Bond Case Briefs

Municipal Finance Law Since 1971

Fitch Ratings: Connecticut Teacher Pension Changes Costly, But Lower Fiscal Risks

Fitch Ratings-New York-28 February 2019: Connecticut is considering several proposals as part of its fiscal 2020-2021 biennial budget to contain the rising cost of pensions on state finances. Fitch Ratings views the proposed changes as meriting careful consideration in the context of the overall budget, particularly as they would alleviate significant fiscal risks to the state over roughly the next 12 years tied to scheduled, escalating contributions to the Teachers Retirement Fund (TRF). However, the funding changes to be made for TRF would increase costs to the state over the long run, in the same manner as funding changes made two years ago for the State Employees Retirement System (SERS). The fate of the proposals is not expected to affect Fitch's rating on the state, as Connecticut's pension burden is unlikely to diminish any time soon absent more extensive changes to funding practices or retirement benefits.

Connecticut's unfunded pension burden, among the highest of the states, contributes to its high burden of long-term liabilities and fixed costs and weighs on its credit quality; Fitch rates Connecticut 'A+'/Outlook Stable, a relatively low level for a U.S. state. As of fiscal 2017, data used in Fitch's 2018 state pension update, the state reported a net pension liability of $37 billion, or $48 billion when adjusted by Fitch to reflect a 6% discount rate, instead of the 8% rate used for TRF and 6.9% rate used for SERS. Debt and adjusted pensions together measured 28% of personal income, second highest among the states and well above the 6% states median as of fiscal 2017. Contributions for debt service, pensions and retiree health care together consumed nearly 21% of governmental spending.

The pension proposals outlined in the governor's executive budget would primarily affect TRF, with some modest additional changes to SERS. The key TRF change would align its amortization profile with that of SERS, which was agreed to in negotiations with organized labor in 2017. The unfunded liability for TRF would be re-amortized over a new, 30-year closed period through fiscal 2049, replacing the current closed amortization schedule through fiscal 2032, which has been in place since 1992.

Given TRF's 58% funded ratio as of its 2018 funding valuation, extending the amortization would avert the risk that the state general fund would have to absorb a contribution spike during the progressively shorter amortization window through fiscal 2032. Such a spike could occur if market returns fail to match the plan's current unrealistic 8% discount rate, or if other actuarial assumptions are not met. Simultaneously, the proposal would lower the TRF discount rate to 6.9%, with amortization payments recalculated on a level dollar basis, a less back-loaded payoff profile relative to the level percentage of payroll basis currently used by TRF. As with the 2017 changes to SERS, the trade-off for reduced near-term contribution risk would be much slower funding progress and higher contributions beyond fiscal 2032.

As part of the proposal, the state would establish a backup funding mechanism to satisfy a restrictive covenant contained in the state's $2.2 billion general obligation (GO) bond transaction from 2008, the proceeds of which were deposited to the TRF. The covenant requires the state to make full actuarial contributions to TRF, unless adequate provision for bondholders is made; the state has

interpreted the covenant as limiting its ability to modify TRF's existing amortization schedule. The new pension proposal would establish a TRF special capital reserve fund (SCRF) at $381 million, equal to maximum annual debt service (MADS) for the 2008 bonds, with the initial SCRF deposit derived from the sizable income tax revenue windfall currently expected to be deposited in the state's Budget Reserve Fund. If drawn in the future, the SCRF would be replenished from net state lottery receipts, but given the GO pledge to bondholders, Fitch views the likelihood of a SCRF draw to be remote. The state's attorney general has opined that the proposal satisfies the covenant.

Beyond these provisions, the governor proposes shifting small portions of TRF normal costs from the state onto local governments, a proposal that appears modest relative to pension cost shifts undertaken by other states in recent years. Connecticut's towns make no employer contributions to TRF at present, and teachers themselves contributed a fixed 6% of payroll to TRF from long before the Great Recession until Jan. 1, 2018, when it rose to 7%. By contrast, since fiscal 2016, county school boards in Maryland have borne all normal costs for teachers, replacing the state as the funder of newly-earned benefits; the state retains responsibility for unfunded liabilities. Since the Great Recession, pension systems in other states including California, Florida and Virginia have shifted larger shares of their rising contribution burdens to employees to shore up pension system funding and reduce fiscal pressure.

In contrast to New Jersey and Illinois – other states with high pension burdens – Connecticut has paid virtually full actuarial contributions for SERS and TRF for more than a decade, and the use of a closed amortization period has been a notable strength relative to the rolling amortization used to date for major New Jersey plans and the inadequate 90% statutory funding target for major Illinois pension plans. However, TRF's discount rate assumption, at 8%, has long been an unrealistic target for future investment returns, in Fitch's view, resulting in actuarial contributions that are inadequate to support long-term funding improvement, thus exposing the state to severe fiscal risk. The state's forecast assessment for TRF concedes this point, as it calculates that lowering the future targeted returns by only 110 bps, to the 6.9% level in the state's restructuring proposal, while maintaining the fiscal 2032 closed amortization target would spike TRF's contribution to about $3.4 billion, from the current $1.3 billion level. Fitch recalculates pension liabilities based on a 6% discount rate, if plans use a higher rate, to reflect Fitch's expectation that future pension asset performance is unlikely to match historical experience.

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New Mexico House OKs Public-Private Partnerships for Roads, Broadband Projects.

More than 35 states allow partnerships in which private entities can bid to help finance and build government-owned facilities.

New Mexico is not yet one of those states. But it could be if a bill that the House of Representatives approved Friday by a vote of 64-0 makes it into law.

House Bill 286, sponsored by five lawmakers from both political parties, would allow any government agency in the state to enter into a long-term agreement with a private entity to finance and build road and broadband infrastructure.

In this case, Rep. Patricia Lundstrom, D-Gallup, one of the bill's sponsors, told lawmakers the initiative could help with much-needed road, bridge and internet service in counties and municipalities where capital funds are limited.

"This is a really important bill for our state," she said.

Nobody chose to debate the bill.

During earlier committee hearings, Lundstrom explained that the bill would set up the partnerships under the New Mexico Finance Authority. It would help bankroll them.

The private groups wanting to bid for jobs in the state have to provide a cost-benefit analysis, a budget proposal and take part in public hearings to solicit feedback from community members affected by the projects.

To qualify, a project must take at least five years to complete.

Though the bill has no appropriation, its fiscal impact report says the Legislative Finance Committee recommends setting aside $40 million for a startup fund.

Lundstrom told lawmakers the new private-public setup would not include the building of toll roads.

The bill originally included a number of other possible projects, including schools and public facilities, before the sponsors narrowed it down to just roads and broadband — two areas, Lundstrom said, where the state needs help.

The bill goes next to the Senate for consideration.

Santa Fe New Mexican

By Robert Nott | rnott@sfnewmexican.com

Mar 1, 2019

MTA Bond Buyers Are Like New York Commuters Waiting for a Train.

- **Investors holding $40 billion in debt don't see fast change**
- **Congestion charge cash 'gives some relief' says MMA's Fabian**

What do municipal-bond investors have in common with New York commuters stuck waiting for a subway train? Both are likely to keep putting money into the embattled Metropolitan Transportation Authority.

Holders of some of the MTA's $40 billion of bonds also share the same skepticism as riders over the likelihood of a quick turnaround for the troubled agency, despite a preliminary deal released yesterday by New York City Mayor Bill de Blasio and Governor Andrew Cuomo to boost its finances.

And those investors are the ones who are likely to buy what could amount to $15 billion in new debt that would fund a revamp of the system's crumbling infrastructure.

Continue reading.

Bloomberg Markets

By Amanda Albright

February 27, 2019, 12:01 PM PST

NYC's $38 Billion of Debt Raised as Wall Street's Sway Wanes.

- **Moody's raised general obligation debt one notch to Aa1**
- **Cited diversification of the city's economy and lower costs**

Wall Street's hometown just got a credit-rating upgrade, in part because of an economy that has moved away from the industry that defines it.

The rating on about $38 billion in outstanding New York City general-obligation bonds was raised one step to Aa1, the second highest level, by Moody's Investors Service, the company said in a statement Friday. The upgrade — made ahead of a planned sale of about $1 billion debt next week — is Moody's first to New York since 2010, Mayor Bill de Blasio said in a statement.

The better rating comes just two weeks after Amazon.com Inc. announced it was scuttling plans to build a new corporate campus in Queens, a project that had promised 25,000 jobs in the city over the next two decades with an average salary of $150,000. At the time, Moody's warned that Amazon's decision would cost jobs and highlighted how politics and anti-business sentiment could derail development.

But Friday, Moody's said New York's strengthening and diversified economy has made the biggest U.S. city less reliant on the volatile financial services industry. The rating company also noted decreased costs for debt service, pensions and retiree health care.

New York's economy grew 3.9 percent in the fourth quarter of 2018 and Wall Street continued to perform strongly as a result of higher interest rates and lower corporate taxes. Income after taxes for the top six banks rose to almost $30 billion in the fourth quarter. Meanwhile, the city's private sector added 34,000 jobs in the quarter, the fastest rate in the last four years. The largest gains came in health care and education. By comparison, U.S. private sector employment grew 2.1 percent.

De Blasio's office said New York's current rating is the highest it has ever had from Moody's and may lower its debt service costs, enabling it to more efficiently borrow and finance capital and infrastructure projects.

