, has died at the age of 71.

He died Monday of cancer at his home in River Edge, New Jersey, according to his wife of 46 years, Ann.

Baker joined Chase Manhattan Bank in 1972 and retired from JPMorgan Chase & Co. in 2015.

"It was his first job out of school," said Ann Baker.

Baker was chairman of the Municipal Analysts Group of New York in 1993, and chairman of the National Federation of Municipal Analysts in 1997.

In 1994, he received the organization's Industry Contribution Award, with Katherine Bateman and Bill Oliver, for their "active involvement as NFMA representatives with other industry groups and the SEC, as well as their development of the 15 recently released Secondary Market Disclosure Forms."

Baker "gave freely of his time and expertise," recalled Steve Schrager, a fellow municipal bond analyst and long-time friend. "He sought out and mentored younger analysts, contributing to their professional growth."

Another friend, Mark Tenenhaus of RSW Investments, recalled Baker as a devoted fan of the New York Jets football team. "His tailgates were legendary."

Baker majored in finance at New England College in Henniker, New Hampshire, and got his MBA from Fairleigh Dickinson University.

In addition to Ann, he is also survived by his daughter, Lynne, and son-in-law Matt Weber, and two grandchildren, Benjamin and Zoe. He was predeceased by a son, Scott, in 1996.

There will be a service for Baker on Thursday at 11 a.m. at Temple Avodat Shalom in River Edge.

Bloomberg Business

By Joseph Mysak Jr

July 28, 2021, 8:41 AM PDT

- GASB Issues Proposal to Enhance Concepts for Notes to Financial Statements.
- GASB Proposes Omnibus Statement Addressing Wide Range of Practice Issues.
- S&P U.S. Public Finance Mid-Year Outlook: Beyond COVID?
- Fitch ESG in Credit White Paper 2021.
- Interesting eminent domain case out of Texas here.
- And finally, Detention: With Extreme Prejudice is brought to us this week by *Khoury v. Miami-Dade County School Board*, in which the court noted that "… the School Board developed an unwritten policy of improperly detaining people under the Baker Act." The Baker Act allows for involuntary 72-hour stays at the local spa, also know as "your friendly neighborhood psychiatric facility." Yup, you read that correctly – the School Board. What could possibly go wrong? Apparently all it took was, "exhibiting 'concerning' and 'odd' behaviors." BCB promptly filed an amicus brief, due to the

fact that our entire workforce faced the imminent threat of a direct flight over the proverbial cuckoo's nest, as the only behaviors ever observed 'round these parts are distinctly "odd" and "concerning."

LEGAL SERVICES - ALABAMA

Fuston, Petway & French, LLP v. Water Works Board of City of Birmingham

Supreme Court of Alabama - June 30, 2021 - So.3d - 2021 WL 2678325

Law firm brought action against client, which was a city water works board, and asserted claims of breach of contract and breach of the covenant of good faith and fair dealing, which arose from board's vote to terminate contract pursuant to which law firm represented board.

The Circuit Court dismissed the claim of breach of the covenant of good faith and fair dealing and later entered summary judgment for the board on the claim of breach of contract. Law firm appealed.

The Supreme Court held that:

- Contractual provision requiring that there be a supermajority in order for board to terminate the contract was against public policy and therefore invalid, and
- The contract was for legal services as opposed to nonlegal services.

Contractual provision requiring that there be a supermajority in order for city water works board to terminate the three-year contract, pursuant to which a law firm provided legal services to board, was against public policy and therefore invalid.

Contract between law firm and city water works board was for legal services as opposed to nonlegal services, as was relevant to determining if contractual provision requiring that there be a supermajority in order for board to terminate the contract before the end of its three-year duration was against public policy; despite argument that agreement provided that law firm administer board's purported contract-compliance program, which allegedly would have been a nonlegal service so as to allow law firm to maintain breach-of-contract claim against board for terminating the contract as to the contract-compliance program's administration, nothing in the record showed that board adopted such a program.

PUBLIC UTILITIES - CALIFORNIA

Save Lafayette Trees v. East Bay Regional Park District

Court of Appeal, First District, Division 3, California - June 30, 2021 - Cal.Rptr.3d - 2021 WL 2677595 - 21 Cal. Daily Op. Serv. 6705

Neighbors and interest group filed an amended petition/complaint seeking to vacate regional park district's approval of a memorandum of understanding with natural gas utility allowing for the removal of 245 trees from park district land.

The Superior Court sustained defendants' demurrers without leave to amend and dismissed the lawsuit, and neighbors and interest group appealed.

The Court of Appeal held that:

- Tolling agreement with regional park district regarding California Environmental Quality Act (CEQA) challenge was not binding on utility;
- Date on which CEQA's 180-day statute of limitations was triggered was date of public hearing;
- Statutory exception prohibiting a regional park district from interfering with public property that is either "owned or controlled" by city did not require park district to comply with municipal tree protection ordinance;
- Park district's board was not bound by district ordinance providing rules and regulations for the general public's use of district land; and
- District's actions were all quasi-legislative actions to which constitutional due process rights of notice and hearing were inapplicable.

Tolling agreement between petitioners and regional park district regarding petitioners' California Environmental Quality Act (CEQA) challenge to district's approval of a memorandum of understanding with natural gas utility regarding removal of trees on park land was not binding on utility; utility was both a necessary party and an indispensable party without whom the CEQA cause of action could not proceed, and utility, as a named party, was entitled to either assert or waive the statute of limitations defense to the amended petition/complaint.

Date on which 180-day statute of limitations under the California Environmental Quality Act (CEQA) was triggered for petitioners' challenge to park district's agreement to allow gas utility to remove 245 trees from park land was date of public hearing at which park district committed to a definite course of action by issuing a resolution authorizing the acceptance of funding from utility for the cost of the tree replacement and maintenance, even if meeting agenda and description of the resolution did not indicate that trees would be removed; memorandum of understanding, executed over the following two days, was consistent with the resolution and the project as outlined in the staff report submitted to the park district's board of directors.