"For the last five years, we've used the city's budget to improve the lives of New Yorkers," de Blasio said in a statement. "Moody's credit rating is validation of what we've always known: that you can be both a progressive and a strong fiscal manager."

Some investors worry that the upgrade will drive up the price of New York's bonds, some of which already carry yields close to AAA rated debt.

"It's already hard to find New York paper these days," said Jonathan Law, vice president and portfolio manager at Advisors Asset Management, which oversees about $325 million in municipals in separately managed accounts. "It's probably going to be even harder now especially if you are looking to capture some yield."

A New York bond due in 2028 traded Friday for a yield of about 2.3 percent, or 0.22 percentage point over the benchmark, according to data compiled by Bloomberg.

Bloomberg Economics

By Danielle Moran and Martin Z Braun

March 1, 2019, 12:16 PM PST Updated on March 1, 2019, 1:30 PM PST

— *With assistance by Claire Ballentine*

- Babies, Bathwater, etc. – The IRS Should Keep the Helpful Non-Reissuance Rules from the Reissuance Notices
- Recap of Feb 14 IRS Public Hearing on Opportunity Zones.
- CDFA Federal Financing Webinar Series: Opportunity Zones
- S&P Pension Brief: Are Asset Transfers A Gimmick Or A Sound Fiscal Strategy?
- Fitch Introduces ESG Relevance Scores.
- Philadelphia Sues Seven Banks Over 'Collusion' in Muni Deals.
- 5 Steps to Maintain or Improve Your Municipal Bond Rating.
- Deutsche Bank Lost $1.6 Billion on a Bond Bet.
- *ACA Financial Guaranty Corporation v. City of Buena Vista, Virginia* – Court of Appeals holds that city which had leased municipal golf course from public recreational facilities authority, which, in turn, was to have used city's rent payments to repay the bonds it had issued to refinance its construction loan, did not have an enforceable obligation to make rent payments to authority; neither city, nor authority, breached the implied covenant of good faith and fair dealing by using "subject to appropriation" language in their various financing agreements.
- And finally, Them's Fightin' Words! is brought to us this week by *Fontenot v. Town of Mamou*, in which the court ruled that a town was "a precarious possessor of a sewerage lift station." This is will henceforth be our all-purpose insult and will doubtless result in the fighting of many duels.

ZONING & PLANNING - CALIFORNIA

Berkeley Hills Watershed Coalition v. City of Berkeley

Court of Appeal, First District, Division 1, California - January 30, 2019 - Cal.Rptr.3d - 2019 WL 365765 - 19 Cal. Daily Op. Serv. 958 - 2019 Daily Journal D.A.R. 818

Interest group petitioned for writ of mandate to challenge city's approval of construction of three new single-family homes on adjacent parcels in hills after determining that project was exempt from California Environmental Quality Act (CEQA) review.

The Superior Court denied the petition, and interest group appealed.

The Court of Appeal held that:

- Earthquake fault zone and earthquake-induced landslide area were not "environmental resources of hazardous or critical concern" within meaning of location exception to categorical exemption from CEQA review;
- Project site was not located in an environmentally sensitive area, and thus location exception to categorical exemption from CEQA review did not apply;
- Evidence did not support fair argument that project might have an adverse effect on the environment; and
- City "Mini-dorm ordinance," which required permits for certain bedroom additions, did not apply to project.

EMINENT DOMAIN - KANSAS

Nauheim v. City of Topeka

Supreme Court of Kansas - January 11, 2019 - 432 P.3d 647

Former commercial tenants brought action against city for relocation benefits, after tenants were forced to relocate in connection with city purchasing property leased by tenants from landlord.

The District Court granted summary judgment to the city. Tenants appealed, and the Court of Appeals reversed and remanded. Tenants petitioned for review, which was granted.

The Supreme Court of Kansas held that:

- Showing that real property was acquired "through negotiation in advance of a condemnation action," warranting payment of displaced person benefits, does not require a specific evidentiary showing that the condemning authority either threatened condemnation or took affirmative action towards a condemnation action, and
- Genuine issue of material fact as to whether city's negotiations to acquire property were in advance of a condemnation action precluded summary judgment on claim for relocation benefits.

ADVERSE POSSESSION - LOUISIANA

Fontenot v. Town of Mamou

Court of Appeal of Louisiana, Third Circuit - December 19, 2018 - So.3d - 2018 WL 6630268 - 2018-301 (La.App. 3 Cir. 12/19/18)

Owner of tract of land on which a town had built a sewerage lift station brought declaratory

judgment or quiet title action to determine ownership of the lift station.

The District Court entered judgment determining that the town owned the lift station and the land upon which it was built. Landowner appealed.

The Court of Appeal held that:

- The town, as a political subdivision, could not acquire full ownership of the land through acquisitive prescription
- Even if town was able to acquire ownership through acquisitive prescription, the town was a precarious possessor of a sewerage lift station;
- Town's annexation of land upon which the lift station was built did not constitute actual notice to landowners, as required for acquisitive prescription; and
- Registered landowner, rather than town, owned land that town had built the lift station on.

Constitutional provision which permits political subdivisions to acquire property by purchase, donation, expropriation, exchange, or otherwise, does not include by way of acquisitive prescription.

Even if town was able to acquire ownership of a property through acquisitive prescription, the town was a precarious possessor of a sewerage lift station and land that it was built upon; town was requested to connect sewerage system, prior landowners permitted construction of lift station, the prior landowners never interfered with town's maintenance or operation of the station, and town never gave actual notice of its intent to possess the land as an owner.

Town's annexation of land upon which a sewerage lift station was built did not constitute actual notice to landowners, as required for acquisitive prescription, where the town's annexation merely extended corporate limits of the town to include the land.

Registered landowner, rather than town, owned land that town had built a sewerage lift station on, under statute providing that improvements on another's land belong to the builder, where the town never recorded separate ownership of the land.

ZONING & PLANNING - MASSACHUSETTS

Bellalta v. Zoning Board of Appeals of Brookline

Supreme Judicial Court of Massachusetts, Suffolk - February 8, 2019 - 481 Mass. 372 - 116 N.E.3d 17

Neighbors sought review of decision of zoning board of appeals which allowed homeowners' request for special permit to modify roof, which would have increased preexisting nonconforming floor area ratio.

The Land Court Department entered summary judgment upholding decision. Neighbors applied for direct appellate review.

After grant of review, the Supreme Judicial Court of Massachusetts held that under the "second except clause" of statute governing modification of nonconforming structures, creating explicit protections for one- and two-family residential structures and allowing increases in nonconforming nature of such structures upon finding of no substantial detriment to neighborhood, a variance from local bylaw is not required for modification of preexisting nonconformity.

IMMUNITY - MISSISSIPPI

Mark v. City of Hattiesburg

Court of Appeals of Mississippi - January 8, 2019 - So.3d - 2019 WL 125656

City municipal court clerk, who was terminated and reassigned after being accused of hiding paperwork, shredding documents, accepting bribes in exchange for dismissing tickets, fines, and warrants, and engaging in inappropriate contact with judges brought action against city, mayor, and city council members alleging slander, invasion of privacy, breach of implied contract, negligence, and intentional or negligent infliction of emotional distress.

The Circuit Court granted city's motion for summary judgment and following trial granted members' and mayor's motion for directed verdict. Clerk appealed.

The Court of Appeals held that:

- City did not improperly deny clerk's grievance hearing and wrongfully transfer her;
- City was immune from liability for invasion of privacy and intentional infliction of emotional distress claims under the Tort Claims Act;
- No evidence showed that clerk suffered physical or emotional damages, as required for her negligence and negligent infliction of emotional distress claims;
- Public comments to media by mayor and members regarding reported misconduct by municipal court clerks were not directed at clerk specifically, as required for slander;
- Disclosure to the public of city council's letter to mayor regarding allegations of misconduct by municipal court clerks, and an executive summary prepared by city's attorney regarding the allegations, did not constitute an invasion of clerk's privacy; and
- No evidence showed members or mayor engaged in extreme conduct beyond all possible bounds of decency for clerk's claim of intentional infliction of emotional distress.

ZONING & PLANNING - NEW YORK

HV Donuts, LLC v. Town of LaGrange Zoning Board of Appeals

Supreme Court, Appellate Division, Second Department, New York - February 6, 2019 - N.Y.S.3d - 2019 WL 454279 - 2019 N.Y. Slip Op. 00874

Donut shop located across the street from gas station and convenience store, which ceased operations after a gasoline spill to commence remediation efforts, but thereafter sought to re-open, brought an article 78 proceeding seeking review of Zoning Board of Appeals decision upholding building inspector's determination that property owner was eligible to invoke Zoning Law provision which allowed re-establishment of nonconforming uses after casualties.

The Supreme Court, Dutchess County, denied petition to review, confirmed determination of the building inspector, and dismissed the proceeding. Donut shop appealed.

The Supreme Court, Appellate Division, held that:

- Property owner was entitled to invoke prior nonconforming use exception to Zoning Law, and
- Zoning Law provision, which required an owner to obtain a building permit for restoration of buildings damaged by casualty within one year and to complete repairs within two years, did not apply to property owner's remediation efforts.

Property owner, who operated gas station and convenience store on property, which were nonconforming uses of the property, prior to petroleum spill, was entitled to invoke prior nonconforming use exception, which addressed re-establishment of nonconforming uses after casualties, to town zoning ordinance, which prohibited property owner from resuming nonconforming use, if nonconforming use was discontinued for a period of one year or more, where remediation of petroleum spill amounted to a continuation of the nonconforming use.

Town Zoning Law, which required an owner to obtain a building permit for restoration of buildings damaged by casualty within one year and to complete repairs within two years, did not apply to property owner's remediation efforts following petroleum spills on property on which owner operated a convenience store and gas station, where petroleum spills did not affect the convenience store building.

EMINENT DOMAIN - NEW YORK

Matter of New Creek Bluebelt, Phase 3

Supreme Court, Appellate Division, Second Department, New York - January 9, 2019 - N.Y.S.3d - 168 A.D.3d 745 - 2019 WL 138632 - 2019 N.Y. Slip Op. 00128

After vacant, unimproved property owned by condemnee, the majority of which was designated as wetlands after condemnee acquired title, was acquired by condemnor by eminent domain as part of its stormwater management project, condemnee commenced condemnation proceeding, seeking compensation for the taking.

Following nonjury trial, the Supreme Court, Richmond County, awarded condemnee $3.5 million as just compensation for the taking, based on finding that condemnee was entitled to increment above the regulated value of the property on the day of the taking and that 75% formula for calculating increment was appropriate. Condemnor appealed.

The Supreme Court, Appellate Division, held that:

- Condemnee was entitled to increment above value of property under reasonable probability—incremental increase rule, but
- Increment formula provided by condemnor's appraiser applied when determining appropriate increment above regulated value of property.

After property was acquired by condemnor by eminent domain as part of its stormwater management project, condemnee was entitled to increment above the value of its property, the majority of which was designated as wetlands after condemnee acquired title, under the reasonable probability—incremental increase rule, since condemnee established that there was a reasonable probability that the imposition of wetlands regulations on the property would be found to be constitute a taking; parties agreed that the imposition of the regulations diminished the value of the property, which was zoned for commercial development, by approximately 95% and that there was virtually no chance that Department of Environmental Conservation would issue a permit allowing property to be developed.

Increment formula provided by condemnor's appraiser, rather than increment evaluation provided by condemnee's appraiser, applied when determining what increment above the regulated value of vacant, unimproved property taken in condemnation was required to be added to the regulated value of the property based on finding that there was a reasonable probability that the imposition of

wetlands regulation on the majority of condemnee's property, which was zoned for commercial development, would be found to constitute an unconstitutional taking; formula provided by condemnor's appraiser was based upon market data and provided a reasonable explanation of the conclusions reached.

EMINENT DOMAIN - PENNSYLVANIA

Whiteland Holdings, L.P. v. United States

United States Court of Federal Claims - February 8, 2019 - Fed.Cl. - 2019 WL 494103

Property owners filed suit against United States, claiming that federal government's operations and methods of disposal of hazardous substances at superfund site contaminated soil and groundwater on owners' property, allegedly effecting taking by inverse condemnation without just compensation in violation of Takings Clause of Fifth Amendment.

Government moved to dismiss for lack of subject matter jurisdiction.

The Court of Federal Claims held that takings claim was time barred.

Accrual suspension for the six-year limitations period for claims against the United States filed in the Court of Federal Claims will not be available where a claimant could have asserted a claim if it had sought advice, launched an inquiry, or otherwise taken steps to discover available information.

Under stabilization doctrine as manifestation of accrual suspension rule, property owners' Fifth Amendment takings claim against federal government, for alleged inverse condemnation caused by government's operations and methods of disposal of hazardous substances at superfund site that contaminated soil and groundwater on owners' property, accrued, commencing under six-year limitations period for claims against United States of which Court of Federal Claims had jurisdiction, no later than year that owners completed required remediation of site at which point owners were reasonably aware of permanent nature of alleged taking.

PROMESA - PUERTO RICO

Aurelius Investment, LLC v. Puerto Rico

United States Court of Appeals, First Circuit - February 15, 2019 - F.3d - 2019 WL 642328

Investment fund moved to dismiss petition filed by the Financial Oversight and Management Board for Puerto Rico under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), on theory that members of the Board were not properly appointed in accordance with the Appointments Clause.

The United States District Court denied motion, and fund appealed.

The Court of Appeals held that:

- Members of the Financial Oversight and Management Board for Puerto Rico were "officers of the United States," who had to be appointed in accordance with requirements of the Appointments Clause;
- Board members were principal officers of the United States, who should have been appointed by

the President by and with the advice and consent of the Senate; but
- De facto officer doctrine applied to prevent dismissal of petition filed by the Financial Oversight and Management Board for Puerto Rico under PROMESA.

Members of the Financial Oversight and Management Board for Puerto Rico were "officers of the United States," who had to be appointed in accordance with requirements of the Appointments Clause, as officials who occupied continuing positions established by federal law, and who exercised significant authority, including authority to initiate and prosecute largest bankruptcy in history of the United States municipal bond market, pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), a federal law.

Members of the Financial Oversight and Management Board for Puerto Rico were principal officers of the United States, who should have been appointed by the President by and with the advice and consent of the Senate, as officials who were answerable to and removable only by the President, and who were not directed or supervised by others who were appointed by the President with Senate confirmation; while the Board members' tenure was temporary, in sense that they were appointed essentially to accomplish a single task, their authority was not limited, but spanned across the economy of Puerto Rico, overpowering that of the Commonwealth's own elected officials.

Unconstitutional provision of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which purported to authorize the President to appoint members of the Financial Oversight and Management Board for Puerto Rico without advice or consent of the Senate, could be severed from remainder of PROMESA, which contained explicit severability clause, and which provided an alternative appointments mechanism, at least as to six Board members.

De facto officer doctrine applied, to prevent dismissal of petition filed by the Financial Oversight and Management Board for Puerto Rico under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and invalidation of all actions taken by the Board since its members were appointed, on ground that members were unconstitutionally appointed without advice and consent of Senate; Board members were acting with color of authority in deciding to file the Title III petitions on the Commonwealth's behalf, a power squarely within their lawful toolkit, there was no indication but that they acted in good faith, and dismissal would have negative consequences for many, if not thousands, of innocent third parties who had relied on the Board's actions.

Court of Appeals, after striking down as unconstitutional a provision of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) which purported to authorize the President to appoint members of the Financial Oversight and Management Board for Puerto Rico without advice or consent of the Senate, would delay issuance of its mandate for 90 days, so as to allow the President and the Senate to validate the currently defective appointments or to reconstitute the Board in accordance with the Appointments Clause.

OPEN MEETINGS - TEXAS

Terrell v. Pampa Independent School District

Court of Appeals of Texas, Amarillo - January 9, 2019 - S.W.3d - 2019 WL 150884

Teacher filed action against school district, alleging violations of Texas Open Meetings Act (TOMA) in connection with school board meetings, and seeking to void actions taken by school district at meetings, including termination of teacher's probationary contract.

The District Court entered judgment that teacher took nothing by her claims. Teacher appealed.

The Court of Appeals held that:

- Notices of school board meetings posted at administrative office were sufficient to comply with TOMA;
- Evidence was sufficient to support trial court's determination that school district's written notice of school board meeting was posted at least seventy-two hours before meeting, and that notice identified that teacher's probationary contract would be addressed at meeting;
- Evidence was insufficient to conclude that superintendent's secretary was not authorized to sign and post school board meeting notices;
- Postings of school board meeting notices sufficiently complied with TOMA requirement that posting be placed on a bulletin board in the central administrative office of district;
- Evidence was sufficient to support trial court's determination that school district posted timely and proper notices of school board meetings on its website during five-month period;
- Evidence was sufficient to support trial court's determination that school district made good faith attempt to comply with TOMA requirement that school board meeting notices be posted to its website; and
- Testimony of school district information technology officer did not constitute hearsay and was not barred under rules of evidence.

BONDS - VIRGINIA

ACA Financial Guaranty Corporation v. City of Buena Vista, Virginia

United States Court of Appeals, Fourth Circuit - February 21, 2019 - F.3d - 2019 WL 758292

After public recreational facilities authority, which had taken out loan to finance construction of municipal golf course for city and later had refinanced loan by issuing bonds, failed to repay bonds because city, which had leased golf course from authority, failed to appropriate funds for rent payments on golf course lease, bank and bond insurer brought action against city and authority, seeking payment of monies allegedly owed under loan arrangement.

Defendants moved to dismiss complaint for failure to state a claim. The United States District Court for the Western District of Virginia granted motion, and plaintiffs appealed.

The Court of Appeals held that:

- Under Virginia law, city did not have an enforceable obligation to make the rent payments that were to be used to repay the bonds;
- Authority did not breach trust agreement with bank by failing to make bond payments;
- Neither city nor authority breached deeds of trust;
- Neither city nor authority breached forbearance agreement;
- Even if pleaded properly, defendants' use of "subject to appropriation" language in the various financing agreements did not amount to breach of the implied covenant of good faith and fair dealing;
- Plaintiffs did not adequately plead a claim for constructive fraudulent inducement; and
- Even if plaintiffs' "requests" to amend constituted a motion to amend, the district court did not abuse its discretion by denying it.

Under Virginia law, city, which had leased municipal golf course from public recreational facilities

authority, which, in turn, was to have used city's rent payments to repay the bonds it had issued to refinance its construction loan, did not have an enforceable obligation to make rent payments to authority; although lease agreement between city and authority stated that city was to pay the rent to lender on behalf of authority, lease made that requirement "subject to and dependent upon" city appropriating the funds for such payments, such that if city did not appropriate funds, city had no obligation to make rent payments, and lease further provided that city's failure to make rent payments when no appropriations were made did not constitute an event of default.