Statutory exception prohibiting a regional park district from interfering with public property that is either "owned or controlled" by city did not require park district to comply with municipal tree protection ordinance before entering into memorandum of understanding with gas utility to allow gas utility to remove 245 trees from park land within city; rather, exception merely prohibited district from taking control of city parks and recreational facilities, such as a municipal golf course.

Regional park district's board was not bound by district ordinance providing rules and regulations for the general public's use of district land, and thus ordinance did not apply to memorandum of understanding between park district and gas utility allowing utility to remove 245 trees from park district land; park district's administration of district land was subject to separate "Operating Guidelines."

Actions of regional park district's board of directors in holding a public hearing, issuing a resolution, and entering into a memorandum of understanding with gas utility allowing utility to remove 245 trees from park district land were all quasi-legislative actions, not quasi-adjudicatory ones, to which constitutional due process rights of notice and hearing were inapplicable; decisions were not limited to a consideration of the interests of nearby property owners, but, rather, board was tasked with considering utility's request in the context of how the proposed tree removal and replacement and future maintenance operations would impact the park district's mission, and decision required the board to assess a broad spectrum of community costs and benefits not limited to facts peculiar to the individual case.

IMMUNITY - FLORIDA

Khoury v. Miami-Dade County School Board

United States Court of Appeals, Eleventh Circuit - July 7, 2021 - F.4th - 2021 WL 2817612

Detainee brought § 1983 action against public school board and public school police officers, asserting claims for municipal liability against board and claims against officers for false arrest, excessive force, and First Amendment retaliation.

The United States District Court for the Southern District of Florida entered summary judgment for board and officer. Detainee appealed.

The Court of Appeals held that:

- Officer was not entitled to qualified immunity for false arrest claim;
- Fact issues precluded summary judgment on First Amendment retaliation claim; and
- Board did not have municipal liability under § 1983.

Public school police officer had no arguable probable cause to conclude that detainee was a danger to herself or others as required to involuntarily commit her for a mental health examination under Florida's Baker Act and thus, he was not entitled to qualified immunity from detainee's § 1983 false arrest claim, where although detainee had been acting strangely while filming vehicles she believed to be parked illegally and acted irrationally by screaming she was being attacked by the officer, she was not violating the law or harming anyone by filming, nor was she a threat to any of the witnesses.

Genuine issue of material fact as to whether there was a causal connection between public school police officer's retaliatory actions in involuntarily committing detainee and forcing her to undergo a mental health examination under Florida's Baker Act in connection with incident related to detainee's filming of what she believed to be illegally parked cars on school property and the adverse effect on speech precluded summary judgment on detainee's First Amendment retaliation claim against officer.

Detainee failed to provide sufficient evidence that public school board had a custom or practice of committing people who did not qualify for an involuntary mental health examination pursuant to Florida's Baker Act and thus, board did not have § 1983 municipal liability for alleged violation of her First and Fourth Amendment rights for public school police officer's actions in committing her for a mental health examination under the Baker Act in relation to an incident that occurred while she was filming cars she believed to be illegally parked on school property; despite detainee's allegations of other incidents involving the Baker Act detentions, those incidents were either too remote in time or did not show a constitutional violation.

PUBLIC UTILITIES - HAWAII

Matter of Hawaiʻian Electric Company, Inc.

Supreme Court of Hawaiʻi - June 29, 2021 - P.3d - 2021 WL 2660470

Environmental organization sought review of Public Utilities Commission's (PUC) decision to not re-open its order approving power purchase agreement (PPA) in which electric utility agreed to purchase wind energy generated on proposed wind farm.

The Supreme Court held that:

- Court had jurisdiction to rule on jurisdictional issue;

- Organization’s request to re-open via relief from judgment rule was not a collateral attack on order;
- Organization was a “person aggrieved” with standing to appeal;
- Relief from judgment rule was not available to re-open order to address impact of project on greenhouse gas emissions;
- Alleged lack of a timely incidental take license over Hawaiʻian hoary bat did not void PPA as a basis to re-open order; and
- Blog article from popular science magazine about decreased wind energy prices did not warrant re-opening of order.

Supreme Court possessed jurisdiction, at a minimum, to rule on jurisdictional issue raised in environmental organization’s appeal of Public Utilities Commission’s (PUC) decision to not re-open its unappealed order approving power purchase agreement (PPA) between electric utility and wind energy generator following contested case proceeding in which organization was granted participant status, where objector asked Court to consider whether rule governing motions for relief from judgment or order provided authority to re-open PUC’s order due to substantially changed circumstances.

Environmental organization’s request, made via the relief from judgment rule, to re-open Public Utilities Commission’s (PUC) order approving power purchase agreement (PPA) between electric utility and wind energy generator following contested case proceeding in which organization was granted participant status was not an impermissible collateral attack on order, where motion was submitted in same proceeding that generated the order.

Environmental organization was a “person aggrieved” with standing to appeal Public Utilities Commission’s (PUC) decision to not re-open PUC’s unappealed order approving power purchase agreement (PPA) between electric utility and wind energy generator following contested case proceeding in which organization was granted participant status, where organization’s motion for relief from the order was brought within the same proceeding.

Public Utilities Commission (PUC) properly declined to use the relief from judgment rule, which was asserted by environmental organization that had participant status, as a basis to re-open PUC’s order approving power purchase agreement (PPA) between electric utility and wind energy generator in order to address impact of project on greenhouse gas (GHG) emissions, where absence of a GHG emissions analysis was readily apparent in order when it was filed, organization could have timely moved for rehearing or reconsideration of order, and organization also could have timely appealed order.