Under Virginia law, public recreational facilities authority, which had taken out loan to finance construction of municipal golf course for city and later had refinanced loan by issuing bonds, did not breach trust agreement with bank by failing to make bond payments; pursuant to language of trust agreement, authority's obligation to make bond payments was dependent on city's payment of rent, city ceased paying rent after voting not to appropriate funds for rent payments, and aside from rent payments from city, authority had no independent contractual obligation to make bond payments.

Under Virginia law, neither city, which had leased municipal golf course from public recreational facilities authority, nor authority, which was to have used city's rent payments to repay the bonds it had issued to refinance its construction loan, breached deeds of trust executed in connection with bond transaction by failing to make bond payments in the manner provided by the trust agreement; while deeds of trust at issue, namely, deed of trust issued to bank wherein city pledged its city hall building and police station as security and deed of trust issued to bank wherein authority pledged golf course as security, required city and authority to adhere to trust agreement, they did not alter express terms of trust agreement under which authority's obligation to make bond payments was limited to rent paid by city, whose obligation, in turn, was subject to its decision to appropriate rent money.

Under Virginia law, neither city, which had leased municipal golf course from public recreational facilities authority, nor authority, which was to have used city's rent payments to repay the bonds it had issued to refinance its construction loan, breached forbearance agreement executed with bond insurer after city failed to appropriate enough money to fully pay rent due on golf course lease, resulting in authority's inability to repay the bonds; under forbearance agreement, city's and authority's duty to make rent payments was subject to annual appropriations by city.

Complaint, which alleged that plaintiffs had been damaged as a result of defendants' breaches of contractual obligations contained in forbearance agreement, but did not contain any allegations about defendants' alleged misrepresentations, was not pled with enough specificity to plausibly state a claim for breach of forbearance agreement through the making of misrepresentations; although plaintiffs argued that making a misrepresentation constituted a breach of defendants' obligations under the forbearance agreement, their conclusory allegations neither specified what contractual obligation was breached nor referred to any underlying facts to support the purported breach.

Under Virginia law, neither city, which had leased municipal golf course from public recreational facilities authority, nor authority, which was to have used city's rent payments to repay the bonds it had issued to refinance its construction loan, breached the implied covenant of good faith and fair dealing by using "subject to appropriation" language in their various financing agreements; language at issue was not ambiguous but, rather, under the express language of the agreements, city's duty to make rent payments, as well as authority's duty to make bond payments, was subject to annual appropriations by city, plaintiffs, a bank and a bond insurer, were sophisticated commercial entities engaged in a multi-million dollar municipal finance transaction, and the court declined to, in essence, impose new terms to save plaintiffs from the express terms of their agreements.

Even if plaintiffs' five "requests" to amend, contained in their response in opposition to defendants' motion to dismiss, constituted a motion to amend, the district court did not abuse its discretion by denying it; plaintiffs never indicated what amendments they were seeking, never identified any facts they sought to include in an amendment, and never identified any cause of action they sought to add in an amendment, and without that information, there was no way for the district court to evaluate whether the proposed amendments were futile.

S&P to Pritzker: Pension Reform Only Way to Avoid 'Junk' Credit Rating.

A further decline could mean serious challenges in terms of the state's ability to borrow money. That should be of particular concern to Pritzker, whose proposed budget includes $2 billion in bonds to reduce the state's pension liability. Those bonds constitute one aspect of Pritzker's "five-point" pension plan, but S&P cautions that they may jeopardize the state's long-term pension funding levels. … S&P also finds dubious the remaining two points in the governor's plan: the sale of state assets and a pension buyout program.

Read the full article on: Illinois Policy Institute

Truth in Accounting

Vincent Caruso | February 25, 2019

Credit Downgrades, Lawsuits, Lost Revenue Could Hinder Pritzker Pension Plan.

To improve funding levels for the state's pension systems, Pritzker is proposing to transfer state assets directly into those retirement funds. Pritzker's budget proposal said a recently-created task force will "identify what assets from among the billions of dollars in state real estate and infrastructure could be directed to enhance the value of the state's pension funds.

Read the full article on: Illinois News Network

Truth in Accounting

Cole Lauterbach | February 25, 2019

Chicago's Next Mayor Can't Dodge Tax Pain Needed for Pension Fix.

- **14 candidates, few willing to consider hiking property levy**
- **Investors say refusal could worsen city's financial reckoning**

The leading candidates in Chicago's mayoral election on Tuesday have clashed over everything from reducing violent crime to fighting public corruption. Most agree on one thing: Property taxes in the nation's third-largest city are too high and shouldn't be raised.

But taking the most reliable source of revenue off the table could worsen Chicago's financial plight, especially as it struggles to come up with an additional $1 billion needed by 2023 to cover mandatory pension payments, say municipal-finance investors and analysts.

Mayor Rahm Emanuel, who took office in 2011 and isn't seeking re-election, put all four retirement plans on a path to solvency, boosting contributions to the funds by raising taxes and utility fees. From 2007 to 2016, Chicago's effective residential tax rate rose by more than 35 percent, according to a Civic Federation report published last month. That limits the political options for whoever wins an expected runoff on April 2.

"Emanuel's achievements came with a price — namely, tax fatigue," John Humphrey, head of credit research at Gurtin Municipal Bond Management, a Pimco subsidiary, wrote in a January research note. Those taxes and other local pension demands "have left residents with sticker shock," he added, "and the next mayor will confront increased tax fatigue as he or she looks to find revenues to ease the city's financial strain."

Property taxes are far and away the largest source of revenue for the retirement plans: Emanuel's most recent proposed budget allocated $1.36 billion toward pension funds, and more than $905 million of that came from such taxes.

Susana Mendoza, Illinois's comptroller and a leading mayoral contender, said in an interview that Chicagoans "feel suffocated to death" by property taxes.

Bill Daley, the younger brother of former Mayor Richard M. Daley, echoed those sentiments when he told local media that "we've got to begin to solve our long-term fiscal problems, but we cannot do it on the backs of homeowners and property taxes." He has committed to not raising those taxes, at least in the first year.

The one well-known candidate willing to voice support for a property-tax hike is Paul Vallas, a former city budget director. On his campaign site, he proposes $250 million in additional property taxes over the next five years capped at 5 percent or the rate of inflation, whichever is lower.

Junk Grade

The hikes under Emanuel made headway toward arresting mounting financial strains that caused Moody's Investors Service in 2015 to downgrade Chicago's bonds to junk grade. But his plan delayed a surge in payments until after he left office, and the city doesn't have the money at current funding levels to make that jump.

That means whoever emerges from the field of 14 candidates will likely have to raise property taxes, said John Miller, co-head of fixed income at Chicago-based Nuveen who oversees about $155 billion municipal bonds under management.

"I think if phased in appropriately and combined with other efforts, Chicago can probably handle another property-tax increase," Miller said.

The next mayor, who will take over in May, will see Chicago's required annual contribution to the city's four pension funds double from about $1 billion in 2018 to $2.1 billion in 2023, city documents show.

The pension bills will soar because the city will have to pay what actuaries say is needed into the public safety funds starting in the 2020 budget year and in 2023 for the municipal employees' and laborers' plans. That means not only covering what it owed for newly earned benefits, but making up

for the shortfall that resulted from years of not paying the full amount.

Unless Chicago's economy continues to expand at a robust rate to generate natural growth in other sources, such as sales taxes and fees, additional tax increases will be needed to fund the required pension contributions over the long term, Moody's said in a report.

Sports Betting

Two potential sources of new money for Chicago would be its share from legalizing sports betting and marijuana — proposals included in Governor J.B. Pritzker's budget announced last week. The state legislature is controlled by Pritzker's fellow Democrats, but even if those measures passed they wouldn't fill the pension hole.

"The issues that they're talking about — ranging from a casino to marijuana — I don't think that'll be enough," said RBC Capital Markets municipal-debt strategist Brian Olson. "It has to be comprehensive. It has to be taxes, it has to be cuts."

In the months since Emanuel's surprise announcement that he wasn't going to run for a third term, he has advocated for the sale of $10 billion in pension obligation bonds — debt issued to infuse cash into the pension system on the bet that the returns generated will outpace the interest payments to investors. The proposal has had mixed reviews among candidates and the bond market alike.

Bill Daley, who served as chief of staff to President Barack Obama, said such a proposal "ought to be on the table" but he remains skeptical of the plan. "It's all great as long as rates stay good," he said. "There's a risk-reward." Daley has said the best way to solve the city's pension problem would be to alter the state's constitution to allow existing benefits for public employees to be reduced.

relates to Chicago's Next Mayor Can't Dodge Tax Pain Needed for Pension Fix
Susana Mendoza.Photographer: Seth Perlman/AP Photos
Mendoza has advocated for a bond deal, though not one as large as the $10 billion sale Emanuel floated. She called that amount "overly aggressive." Instead, she said a lower-risk plan of $2 billion to $3 billion or medium-risk one of $5 billion to $6 billion should be presented to the voters. "It's not an ideal option, but we don't really have other sources of immediate cash flow," she said.

Another prominent candidate, Gery Chico, said in an interview that he'd been hesitant to bond out the liabilities, but after speaking with bankers "they've made me more comfortable with it as a tool."

Whatever temporary tool is used, Chicago's pension burden will increase and current contributions will likely fail to meet the required amounts. So the next mayor likely will face an unpalatable decision, said Michael Belsky, executive director of the Center for Municipal Finance at the University of Chicago.

"The liability isn't going to go away, and you'll need additional revenue," Belsky said. "The most reliable source of revenue is the property tax."

Bloomberg Markets

By Danielle Moran

February 25, 2019

— With assistance by John McCormick, and Elizabeth Campbell

Can You Index Municipal Bonds?

Indexing has limitations. Some markets or market segments are easier to index than others. The degree of difficulty is largely a factor of the breadth, depth, standardization, and liquidity of the pool of assets in question. Nonstandard assets that are difficult to trade, like municipal bonds, can be difficult to index. Indeed, running an index-tracking municipal bond fund is a tricky proposition. The managers of an indexed municipal bond portfolio have to strike a balance between tracking their index and the costs involved in doing so. Based on the performance records of many of the municipal bond index funds available to investors, these funds' managers appear to be capable of managing this balancing act.

Let's say you're a portfolio manager running a bond index fund. When your fund's target index rebalances, you'll likely need to do some trading so the fund's holdings match those in the index. This is a necessary maintenance activity that keeps your fund's portfolio and performance in line with its benchmark.

Now suppose the target index requires that you buy bond A following a rebalance. You go to the market, but there is only one willing seller of bond A. You make an offer to buy. But that lone seller knows he's the only show in town and attempts to take advantage of his status by counter-offering at a higher price. You're in a predicament. You can buy the bond, but it's going to cost you. And that cost is absorbed by the fund's shareholders.

Continue reading.

Morningstar

by Daniel Sotiroff

22 Feb 2019

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5 Steps to Maintain or Improve Your Municipal Bond Rating.

Maintaining or improving municipal bond ratings can be challenging, but there are steps finance leaders can take to be sure they are fully prepared for the review process.

Bond ratings are important to a government from both a perception standpoint as well as an economic one. They indicate how safe an investment in the city's or county's bonds are and serve much like an individual's credit score. Since a municipal bond rating holds such power, each government should understand what factors influence their bond rating and take the appropriate steps to either maintain or improve their bond rating.

Maintaining or improving municipal bond ratings can be challenging. Annual reviews can alter the rating and many government finance directors dread the review process.

What can finance leaders do to be sure they are fully prepared for the review process? It begins with a year-round proactive approach to address the factors that comprise a bond rating and own the conversation with the ratings agent.

In our latest webinar, Charlie Francis, a 45-year veteran of government finance and former CFO and

finance director, presented steps that governments can take to ensure they achieve the best possible score.

Here are some highlights from the live webinar:

- Know that rating agencies measure quantitative and qualitative factors. When you know what is being measured, you can manage to those factors. Luckily, ratings agencies post all factors that influence their ratings online. Factors that are scored include:

    - Management
    - Budgetary flexibility
    - Budgetary performance
    - Liquidity
    - Debt and contingent liabilities
    - Institutional framework

Qualitative factors influence the quantitative factors. The overall functioning of your government, as well as accountability and transparency play a key role in bond ratings. Owning this data and the story behind it will enable your government to make a case for a higher rating.

- **Build a relationship with your rating agency.** Get to know the people who review your government. Be sure to keep an ongoing dialogue going with them and share stories of what your government is doing to proactively manage issues. Share policies and keep them informed of what is happening and how it is being addressed.
- **Be able to back up information with data.** Every self-assessment score needs to be proven with data for it to be justified. Inflated scores will only cause damage and break down trust.
- **Prepare all year round.** Transparency, solid management practices, accountability, and leadership all influence ratings and can be improved continually. Know what each agency measures, add performance context with stories about how your government is making a difference in citizens' lives, and prepare a scorecard and keep it updated throughout the year. By taking a proactive approach, you own the factors that you can control and can be more prepared for official ratings reviews.

In addition, Charlie shared five steps municipalities can take to continually maintain or improve bond ratings:

1. Conduct a risk-based analysis of general fund reserve requirements and adopt a reserve policy.
2. Conduct a comprehensive review of factors affecting the government's ability to issue debt and adopt a debt affordability policy.
3. Formally monitor financial and economic conditions and implement financial/economic mitigation management plans.
4. Develop, adopt, and maintain an asset management policy, strategy, and plans.
5. Develop a model that evaluates the impact on revenues, spending, and reserve levels from various budget initiative and economic scenarios, and incorporate long-term financial planning in all policy decisions.

OpenGov can help governments strengthen their financial reporting and story presentation to continually be prepared for bond rating reviews.

For more ways on how to maintain or improve your municipal bond rating, and for a more in-depth discussion on the ideas and steps presented above, view the webinar on-demand or download our

latest eBook, How to Maintain or Improve Your Municipal Bond Rating.

OPENGOV | FEBRUARY 20, 2019 AT 5:30 PM

Deutsche Bank Lost $1.6 Billion on a Bond Bet.

One of the banking industry's biggest soured bets since the financial crisis involved a complex municipal-bond investment. Warren Buffett was enmeshed in the deal.

Deutsche Bank AG DB -0.12% racked up a loss of $1.6 billion over nearly a decade on a complex municipal-bond investment that it bought in the runup to the 2008 financial crisis, and failed to confront head-on even as markets were upended and regulations tightened.

The loss, which hasn't previously been reported, represents one of Deutsche Bank's largest ever from a single wager—roughly quadruple its entire 2018 profit—and ranks as one of the banking industry's biggest soured bets in the last decade.

The prolonged struggle over how to handle the investment sheds light on cultural and financial challenges inside one of Europe's biggest banks that have hampered its ability to compete with stronger U.S. rivals.

Continue reading.

The Wall Street Journal

By Jenny Strasburg and Gretchen Morgenson

Feb. 20, 2019 2:31 p.m. ET

MSRB Publishes Annual Fact Book of Municipal Securities Data.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published its annual Fact Book that highlights key market trends and statistics for 2018. Last year, the par amount of municipal securities traded increased 3.7% to $3.09 trillion and trades rose 2.9% to 10.2 million—up from 9.89 million in 2017 and the highest since 2013.

"Trading of municipal securities rose significantly in 2018," said MSRB Director of Research Marcelo Vieira. "We saw the number of securities traded daily in the secondary market increase from an average of about 14,000 in 2017 to 15,500 last year, in line with the increase in the number of transactions in the municipal securities market."

The MSRB's annual Fact Book includes comprehensive and historical statistics on municipal market trading, primary market and continuing disclosures, among other data, and provides municipal market participants, policymakers, regulators, academics and others with historical statistics that can be further analyzed to identify market trends and activity.

One highlight in terms of historical data is a decline in the number of financial and event disclosures received by the MSRB through its Electronic Municipal Market Access (EMMA®) website, where

issuers of municipal bonds submit financial and other ongoing disclosure documents about events affecting a bond. In 2018, the number of total financial and event disclosures the MSRB received decreased 9.8% to approximately 147,000 disclosures—the lowest since 2012. Event disclosures, including bond calls, defeasance and rating changes, accounted for most of the decline. In total, event disclosures decreased 16.7% to 50,722 in 2018 from 60,883 in 2017. Financial disclosures decreased 5.6% to approximately 97,000 and is the lowest since 2013

The 2018 Fact Book includes monthly, quarterly and yearly aggregate market information from 2014 to 2018, and covers different types of municipal issues, trades and interest rate resets. All data in the Fact Book are based on information submitted to the MSRB by municipal securities dealers, issuers and those acting on their behalf. Some of the data in the Fact Book can be accessed digitally on EMMA, which allows users to view trading and new issuance statistics for different date ranges, types of trades and securities. Daily and historical summaries of trade data based on security type, size, sector, maturity, source of repayment and coupon type can be found in EMMA's Market Statistics section.

To protect investors and other market participants, the MSRB promotes market transparency and access to real-time, municipal market bond information by collecting and publicly disseminating information through EMMA and other market transparency systems.

Date: February 19, 2019

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

Mayors in Support of Advance Refundings.

Today, executive chair of the Municipal Bonds for America (MBFA) Coalition Steve Benjamin, Mayor of Columbia, S.C., submitted an opinion piece to the Bond Buyer advocating for the full reinstatement of advance refundings, while also explaining why this important financing tool is significant for local government infrastructure investment and local control. You can view his commentary online here.

An offline copy of his commentary is provided in pdf format here.

Continued Work and Advocacy on Advance Refundings:

In 2019, the MBFA Coalition will continue to advocate to preserve the tax-exempt status of municipal bonds as discussions and hearings begin on infrastructure next month. MBFA began holding meetings in earnest with key Congressional Members on the House Ways and Means and Senate Finance Committees early this year on advance refundings as its principle legislative advocacy item. With Mayor Benjamin's leadership on this issue at the national level as the president of the U.S. Conference of Mayors, the MBFA is positioned to have a significant influence in the process should technical fixes to the 2017 passed tax law arise this year.

The BDA will continue to keep you updated on legislative or technical fixes to tax laws and infrastructure proposals as they advance through Congress.

Additional Information:

For additional updates on activities of the MBFA Coalition, please visit our website here.