Any failure of electric utility or wind energy generator to timely obtain an incidental take license (ITL) over Hawaiʻian hoary bat did not void their power purchase agreement (PPA) and Public Utilities Commission’s (PUC) order approving PPA within meaning of the relief from judgment rule, and therefore PUC was not required to re-open its order, via that rule, pursuant to request of environmental organization that had participant status in contested case proceeding; the “voiding” of PPA and PUC’s order that organization sought to prove did not involve defects in jurisdiction or a due process violation.

Blog article from popular science magazine summarizing Department of Energy’s (DOE) report that wind energy prices nationwide had fallen did not provide extraordinary circumstances necessary to re-open Public Utilities Commission’s (PUC) order approving power purchase agreement (PPA) between electric utility and wind energy generator on the basis, under the relief from judgment rule, that it was no longer equitable for order approving higher wind energy prices to have prospective application, where Hawaiʻi was excluded from DOE’s report due to unique issues facing wind development in state.

VOTER INITIATIVES - MAINE

Portland Regional Chamber of Commerce v. City of Portland

Supreme Judicial Court of Maine - July 6, 2021 - A.3d - 2021 WL 2795844 - 2021 ME 34

Regional chamber of commerce brought action against city alleging that voter-initiated legislation establishing emergency minimum wage in city violated direct initiative provisions of State Constitution and city's direct initiative ordinance.

The Superior Court granted summary judgment against chamber. Chamber appealed and intervenors cross-appealed.

The Supreme Judicial Court held that:

- Emergency minimum wage provision did not violate direct initiative power under State Constitution;
- Provision did not violate direct initiative ordinance; and
- Effective date of provision was date that new minimum wage rate came into effect.

Voter-initiated legislation establishing emergency minimum wage in city related to municipal affairs, and therefore it did not violate direct initiative provisions of State Constitution; local minimum wage was among the issues encompassed by municipal legislative authority.

Voter-initiated legislation establishing emergency minimum wage in city related to municipal affairs, and therefore it did not violate city's direct initiative ordinance; local minimum wage was among the issues encompassed by municipal legislative authority, and direct initiative ordinance was a predominantly procedural provision that merely facilitated the substantive law and that could evolve separate and apart from the procedure.

Effective date of voter-initiated legislation establishing emergency minimum wage in city was date that new minimum wage rate came into effect, where legislation did not explicitly state an effective date for emergency minimum wage provision and emergency provision cross-referenced another section to establish the effective minimum wage rate for purposes of computing emergency minimum wage.

CIVIL ASSESSMENTS - MARYLAND

Angel Enterprises Limited Partnership v. Talbot County

Court of Appeals of Maryland - July 9, 2021 - A.3d - 2021 WL 2885857

Following administrative proceeding arising from imposition of civil penalty on landowners for their violations of county code, county filed petition for judicial review of decision of county board of appeals, which determined that daily accrual of fines was stayed during pendency of administrative appeal.

The Circuit Court reversed in part. Landowners appealed. The Court of Special Appeals affirmed in part and vacated in part. Landowners filed petition for writ of certiorari.

The Court of Appeals held that:

- The jurisdiction conferred upon a local board of appeals by Express Powers Act does not include original jurisdiction or administrative adjudicatory review of civil fines or penalties or other civil assessments, and
- Civil assessments issued by county compliance officer were not “adjudicatory orders” over which county, a charter county, could confer jurisdiction upon its board of appeals pursuant to Express Power Act.

The jurisdiction conferred upon a local board of appeals by Express Powers Act does not include original jurisdiction or administrative adjudicatory review of civil fines or penalties or other civil assessments.

Civil assessments issued by county compliance officer on landowners for violations of county code associated with clearing of trees and building of driveway were not “adjudicatory orders” over which county, a charter county, could confer jurisdiction upon its board of appeals pursuant to Express Power Act; assessments did not command landowners to take a specific action but rather purported to enforce abatement orders by imposing daily civil penalty until such time as landowners complied with separately-issued orders.

MUNICIPAL ORDINANCE - MISSOURI

[Langford v. City of St. Louis, Missouri]()

United States Court of Appeals, Eighth Circuit - July 6, 2021 - F.4th - 2021 WL 2793564

Protestor brought action against city, seeking injunctive and declaratory relief and alleging that ordinance prohibiting obstructing or delaying movement of pedestrian or vehicular traffic violated her free speech rights, was overbroad as applied to her and facially, and was void for vagueness in violation of the Due Process Clause of the Fourteenth Amendment.

Both sides moved for summary judgment. The United States District Court for the Eastern District of Missouri granted protestor’s motion and denied the city’s cross-motion, and the city appealed.

The Court of Appeals held that:

- Municipal ordinance that prohibited any person from “position[ing]” himself or herself “in such a manner as to obstruct the reasonable movement of vehicular or pedestrian traffic” was not, on its face, unconstitutionally overbroad in violation the First Amendment;
- Ordinance was not, on its face, unconstitutionally vague; and
- Police officers did not invidiously discriminate against protestor based on her speech, in alleged violation of her First Amendment rights, in arresting her for violating a traffic ordinance.

Municipal ordinance that prohibited any person from “position[ing]” himself or herself “in such a manner as to obstruct the reasonable movement of vehicular or pedestrian traffic” was not, on its face, unconstitutionally overbroad in violation the free speech rights of protestor who, upon returning from public march down the same street over which she had previously traveled, refused to obey the directions of police officers who were attempting to clear the street after the conclusion of the march, who had directed her to move from the street to the sidewalk; ordinance was not addressed to speech, but to conduct, and furthered the city’s legitimate interest in ensuring the free and orderly flow of traffic on its streets and sidewalks.

Municipal ordinance that prohibited any person from “position[ing]” himself or herself “in such a manner as to obstruct the reasonable movement of vehicular or pedestrian traffic” was not, on its face, unconstitutionally vague in violation the due process rights of protestor who, upon returning from public march down the same street over which she had previously traveled, refused to obey the directions of police officers who were attempting to clear the street, and who had directed her to move from the street to the sidewalk; ordinance used terms that were widely used and well understood, and the mere fact that officers would need to use some degree of judgment in determining whether a person had positioned herself in a manner that obstructed the reasonable flow of traffic did not render the ordinance unconstitutional.

Police officers did not invidiously discriminate against protestor based on her speech, in alleged violation of her First Amendment rights, in arresting her for violating a traffic ordinance that prohibited any person from “position[ing]” himself or herself “in such a manner as to obstruct the reasonable movement of vehicular or pedestrian traffic”; protestor was the only one in group of protestors who, upon returning from public march down the same street that she had previously traveled, ignored the commands of police officers who were attempting to clear the street by moving from the street to the sidewalk.

OPEN MEETINGS - OHIO

[State ex rel. Ames v. Portage County Board of Commissioners]

Supreme Court of Ohio - July 14, 2021 - N.E.3d - 2021 WL 2944137 - 2021-Ohio-2374

Petitioner filed a mandamus action against county board of commissioners and county solid waste management district (SWMD) commissioners alleging the board violated the Open Meetings Act and the Public Records Act.

The parties filed cross-motions for summary judgment. The Court of Appeals granted the board’s motion and denied petitioner’s motion. Petitioner appealed.

The Supreme Court held that:

- Evidence established that SWMD was a valid entity created by statute, and thus board of county commissioners did not violate the Open Meetings Act by separately conducting SWMD business during recesses of the board’s regular meetings;
- A genuine issue of material fact existed as to whether the use of a consent agenda during SWMD meetings violated the Open Meetings Act; and
- Petitioner was entitled to mandamus relief on his claim that the county board of commissioners violated the Open Meetings Act by failing to produce full and accurate minutes from SWMD meeting in response to petitioner’s public-records request.

Evidence established that solid waste management district (SWMD) was a valid entity created by statute, and thus board of county commissioners did not violate the Open Meetings Act by separately conducting SWMD business during recesses of the board’s regular meetings; statutes expressly authorized a board of county commissioners to create a SWMD, when a board of county commissioners established a SWMD it also served as the district’s board of directors, and the General Assembly defined a SWMD as a political subdivision unto itself, separate from a county, though governed by the board of county commissioners that created it.

A genuine issue of material fact existed as to whether the use of a consent agenda during solid waste management district (SWMD) meetings violated the Open Meetings Act, as the use of a consent effectively closed the SWMD meetings because it prevented members of the public in attendance at the meetings from knowing which resolutions were being approved and hearing any deliberations on those resolutions, precluding summary judgment in mandamus action seeking to compel county board of commissioners to prepare, file, and maintain accurate minutes for SWMD meetings.

Petitioner was entitled to mandamus relief on his claim that the county board of commissioners violated the Open Meetings Act by failing to produce full and accurate minutes from solid waste management district (SWMD) meeting in response to petitioner's public-records request; the meeting minutes stated a list of expenditures totaling $1,794.42 was "attached hereto as Exhibit 'A' and incorporated herein by reference," and it was undisputed that Exhibit A was not attached to the official minutes prepared by the board's clerk or included with the documents produced to petitioner in response to his public-records request.

EMINENT DOMAIN - TEXAS

Hidalgo County Water Improvement District No. 3 v. Hidalgo County Water Irrigation District No. 1

Court of Appeals of Texas, Corpus Christi-Edinburg - May 27, 2021 - S.W.3d - 2021 WL 2149828

Water improvement district filed condemnation proceeding against water irrigation district to obtain permanent subterranean easement to install water pipeline through irrigation district's property.

The County Court at Law granted irrigation district's plea to the jurisdiction and dismissed for want of subject matter jurisdiction based on governmental immunity. Improvement district appealed.

The Court of Appeals held that:

- As matter of first impression, governmental immunity applied in condemnation proceeding, and
- Legislature did not waive irrigation district's immunity by granting power to improvement district to condemn "any land."

Condemnation proceeding's status as quasi in rem action did not deprive water irrigation district of governmental immunity from suit in water improvement district's action seeking permanent subterranean easement to install water pipeline on irrigation district's property, even though governmental immunity did not apply to in rem actions under Expedited Declaratory Judgment Act (EDJA); condemnation proceeding, unlike an EDJA action, involved forced transfer of property interest, allowing suit would threaten separation-of-powers principles that underlie immunity by giving trial court control over irrigation district's choice not to allow improvement district to build pipeline, and governmental entities were immune from a "suit for land," a class of suits that included condemnation actions.

Statute that granted power to water improvement district to acquire "any land" by condemnation did not clearly and unambiguously waive governmental immunity of irrigation district that owned land over which the improvement district sought, through condemnation action, to obtain permanent subterranean easement to install water pipeline; reference to acquiring "any land" was at most ambiguous, as it could be interpreted, with respect to public land, as general grant of power to condemn such land in the event that a specific waiver of governmental immunity existed, rather than as being a waiver of governmental immunity, statute made sense without finding waiver, and all ambiguities had to be resolved in favor of retaining immunity.

S&P U.S. Public Finance Mid-Year Outlook: Beyond COVID?

Key Takeaways

- Credit stability has returned for U.S. public finance and we expect it to continue for the remainder of the year.
- Strong economic growth has translated to positive revenue performance for most issuers and the economic outlook for the rest of the year is favorable.
- The unprecedented federal response to the pandemic with multiple rounds of stimulus has supported the economy and finances of issuers.
- Active management by issuers has supported credit quality across all sectors and will continue to be important as COVID-19 lingers and other ESG related risks present fiscal challenges.

Continue reading. [Registration required.]

22 Jul, 2021

Feds Reveal Programs For $3B in Local Economic Development Funds.

State and local governments will have access to the money, which is flowing from the Economic Development Administration.