Bond Dealers of America

February 20, 2019

Fitch Ratings: Alaska Governor's Budget Proposals Would Weaken Municipal Credit Quality

Fitch Ratings-San Francisco-22 February 2019: Fitch Ratings believes the governor of Alaska's fiscal 2020 budget proposals that affect local governments and alter municipal property tax laws could have significant negative impacts on the credit quality of local municipalities throughout the state if enacted. Fitch does not anticipate immediate rating changes due to the legislation because prospects for passage are uncertain. Fitch will monitor progress of the legislation and may take rating action if passage begins to appear more definite.

The budget proposal eliminates the state's school bond debt reimbursement program for local governments and cut unrestricted general fund spending for schools by 24%. A second, related proposal would shift property tax levies on oil and gas infrastructure from the local level to the state.

While Alaska's schools are governed by school boards, boroughs levy property taxes on their behalf, and boroughs and school districts share operating tax caps. Fitch believes enacted reductions in state formulaic school funding could pressure borough policymakers to backfill some district revenue losses, creating budget stress for borough governments and potentially crowding out other services.

The loss of school bond reimbursement would prompt immediate increases in debt service property tax rates that support schools' unlimited tax general obligation (GO) bonds. Higher debt service tax rates could make it more difficult to offset operating revenue losses even for jurisdictions that are not at their tax caps and could decrease public appetite for school bonds to meet ongoing capital needs.

The change in taxation of oil infrastructure would be of particular concern for the North Slope Borough ('AA'/Stable), which relies almost entirely on an energy-dominated property tax levy. The North Slope Borough collects about 85% of the $440 million in revenue that could be shifted to the state from local governments under the proposal. North Slope's estimated revenue is about $372.1 million, or 93% of its 2018 property tax revenues and 86% of total general fund revenues, with the exact loss dependent on which assets are classified as oil infrastructure.

The vast and sparsely populated borough covers the state's Arctic coast and Prudhoe Bay oil fields. Outside of the energy sector, the borough's small, remote communities have very limited tax bases and economies. Fitch believes the borough is unlikely to be able to reduce spending to match revenues available under the governor's plan, and earnings on its large permanent fund (which had a corpus of $708 million at the end of fiscal 2018) would be insufficient to replace the lost revenues on an ongoing basis.

The borough's rating incorporates the narrow, highly concentrated tax base as an asymmetric risk factor. However, the rating does not incorporate the risk of a sudden change in state tax law of the sort proposed by the governor. The borough had about $162.7 million of GO bonds outstanding at the end of fiscal 2018 and keeps debt maturities very short.

The impact of the change in the property tax regime would be notable but much less dire for other local governments in the state. For instance, the Fairbanks North Star Borough (IDR 'AA'/Stable), which has the second-highest exposure among rated entities, collected about $11.2 million in oil infrastructure property taxes in fiscal 2018, approximately 10% of its overall general fund revenue. Anchorage, the state's largest city, has a much more diverse tax base with less than 0.5% of revenues derived from property taxes on energy infrastructure.

The governor has also proposed amendments to the state's constitution in support of his initiatives. For details, see "Fitch Ratings: Alaska Proposals to Limit Budget Flexibility Could Pressure Rating", published Feb. 5, 2019.

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Additional information is available on www.fitchratings.com

Fitch Introduces ESG Relevance Scores.

Read the Fitch report.

Puerto Rico Bondholders Fume for Being Shortchanged in Swap.

- **Individual investors waiting on payment of odd-lot bonds**
- **Execution of deal a 'complete abomination,' investor says**

Money manager Glenn Ryhanych sat in his office in Virginia, waiting for a final resolution of bankrupt Puerto Rico's nearly two-year saga with its $17.6 billion of sales-tax-backed bonds. He got a shock instead.

On Feb. 12, the island exchanged the old bonds for new ones of lesser value, allowing it to cut the amount of the debt outstanding by nearly a third. But the transaction brought another surprise to investors like him: Because the new bonds were issued in only $1,000 increments — and any odd lots were rounded down — the amount they received was in many cases less than they were expecting. Ryhanych estimates that's leaving him short about $700,000.

“When we saw everything coming in, the way it was coming in, and the rounding down we were like ‘oh my God,”’ Ryhanych, president of BlueList Partners, said about seeing the changes in his clients’ accounts following the debt swap.

The owners of the debt knew they’d be getting less than what Puerto Rico promised when it first issued its sales-tax bonds years ago and a majority signed off on the deal in the government’s bankruptcy, which began in May 2017. The deal called for the new debt to be issued at a rate of 93 cents on the dollar to holders of senior-lien bonds, with owners of junior securities receiving 56 cents. They weren’t expecting to take additional losses if the stake they were owed wasn’t evenly divisible by $1,000.

Bondholders may soon receive the rest, according to a court filing, so the stress of the past two weeks could just be a temporary hiccup in a type of debt restructuring rarely seen in the municipal-bond market, where defaults and bankruptcies are extremely rare.

“I’ve been doing this for 25 years and, at least on the surface, the execution of this thing with the individual or retail investor in mind was a complete abomination,” said Ryhanych, who oversaw $11 million of senior sales-tax bonds before the debt exchange.

A court document posted Friday on the Municipal Securities Rulemaking Board’s website said that Depository Trust Co., the depository firm distributing the bonds and cash to broker dealers, is now allowed to alter the threshold for rounding down. Broker dealers may also provide cash to cover amounts below the threshold.

A spokesman at Bank of America Corp., the manager of the restructuring, declined to comment, as did a spokesman at Stifel Financial Corp. Miller Buckfire, a unit of Stifel, served as a financial adviser to a group of senior bondholders.

Puerto Rico’s Fiscal Agency and Financial Advisory Authority said that it is aware that certain bondholders have not yet received the correct initial distributions and that Depository Trust Co., has rectified the situation through allocations to broker dealers, the agency said in an email Friday.

“To the extent bondholders have questions regarding when cash and bond distributions will be reflected in their accounts, we urge them to contact their brokers or account managers regarding their specific situations,” Christian Sobrino, executive director for Puerto Rico’s Fiscal Agency and Financial Advisory Authority said in an email.

A federal board that oversees Puerto Rico finances and its bankruptcy process supports the efforts of all parties to address promptly any distribution issues,” Matthias Rieker, a spokesman for the board, said in an email Friday.

Before Friday’s statements, some brokerage firms had planned to pool together bonds that fall below $1,000, called fractional bonds, and sell them to raise cash that they’ll then direct to their clients who are still waiting to reach their full recovery amounts.

The confusion had left investors doubting if they’ll get the cash for their fractional shares, Ryhanych said. And because the new sales-tax bonds don’t yet have a credit rating, he wasn’t sure if pooling the bonds could raise enough cash to make up the difference.

Bloomberg Markets

By Michelle Kaske

February 22, 2019

Bond Raters Advise on Fix to California Law that Doomed PG&E.

- **Legislators say they will seek input from credit-rating firms**
- **Utilities face junk ratings amid mounting risk from fires**

It's no secret that lobbyists help craft laws. But what about credit-rating companies?

As California lawmakers work on a plan to stabilize the state's biggest electric companies, which are facing increasing pressure from wildfire liabilities, they say they'll seek input from ratings analysts to help ensure the utilities can retain access to capital markets. In a statement Tuesday, S&P Global Ratings said "there was a relatively short window" for legislators to show "concrete steps" before it downgrades the companies again.

Senate Majority Leader Bob Hertzberg said in an interview that any legislative proposals would be "informed by Moody's, Standard & Poor's and Fitch." He wants to talk to the companies personally, the Democrat said.

"Once we come up with various structures, they're going to be very instrumental in determining whether or not they'll give credit so we can have borrowing by both investor owned and municipal-owned utilities," said Hertzberg, who was Assembly Speaker during the state's energy crisis almost two decades ago.

Fatal wildfires, which have intensified in severity because of climate change, have ravaged California in the past two years and helped push its biggest utility, PG&E Corp., into bankruptcy in January. The company's power lines are suspected of sparking last year's Camp Fire, the deadliest in state history, which killed 86 people and destroyed the Butte County town of Paradise. Utilities can be held liable for blazes sparked by their equipment, even if they followed safety rules, and credit-rating companies have cited that unique state rule in their downgrades of PG&E and its peers.

Junk Ratings

S&P last month cut Edison International's Southern California Edison Co. and Sempra Energy's San Diego Gas & Electric Co. closer to junk status and said it could lower the ratings more. Moody's Investors Service said it may downgrade them as well, and Fitch Ratings changed their outlooks to negative, indicating it could do so.

Downgrades to junk could limit the companies' access to capital, an outcome Edison Chief Executive Officer Pedro Pizarro warned would happen without any legislative action.

Shares of PG&E climbed Tuesday after Citigroup Inc. upgraded the stock on the prospect that legislation may be passed within three months to limit risk from future blazes. Governor Gavin Newsom in a speech last week said he gave his team working on the issue 60 days to map out a plan.

Legislators have said they are urgently reviewing options. But addressing the doctrine known as inverse condemnation, in which utilities are on the hook for damages, is "off the table," Hertzberg said.

State Senator Bill Dodd, who guided legislation last year that helped utilities finance some of their

wildfire liabilities, said in an interview that legislators are looking at other avenues beyond inverse condemnation that would satisfy the raters.

“We have to negotiate, and we have to understand what there is beyond that and what the cost to the ratepayers really is before making that decision,” the Democrat said.

Moody’s declined to comment. S&P said it doesn’t discuss interactions with market participants including elected officials. Fitch didn’t respond to requests for comment.