A federal economic development agency provided more details on Thursday about how it plans to invest $3 billion in American Rescue Plan Act funds, money that state and local governments will be able to tap into. Department of Commerce Secretary Gina Raimondo during a press conference described the suite of programs as one of the largest economic development initiatives in the department's history and said it would create jobs.

"Millions of Americans continue to struggle. … Ensuring that these $3 billion are distributed equitably is core to our investment strategy," she said. "We know that equity is good for workers, good for business, and good for the economy."

The Economic Development Administration, housed within Commerce, said the new Investing in America's Communities initiative will provide:

Continue reading.

ROUTE FIFTY

By Jean Dimeo

JULY 22, 2021

The Federal Windfall That Cities Can't Afford to Waste.

Washington is sending cities a gigantic fiscal gift. They have to produce results. The danger is that the money will be squandered. Republicans are watching all that generosity with skepticism.

Urban advocates have long sought more federal money for cities. Now, they are getting it – bigtime. The aid being provided to cities under the coronavirus relief act represents a major test of the thesis that federal aid can be transformative for urban America. Cities should make the most of this opportunity. If they can use these funds to move the needle on substantial change, this would create a strong case for future aid. But if the money is simply frittered away, there's no reason to expect such extensive help in the future.

The American Rescue Plan contains $350 billion in funding for state and local governments. This includes $45.6 billion for large metropolitan areas. The quantity of funds for these bigger metro areas is significant. Birmingham, Ala., is getting $141 million, Phoenix nearly $400 million, Chicago a bit less than $2 billion.

These are very large sums, particularly when county-level funding is also taken into account. In the merged government of Louisville-Jefferson County, Ky., the "city" is collecting $240 million, plus another $149 million in "county" funding, a bit less than $400 million total. The independent city of St. Louis is getting almost $500 million.

While the rules around how this money can be spent are not entirely clear, there is no mistaking the scope of the grants. Louisville's annual budget is about $1 billion. That means its allocation is equivalent to 40 percent of its entire annual budget.

It is imperative that cities use this money to produce tangible and material benefits. The all too real danger is that instead it will be wasted. An example is excessive "state of good repair" spending on public transit. The highly respected global transit analyst Alon Levy has described state of good repair as "a racket permitting agencies to spend vast sums of money with nothing to show for it."

It is very possible that cities will end up spreading their funding across a variety of programs such that billions of dollars are spent, but the material impact is limited, either in physical improvements or moving the needle on social or economic progress.

What should the money be spent on? There are many potential ways that this funding could be directed to making a big impact. It could be used to pay for a major residential street and sidewalk program, thus wiping out a major portion of a city's infrastructure maintenance backlog. Or it could put a new or renovated playground within walking distance of most kids in the city. It could create more supportive housing units for the homeless. The details will vary from city to city and will depend on federal guidelines around what can be done with the money. The key is to focus on delivering real, material change that is proportionate to the large sums invested.

The imperative to spend the money well is increased by the way that Democrats structured the aid to favor deep blue cities. Money to metropolitan areas was allocated using HUD formulas that greatly privileged deep blue central cities over red or purple suburbs.

For example, in Indiana, South Bend, Evansville, Carmel and Fishers are all about the same size in population. But Evansville is getting $64.5 million and South Bend $58.9 million, while Carmel is getting $7.5 million and Fishers only $6.9 million. The former two vote strongly Democratic while Carmel and Fishers are more conservative suburbs. On a rough per capita basis, Evansville is getting $546 per person and South Bend $577, but Carmel only $74 per person and Fishers $72. This is a difference of about 7.5 times per capita. School funding from the recovery act has been even more lopsided.

With Democrats having shoveled the bulk of the money into their own strongholds, Republicans at both the federal and state level will rightly be looking at this generosity with skepticism. Quite apart from political considerations, however, they should be watching to see whether the money does any real good. If it does, they should be willing to look beyond politics and provide more investment funds to places that have spent previous money wisely. If it doesn't, if these very large sums deliver little to show for them, there's no reason for cities to expect more money like this ever again.

governing.com

Aaron M. Renn

July 22, 2021

Fitch: Relentless Cyber Attacks to Pressure NFP Hospitals' Operations

Fitch Ratings-Austin/New York-22 July 2021: Ever-increasing cyberattacks on the US public healthcare sector will place material revenue and expense pressures on not-for-profit (NFP) hospitals and health systems, Fitch Ratings says. The healthcare sector has seen a historic increase in the number and severity of cyber assaults over the past 18 months. The sector is viewed as a target-rich environment due to the large amount of sensitive data that healthcare entities maintain for patient care and operations.

Cyber-crime accelerated during the pandemic as cyber criminals took advantage of the crisis, causing immense disruption to the healthcare sector at a time when it was facing enormous patient care demands. Ransomware pay-outs and efforts to protect or "harden" healthcare systems and cyber defenses are affecting hospital financial flexibility by increasing on-going operating expenses. Attacks may also hinder revenue generation and the ability to recover costs in a timely manner, particularly if they affect a hospital's ability to bill patients when financial records are compromised or systems become locked. The recovery time and costs associated with breaches of critical data not only pose significant financial burdens but also hamper the ability of healthcare institutions to provide care, which could ultimately have human costs.

The US Department of Health and Human Services estimates that sizable cyber breaches in 2020 exposed patient data of more than 22 million Americans. Cyberattacks against US healthcare entities rose by over 55% in 2020 compared with the previous year according to the cloud security firm Bitglass. Attacks also increased in sophistication and scale, with more than a 16% increase in the average cost to recover each patient record in 2020 versus 2019. Restoration of systems to pre-attack status took an average 236 days.

Hospital and health system databases are a treasure trove of critical and sensitive patient data, which are highly sought after by cyber criminals for ransomware and double extortion schemes. In the US, patient data is considered confidential, and the maintenance and disclosure of such data are governed by patient confidentiality laws, e.g., Health Insurance Portability and Accountability Act (HIPAA), on the federal and state levels. Cyber breaches that disclose patient information carry the risk of loss of consumer confidence, litigation costs and federal enforcement actions due to regulations around patient confidentiality.

Remote work for nonessential staff opened up opportunities for infiltration, as did the sector's increased use of integrated technology, such as smart medical monitoring devices, telehealth and other virtual care capabilities. Software for such devices and heavy medical equipment such as CT scanners and MRI machines are often proprietary and designed with patient care and not necessarily cyber risk in mind. Thus, such software may not always be fully integrated in the institutional cyber defense framework. Additionally, the large costs of such equipment generally mean that institutions, particularly smaller hospitals, may rely on these devices for many years, even with outdated or unsupported software, leading to gaps in institutional security systems.

Fitch includes cybersecurity in its analysis of the sector and as part of its corporate-wide Environmental, Social and Governance (ESG) framework. Cyber risk is both a social risk in terms of safety and security, and a governance risk in terms of management effectiveness. A hospital's ESG Relevance Score would be elevated if cyber risk were deemed to be material to the rating.

Fitch ESG in Credit White Paper 2021.

Read the White Paper.

20 Jul, 2021

The Future of ESG Strategy in Municipal Finances.

We often hear phrases like environmentally friendly, social and equitably beneficial, and financial transparency when it comes to assessing the forward-looking strategy of companies in both the private and public sector. However, in recent years, we have been hearing these phrases cross into local and state government operations such as debt issuances and other financial reporting.

The acronym ESG refers to 'Environmental, Social, and Governance Evaluation' often focuses on a local government's ability to sustainably manage the future risks and opportunities related to its current governance structure along with opportunities to reduce its carbon footprint through the green projects/initiatives that will have a positive social or environmental impact; for example, renewable energy projects, smart infrastructure, affordable housing, and clean transportation.

In this article, we will take a closer look at the ESG efforts related to local government operations, the review of rating agencies, and how it can be mutually beneficial for both issuers and investors.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jul 21, 2021

SEC Commissioner Pierce Criticizes Proposed ESG Regulations: Mintz Levin

Yesterday, SEC Commissioner Pierce–one of two Republicans serving as an SEC Commissioner–delivered a speech criticizing the "potential ESG rulemaking."

Specifically, Commissioner Pierce propounded ten theses questioning the SEC's focus on this issue:

"I. ESG as a category of topics is ill-suited, and perhaps inherently antithetical, to the establishment of clear boundaries and internal cohesion.

II. Many ESG issues lack a clear tie to financial materiality and therefore do not warrant inclusion in SEC-mandated disclosure.

III. The biggest ESG advocates are not investors, but stakeholders.

IV. ESG rulemaking is high-stakes because so many people stand to gain from it.

V. "Good" in ESG is subjective, so writing a rule to highlight the good, the bad, and the ugly will be hard.

VI. An ESG rulemaking cannot resolve the many debates around ESG models, methodologies, and metrics.

VII. Emotions around ESG issues may push us to write rules outside our area of authority.

VIII. ESG issues are inherently political, which means than an ESG rulemaking could drag the SEC and issuers into territory that is best left to political and civil society institutions.

IX. ESG disclosure requirements may direct capital flows to favored industries in a way that runs counter to our historically agnostic approach.

X. An ESG rulemaking could play a role in undermining financial and economic stability."

Notably, many of these critiques–which are explored in depth in her speech–identify potential legal flaws with the SEC's approach to ESG rulemaking (e.g., "many ESG items may not be material to the issuer making the disclosure . . . ."), which could provide a roadmap to future challenges to any such regulations. The venue of the speech is also noteworthy–Commissioner Pierce delivered it at the Brookings Institution, a respected think tank that is generally perceived as non-partisan, indicating that this issue is seen as worthy of debate, and not merely where each side retreats to its partisan corner.

This speech is merely the latest volley in a longstanding war of words between the Republican and Democratic SEC Commissioners concerning whether the SEC should promulgate rules concerning ESG disclosures, and, if it does so, the nature of such disclosures. The particular significance of this speech is twofold. First, Commissioner Pierce identifies legal theories that could be used to challenge this SEC rulemaking (e.g., that the SEC acted ultra vires) should the ESG disclosure regulations be enacted. Second, Commissioner Pierce has continued to challenge the propriety (as well as the extent) of this potential ESG rulemaking by the SEC even after the SEC requested public comment on the proposal and Chairman Gensler identified ESG financial disclosures as a top priority for the Biden Administration's SEC. In other words, Commissioner Pierce's continued dissent indicates that this regulatory arena will continue to be the site of frequent battles between these opposing viewpoints.

> Rather than embarking on a prescriptive ESG rule that departs from and undermines our agency's limited, but important, role, we could work within our existing regulatory framework. We could put out updated guidance to help issuers think through how the existing disclosure regime already reaches many ESG topics and to address frequently asked questions that arise in connection with the application of the existing disclosure regime.[61] We also might consider whether we can give any Commission-level comfort about forward-looking statements along the lines of what former Chairman Clayton, Corporation Finance Director Bill Hinman, and Office of Municipal Disclosure Director Rebecca Olsen did in connection with COVID-19.[62] Finally, we can work with investment advisers using ESG strategies and products to ensure that investors understand what that adviser's brand of ESG means in theory and practice.[63]

Mintz – Jacob H. Hupart

July 22 2021

Going Green Could Be the Next Big Thing in Municipal Bonds.

The municipal bond market is one of the largest segments of the overall bond market, and it's a favored destination for investors seeking steady, low-risk income.

Muni bonds are not, however, often thought of as creative or inventive. That could be changing, and could carry with it implications for the VanEck Vectors Green Bond ETF (NYSEArca: GRNB). GRNB, the original exchange traded fund focusing on green bonds, currently doesn't feature much exposure to government debt, just 5.8% according to issuer data, but that figure could increase over time.