In its statement, S&P said “there is a window of opportunity to bring clarity to the regulatory construct that will start to close at the beginning of the 2019 wildfire season” this summer.

Bloomberg Markets

By Romy Varghese

February 19, 2019

— With assistance by Molly Smith, and Mark Chediak

S&P Pension Brief: Are Asset Transfers A Gimmick Or A Sound Fiscal Strategy?

To face persistent and growing pension challenges, some U.S. state and local governments have looked to develop creative solutions to help mitigate expanding liabilities and bolster wanting asset levels. Increasingly, they are considering asset transfers along with other revenue streams…

Continue Reading

Feb. 19, 2019

GFOA Skills Building Workshop – Budget Development

Date and Time:
Mar 19 2019 – 8:30am to 4:30pm CDT
Mar 20 2019 – 8:30am to 4:30pm CDT
Mar 21 2019 – 8:30am to 4:30pm CDT

Location:
Chicago Office
203 N. LaSalle St Suite 2700
Chicago, IL 60601
(312) 977-9700

Member Price:
$900.00

Non-Member Price:

$1,200.00

Prerequisite:
Experience with local government budget process.

Speakers:
Craig Lesner – Senior Manager GFOA
Katie Ludwig – Senior Manager GFOA
Shayne Kavanagh – Senior Manager, Research GFOA

Who Will Benefit:
This training session is designed for experienced budget officers and budget analysts looking to improve technical skills of how to budget for various costs and revenues common to local government.

Program Description:
GFOA Skills Building Workshop – Budget Development is a three-day workshop that will walk participants through a typical budget development process, operating and capital, focusing on best practices and practical guides for how to address common challenges in budgeting. Specific focus will be on technical competencies of budgeting and how to apply skills and lessons learned while also incorporating GFOA best practices.

Starting with creating the timeline and budget calendar, this class walks through all the major steps to the budget including — budgeting for personnel costs, forecasting revenues, comparing financial data to other communities, the interaction between the operating and capital budgets, the do's and don'ts of balancing the budget and taking the budget to the elected board for approval.

While many of these components are covered in other GFOA sessions, this one focuses more on the technical aspects of the process as the content will provide a deeper dive in these areas than other courses.

Seminar Objectives:

- Build technical skills and practical approach for addressing common budget challenges
- Identify strategies for effective personnel budgeting
- Learn to accurately estimate costs for capital projects and correlate them with operating costs
- Identify pitfalls (and opportunities) for benchmarking
- Become familiar with nuances of revenue projections and forecasting
- Understand how to identify and apply budget balancing strategies
- Learn to avoid budget gimmicks and common pitfalls that move organizations away from achieving its long term objectives

Agenda: Download

Registration Form: Download

Hotel Form: Download

The Slow Housing Market Can Hurt Government Revenues, But Doesn't Have

To.

How much home sales impacts a place depends a lot on its property tax policies.

Home sales have been ticking down for months. It's been particularly bad in the West, where 15 percent fewer homes were sold in December compared to the previous December. The slowdown is widely expected to continue, but how it affects local governments will differ.

That's largely thanks to a government's property tax policies. According to a new analysis from Fitch Ratings, the places least vulnerable to a slow housing market have strong caps on property tax rates and have assessed property values that lag far behind market values.

That bodes well for places out West, such as California, which has one of the nation's toughest restrictions on property taxes. Thanks to Proposition 13, which caps property tax rates, counties in California were spared from severe drops in property tax revenue when the housing market collapsed in 2007 because that revenue was already artificially depressed, according to Fitch's analysis.

"You have a huge way to go for the market decline to affect the assessed value," says analyst Amy Laskey, who co-authored the report. "That's why in Los Angeles, you saw big home price declines, but there was no corresponding decline in assessed value."

By contrast, places without caps on property tax revenue have assessed values that trend closer to actual home values. That creates more volatility.

So while Los Angeles and Chicago had similar declines in home values — about 40 percent between 2006 and 2012 — assessed values in L.A. only dipped by 2 percent. In Chicago, they fell by a whooping 28 percent.

Reasons for the Slow Housing Market

Rising mortgage rates and home prices are largely being blamed for the current slowdown.

According to new data from the National Association of Realtors, the market is slowest in the West, which along with the Midwest, has shown minimal or zero gains in prices from a year ago. Nationally, prices are up nearly 3 percent from last December, but that's roughly half the average growth rate in 2017.

Some believe that the 2017 federal tax overhaul's new limits on mortgage interest and property tax deductions will create more downward pressure on home prices in certain places across the country. That will affect localities differently, too.

Cumberland Advisors CEO John Mousseau is watching places where wealth is concentrated and where taxes are high, including Boston, New York City and its suburbs in Northern New Jersey and Fairfield County, Conn. Homeowners in these places are no longer getting the tax breaks they used to on their properties. "As long as there's no recession," he says, "I think home prices in places like these will stagnate or maybe even decline a little." That could further hurt the local government's property tax revenues.

But declining home prices aren't necessarily a bad thing, Mousseau says. According to Fitch's data, several major markets — including many out West — are currently overvalued. "I think what you'll see is a realignment of house prices," he says. "The idea that house prices can go up 6 or 7 percent a year — I think that's going to go away."

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 21, 2019

Corps Engages Stakeholders for P3 Project Pilot Program.

On February 1, the U.S. Army Corps of Engineers announced a Request for Information (RFI) about the conceptual delivery of a Corps Civil Works program via a public private partnership (P3). The RFI, published in the federal register, opened a 60-day submission period for proposed P3 projects. The program will choose 10 pilot projects to inform future program policy and direction on P3 project delivery. Proposals must be submitted to Corps Headquarters by April 2.

The Corps said the announcement supports the administration's initiative on building U.S. infrastructure. "The Corps is trying to develop additional tools that may be used to deliver infrastructure more efficiently and effectively," said Aaron Snyder, Corps Infrastructure Team, funding and financing, and P3 program development team lead. Congress authorized funding in the fiscal year 2018 appropriations to start the P3 pilot program.

"The Corps has worked on a P3 program for a number of years, and this is really a continuation of those efforts with more of a focus on gathering input from stakeholders and our non-federal sponsors," Snyder said.

The Corps said in its announcement, "The goal of the pilot program is to demonstrate the viability of new delivery methods that can significantly reduce the cost and time of project delivery."

On January 8, Assistant Secretary of the Army for Civil Works R.D. James signed the implementation guidance for the P3 pilot program, which was originally drafted in September 2018. The program is part of the "Revolutionize USACE Civil Works Initiative," which follows a February 2018 administration report on better legislative principles for infrastructure. The administration's framework for rebuilding called for a $2 billion federal investment to stimulate at least $1.5 trillion in new investment over the next decade, where P3s and local non-federal project sponsors take on bigger project roles and responsibilities.

Criteria and Selection

In the original September memorandum, a P3 is defined as: "a long-term contractual relationship between a public sector contracting authority and a private sector entity for the financing and delivery of public infrastructure and/or the provision of public services." The goal, the Corps said, is to transfer the risk associated with the delivery and performance of a project to the private partner.

Federally led P3s are: "P3 contracts directly between the Corps and a competitively selected non-federal entity for the design, construction, financing, operation and/or maintenance of the federally authorized project."

Locally led P3s are: "contractual relationships executed between a non-federal project sponsor and a private entity for the design, construction, financing, operation and/or maintenance of an infrastructure asset over a stipulated period of time, whereby the non-federal project sponsor has a separate project-partnership agreement (PPA), memorandum of agreement, and/or a memorandum of understanding with the Corps setting forth the rights and responsibilities of both the Corps and non-federal entities with respect to the project."

The Corps Infrastructure Team will take the lead on implementation of the P3 pilot program. Snyder said the Infrastructure Team is made of individuals from across the Corps. “We have engineers, economists, planners and biologists, to name a few,” Snyder said. “The team also represents all levels of the Corps from districts, divisions and headquarters.”

During the initial screening process, the Corps Infrastructure Team will use the following criteria to evaluate P3 project proposals:

- Construction cost of more than $50 million;
- Non-federal sponsor support;
- Design, build, finance, operation and maintenance or some combination for federally authorized projects;
  Project delivery acceleration; and
- Ability to generate revenue or leverage non-federal funding sources.

The proposals must also be for projects with existing authorities that are sufficient to allow the P3 project to be completed. The project must also have an initial analysis demonstrating that a P3 contract structure will deliver the project faster and more cost effectively than traditional approaches to project delivery.

Snyder said the Corps does not have any formal requirements for the analysis. “We would like people to provide us with why they think this approach is better. Once a project has been identified as either a pilot or as a project that we need to further develop, we would collectively work on a Value for Money analysis,” Snyder said.

Once projects qualify based on the initial criteria, they will be evaluated and selected based on the following:

- Budget – P3 proposals will be evaluated and ranked on the basis of Return on Federal Investment (ROFI).
- Replicability – P3s that are replicable, the structure or underlying concepts may be applied to other projects.
- Funding – P3s must identify reliable non-federal funding sources for the construction, operation and maintenance of projects.
- Risk Allocation – P3s must allocate delivery and performance risk to non-federal entities and minimize federal liabilities.

The Corps expects both internal and external applications. External applicants should complete a P3 project fact sheet. A copy of the fact sheet and other information on P3 projects and the program can be found here. For outside applicants, the Corps Infrastructure Team will evaluate the projects based on the initial set of criteria and complete the project screening matrix, used for evaluating projects.