"While dozens of green-bond strategies have emerged over the last several years, significantly fewer have arisen with a specific focus on the municipal market," writes Morningstar analyst Gabriel Denis. "This may be surprising for some given that the U.S. muni market, where many issuers have been offering debt that supports environmentally responsible infrastructure projects for decades, appears a natural fit for green bonds."

Green Space in the Muni Arena

Green bonds are a small, but growing part of the fixed income market. Explaining that growth and investors' increasing enthusiasm for such debt, green bonds are issued by companies or governments for the sole purpose of funding environmentally friendly projects.

For example, a state that wants to develop a new wind farm can issue green bonds to that effect, and it's possible those bonds will eventually be included in GRNB's roster.

"The green-bond market within the U.S. has grown quite rapidly over the last few years. According to the Climate Bond Initiative, a nonprofit that certifies green bonds, total U.S. green-bond issuance grew from $12.8 billion over the 2015 calendar year to $61.5 billion over 2020," adds Denis.

The bulk of green bonds are taxable issues from companies, essentially making those bonds corporate debt, but last year, green munis accounted for almost a third of the market – a figure that's forecast to grow alongside the broader green debt arena. As that happens, GRNB's muni exposure could increase.

If that happens, it would jibe with GRNB's mostly low-risk roster. Over three-quarters of the fund's holdings carry investment-grade ratings and of that group, over 51% are rated AAA, AA, or A, confirming robust credit quality and low credit risk.

"The green-bond market within the U.S. has grown quite rapidly over the last few years. According to the Climate Bond Initiative, a nonprofit that certifies green bonds, total U.S. green-bond issuance grew from $12.8 billion over the 2015 calendar year to $61.5 billion over 2020," concludes Morningstar's Denis.

ETF TRENDS

TOM LYDON

JULY 22, 2021

Green Muni Bonds Are Blooming Slowly.

What does the market for green muni bonds look like, and where is it going?

Investors today can expect to see a plethora of gardening-related puns when reading about the blossoming green-bond market. Green bonds, fixed-income instruments whose use of proceeds are specifically linked to the undertaking of environmentally sustainable projects, have surged in size over the previous decade. We dug into this topic in our recent white paper, including assessing the growth of the green-bond market itself, how asset managers both in the United States and in Europe are seeking to take advantage of this new market, and whether these bonds belong in your portfolio.

While dozens of green-bond strategies have emerged over the last several years, significantly fewer have arisen with a specific focus on the municipal market. This may be surprising for some given that the U.S. muni market, where many issuers have been offering debt that supports environmentally responsible infrastructure projects for decades, appears a natural fit for green bonds. Why are there not more green-bond muni strategies for investors to consider? Should tax-free investors keep their eyes peeled for such an option? Here, we dig further into the green-muni-bond market to learn more.

Green Munis: Growing, but Still a Tiny Part of a Niche Market
As with many areas of the world, the green-bond market within the U.S. has grown quite rapidly over the last few years. According to the Climate Bond Initiative, a nonprofit that certifies green bonds, total U.S. green-bond issuance grew from $12.8 billion over the 2015 calendar year to $61.5 billion over 2020.[1] The majority of this issuance stems from taxable issuers, including from major securitized players like Fannie Mae and from corporations like Apple and Coca-Cola. Yet muni bonds are no small part of this market: of the $61.5 billion of total issuance over 2020, 25% ($15 billion) stemmed from muni issuers.[2] This too represents a substantial increase over the same period; in a 2017 analysis, Nuveen Asset Management cited Bloomberg data showing that green muni issuance was just over $4 billion over calendar 2015.[3]

This growth is impressive but represents merely a drop in the bucket of total U.S. muni issuance.

According to the Securities Industry and Financial Markets Association, the U.S. muni market reached just shy of $4 trillion outstanding at the end of 2020, with $485 billion alone issued over 2020[4]; the $15 billion in green muni debt cited earlier represents just 3% of that total issuance. Most of this debt is held directly by individual investors or through mutual fund strategies. Additionally, the market remains fragmented and less liquid than the U.S. corporate bond market as there are about 1 million outstanding muni securities, and only between 30,000 and 40,000 of them trade on an average day.

Certifying Green Munis Remains Tricky
Investors should also note that there's currently substantial uncertainty in the market over how to determine which muni bonds are truly "green." "Greenwashing," wherein companies advertise stronger environmental, social, and governance standards than they are truly practicing, is a serious concern for sustainability-minded investors across asset classes. Within munis, part of the problem is that most muni issuers have arguably been working alongside green principles long before green bonds emerged as an asset class. Organizations like CBI, which offers its own certification service for green bonds, and the International Capital Markets Association, which since 2014 has published a set of voluntary reporting principles for green bonds, seek to minimize the risk of greenwashing by providing issuers a framework through which to prove their proceeds are going to environmental projects. A plethora of second-party opinion organizations, including Kestrel Verifiers and Morningstar-owned Sustainalytics, have emerged over the same period offering to substantiate which issuers are offering truly "green debt." Many muni issuers, whether or not they are intentionally adhering to these frameworks, might be issuing debt that qualifies for consideration but are just not seeking out those green designations. A substantial part of the muni market over the past several decades has been debt issued by states and local authorities to finance construction of capital infrastructure projects, including improvements to water mains, new water and sewer treatment facilities, renewed roads and bridges, and energy-efficient electric utilities. Many of these projects would likely fulfill the use-of-proceeds requirement of a green mandate but just aren't labeled as such.

Even so, caution is warranted in determining which muni bonds are truly green. In a 2019 opinion piece in the *Bond Buyer*, Dana Villanova and Monica Reid of Kestrel Verifiers noted that while the ICMA and CBI encourage issuers to undergo independent external reviews, muni issuers are still able to "self-label" their debt as being green, and there is no mechanism for removing the green label from a muni bond that does not meet its original output goals as long as the funds are used for their original purpose.[5] With these factors under consideration, both CBI certification and additional verification from SPOs have become quite popular in the taxable green-bond market as investors seek ways to determine which bonds are truly following ICMA and other green-bond principles.

Within munis, however, this type of work remains somewhat stunted in comparison. The managers of Wells Fargo Municipal Sustainability (WMSAX), a strategy focused on investing in muni bonds with strong ESG characteristics, noted that CBI certifications and SPO verifications are rarer in the muni market given the budgetary restraints of the issuers themselves. U.S. municipalities, the majority of which are smaller agencies, often operate with limited budgets, and staff and may struggle to justify the added expenses of tracking bond proceeds and preparing annual disclosures to meet green certification requirements. This problem is compounded by the fact that green muni bonds themselves don't appear to trade with the same price premium (often dubbed a "greenium") exhibited by taxable issuance. To varying degrees of intensity, many market observers have noted that when issuers issue both a green and a nongreen bond with otherwise identical characteristics, the green bond will trade with a higher price (and thus lower yield) than its nongreen equivalent. Generally, this would suggest that investors are willing to be compensated less in their quest for investing sustainably, and issuers can expect to pay less over time for a green bond than a nongreen bond. Wells Fargo, for their part, stated that it did not see evidence for a greenium within the muni market. Furthermore, in a 2020 study entitled "Where's the Greenium?", David Larcker and Edward Watts, Stanford and Yale academics writing for the *Journal of Accounting and Economic*s, concluded that investors appeared unwilling to pay more for green munis than their traditional equivalents and suggested that there was no greenium within the muni market.[6] While muni issuers may have an incentive to self-label their bonds as being green in some circumstances, the financial incentive to undergo a formal certification and verification process through a third-party appears less clear.

All things considered, investors may therefore want to take the headline growth of the green muni market with a grain of salt. Even with third-party certification and SPO verification, there is room for additional due diligence to ascertain which green bonds are truly meeting sustainability objectives across the broad fixed-income market. Given the additional certification challenges within munis, investors should be doubly cautious while considering this asset class.

What Are Your Investing Options?
Perhaps in part because of these challenges, the investing universe for green muni strategies remains limited in 2021. As of July 2021, there are only two strategies available to U.S. investors that focus exclusively on green muni bonds: Franklin Municipal Green Bond (FGBKX), incepted in October 2019, and Green California Tax-Free Income (CFNTX), incepted in December 1985 but rebranded as a green-bond fund in 2019. Franklin Municipal Green Bond defines green bonds as those funding projects linked to environmental sustainability. The fund's prospectus, however, acknowledges that while the managers may consider external reports (such as those provided by CBI certification or by an SPO) while determining which bonds are green, ultimately they can choose to invest in any issuers they determine as meeting their stated requirements of a green bond. The strategy has a limited record given its relative youth and remains small: The fund's AUM was just $8 million as of May 2021, and it held only 55 individual securities as of that date. Green California Tax-Free Income is larger and has a longer track record but has applied ESG screens to its investment process only since 2019; while the strategy seeks to be a "green-bond fund" according to its prospectus, it can invest in any issues it judges as meeting its proprietary ESG screens.

These two strategies, both actively managed, do not have any passive competitors. The market for green muni indexes remains quite slim, with the S&P U.S. Municipal Green Bond Index being the only one extant as of July 2021. This index tracks muni bonds which are judged to be green via a certification from CBI. VanEck mentioned this index in the context of its launch of VanEck Vectors Green Bond ETF (GRNB), which tracks the S&P U.S. Select Green Bond Index. The managers there determined that while the universe of U.S.-domiciled, CBI-certified taxable green bonds (which the latter index tracks) was broad and developed enough to support a passive product, the muni market remained too small and concentrated to support a muni-focused product. The amount of issuers in the green muni bond index versus the broader S&P Municipal Bond Index underscores that fact: Whereas the S&P Municipal Bond Index tracked more than 200,000 constituents for a total market cap of $2.7 billion as of June 2021, the S&P U.S. Municipal Green Bond Index tracked just over 2,850 constituents for a market cap of $53 million.[7]

The path forward for the green muni bond investor is uncertain, with both the current strategy options and the incentives for green muni bonds limited. Yet there is optimism that the market for both green muni bonds and for the strategies that invest in them will grow substantially in the years to come. Lauren Kashmanian of Parametric Portfolio Associates, in an interview with Bloomberg News, anticipated that total green muni debt issuance could balloon to $30 billion-35 billion in the wake of additional federal stimulus for U.S. infrastructure.[8] Should the market continue to expand, however, green muni investors should consider their options with a discerning eye and seek to invest with managers with proven teams, sensible processes, and low fees.

[1] Climate Bond Initiative. 2021. “Sustainable Debt: Global State of the Market 2020.” https://www.climatebonds.net/resources/reports/sustainable-debt-global-state-market-2020

[2] Ibid.

[3] Liberatore, S., & Levy, J. 2017. “Green Muni Bonds: Responsible Investing in a Centuries-Old Asset Class.” TIAA. https://www.tiaa.org/public/pdf/C29869_TGAM_whitepaper_muni_bonds.pdf

[4] Securities Industry and Financial Markets Association. “U.S. Municipal Bonds: Issuance, Trading Volume, Outstanding, Holders.” https://www.sifma.org/resources/research/us-municipal-bonds-statistics/

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[6] Larcker, D., & Watts, E. 2019. “Where’s the Greenium?”, J. Accounting and Econ., Vol. 69, No. 2–3, P. 101312. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3333847

[7] S&P Dow Jones Indices.

[8] Moran, D. 2021. “Biden Spending Plan Seen Jolting Muni Green-Bond Sales to Record,” Bloomberg News. https://www.bloomberg.com/news/articles/2021-04-20/biden-spending-plan-seen-jolting-muni-green-bond-sales-to-record

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by Gabriel Denis

Jul 19, 2021

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