Internal submittals from the Corps will include both project fact sheet and a completed matrix. Each Major Subordinate Command (MSC), which includes nine Corps divisions, will designate a P3 point of contact, who will make all submissions to the Infrastructure Team. Each MSC can evaluate and submit projects with no limits, but each will aim to identify at least two projects.

Funding and Long-term Budgets

The program will identify 10 P3 pilot projects, in addition to one the Corps already has in progress – the Fargo Moorhead Diversion Project, which provides flood protection to the area.

Once projects are accepted into the pilot program, they will need to compete for funding. If the project requires a new start, the Corps will conduct an affordability analysis to ensure it can meet future budget requests. The Corps will also maintain a life-cycle budget, which covers all future budget requirements. The life-cycle budget recommendation will be prepared with the final list of projects and updated annually.

Snyder said the authorities for each of the selected projects will vary. "The Corps has a number of existing authorities that could be used to support the development and implementation of P3 projects. For instance, the Fargo-Moorhead project is using Section 221," he said.

In general, the Corps said it will maintain oversight of the projects delivered under a P3 arrangement. Specific project management and controls will be project specific and clearly articulated in the PPA.

In early February, the Corps held two webinars for interested stakeholders. Snyder said the sessions were well attended with more than 100 participants. "The webinars were intended to focus on the RFI criteria, the known constraints from previous work, but most importantly to answer questions from stakeholders," he said.

Information must be submitted to Corps Headquarters on or before April 2. Stakeholders may submit information by mail to: Headquarters U.S. Army Corps of Engineers, Directorate of Civil Works, Infrastructure Team, Attn: John Coho 3F65, 441 G Street NW, Washington, DC 20314; or by email to: CW.Infrastructure.Team@usace.army.mil.

BY ANNA TOWNSHEND

FEBRUARY 20, 2019

CDFA Federal Financing Webinar Series: Opportunity Zones

March 8, June 27, August 22, and October 24, 2019 | 2:00 PM Eastern

The CDFA Federal Financing Webinar Series: Opportunity Zones is an exclusive, four-part online offering that will convene finance experts, federal agencies, and local development finance practitioners to discuss how federal financing tools can be used to leverage the Opportunity Zones incentive. The series will highlight the variety of ways federal grants, loans, guarantees and credit enhancements can be used to attract greater investment in Opportunity Zones, with a particular emphasis on rural development, infrastructure projects, affordable housing, environmental remediation and small business development.

Federal agencies are actively considering ways they can support projects in Opportunity Zones and encourage Opportunity Fund investments into the most highly distressed areas around the country. CDFA is working hand-in-hand with many of these agencies as they consider the shape and scale of their involvement with Opportunity Zones, and CDFA encourages all stakeholders to participate in the webinars and bring project questions and ideas to our expert panelists.

- Opportunity Zones and Rural Development featuring USDA and EPA
- Opportunity Zones and Affordable Housing featuring HUD and USDA
- Opportunity Zones and Transportation featuring DOT and EDA
- Opportunity Zones and Small Business Development featuring SBA and EDA

The CDFA Federal Financing Webinar Series: Opportunity Zones is a 4-part offering available throughout the year. Those interested in attending the series can register for individual webinars or the full webinar series as a package deal. CDFA recommends registering for the full webinar series initially to take advantage of the best available pricing. Webinars will be recorded and made available to all registered participants.

Click here to learn more and to register.

S&P: Is Marijuana Legalization The Answer To States' Budget Pressures?

While proposing and enacting their fiscal 2020 budgets, various states have looked to legalization, and subsequently, taxation of retail marijuana as an additional source of revenue. The governors of New York and Rhode Island have proposed budgets that include introducing taxes on retail marijuana.

Continue Reading

Feb. 21, 2019

S&P Charter School Brief: Colorado

As of Feb. 19, 2019, S&P Global Ratings maintains 30 public ratings on Colorado charter schools. Colorado has the second-highest number of rated charter schools, after Texas. Colorado was the third state in the U.S. to enact a charter school law, and in 1993, the state's first two charter schools opened their doors.

Continue Reading

Feb. 19, 2019

S&P: Pennsylvania 2020 Budget Proposal Signals Near-Term Credit Stability

S&P Global Ratings believes Pennsylvania's fiscal position has stabilized, at least for the near term, given budget estimates for fiscal 2019 and the executive budget proposal for fiscal 2020. Stronger economic growth and slower increases in required pension contributions have helped narrow the commonwealth's budget gaps.

Continue Reading

Feb. 19, 2019

Babies, Bathwater, etc. – The IRS Should Keep the Helpful Non-Reissuance Rules from the Reissuance Notices

The March 1 deadline for submitting comments on the proposed reissuance regulations to the IRS is coming up fast. We make a general comment here – the existing guidance contains helpful ancillary rules that aren't directly implicated by the core reissuance rules. The IRS should not exclude these helpful ancillary rules from the final regulations. They've proved helpful to issuers, and there's no policy reason to scrap them.

Continue Reading

By **Johnny Hutchinson on February 19, 2019**

The Public Finance Tax Blog

Squire Patton Boggs

New Jersey Appellate Division Rules Public Notices in Land Use Cases Need Clear Description of All Uses Proposed.

On February 5, the New Jersey Appellate Division decided the case of *Lakewood Realty Associates v. Lakewood Township Planning Board & RD Lakewood LLC*. The decision is noteworthy because it further clarifies the extent to which the public notice for a development application must describe the proposed uses within a project.

RD Lakewood LLC sought site plan and bulk variance approval from the Township of Lakewood Planning Board for a mixed-use development that included a hotel and a bank. The proposed hotel would also contain a restaurant, bar and banquet hall. During the course of the public hearing before the planning board, Lakewood Realty Associates (LRA) objected to the application. In spite of LRA's objections, the planning board unanimously approved the application. Thereafter, LRA filed a prerogative writ action challenging the board's decision.

At the trial court level, LRA argued, among other things, that the public notice for the development application was defective because it did not indicate there would be a restaurant, bar and banquet hall associated with the hotel. The public notice simply stated, in part, that the applicant proposed "to construct a hotel as well as a bank which are both permitted uses within said zone." The trial court ruled in favor of RD Lakewood, determining, among other things, that the notice stating a hotel was proposed was sufficient given that the architectural plans on file with the planning board clearly indicated the proposed hotel would also include a restaurant with a bar, banquet facilities and meeting rooms, which the judge noted "are common amenities in a hotel of this size associated with a national brand."

LRA subsequently filed an appeal challenging the trial court's decision. After reviewing the facts and applicable law, the Appellate Division overturned the trial court's decision, finding that the public notice did not adequately describe the proposed use. The Appellate Division deemed the notice deficient because it did not describe the hotel's restaurant, banquet facilities and intention to obtain a liquor license, which could raise particular public concerns. Citing Pond Run Watershed v. Hamilton Township, the Appellate Division noted that traffic and public safety issues associated with a facility serving intoxicating beverages would reasonably be of concern to surrounding residents

and property owners. Moreover, the Appellate Division took judicial notice that not all hotels contain a restaurant with a bar and a liquor license, nor do they all operate a banquet facility or a conference center. The Appellate Division reviewed the definitions in the Lakewood Zoning Ordinance of "hotel" (which did not include reference to banquet facilities, meeting rooms or restaurants) and "restaurant" and determined the notice should have disclosed that the applicant envisioned the hotel to function as a conference center, which was also a permitted use in the zone where the property was located. The Appellate Division specifically stated that "[a]ppropriate public notice serves an important gatekeeping function in land-use matters. It is not sufficient for an applicant to circulate and publish an uninformative and vague notice and expect local residents to go down to municipal offices to inspect the plans in order to ascertain the critical features of the proposal."

The lesson here is that public notice for a development project should identify all the significant uses associated with it—not just the principal use. The decision confirms that uses typically deemed as customary and incidental to a principal use should also be identified in the public notice. Moreover, an applicant cannot rely on making plans available for public inspection that include additional information about a proposed development to save an otherwise defective notice that does not properly describe the significant components of a proposed use. The Appellate Division's decision further suggests that any application proposing a use that involves the serving of alcohol, even if ancillary to the principal use, should identify such use in the notice.

This alert serves only as a summary of the case. For more information or questions, please contact the authors or any member of the Day Pitney real estate team.

Publisher: Day Pitney Alert

February 11, 2019

Day Pitney Author(s) Craig M. Gianetti Thomas J. Malman Nicole M. Magdziak

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Innovation Districts and Their Dilemmas With Place.

The global rise of innovation districts continues. In the United States alone, roughly 20 districts have reached a level of critical mass to warrant the name, concentrating a mix of research institutions, mature companies, start-ups and scale-ups, co-working spaces, and supportive intermediaries in close geographic proximity.

Brookings first described this new model of innovation in cities and urbanizing areas five years ago, and since then researchers and practitioners around the globe have been exploring how to help them thrive. Driven by broader economic and demographic trends, most districts emerge organically as established firms and start-ups choose to co-locate around universities, medical institutions and/or other anchors. But over time, as the number of actors increases, innovation district leaders often become much more intentional about working together to leverage their district assets, applying a "collaborate to compete" approach.

Yet even with the best intentions, considerable resources, and unbridled ambition, many innovation district leaders are challenged in their efforts to create a balance between growing the innovation economy, enhancing social and professional networks, and creating a high quality physical environment that facilitates both.

Continue reading.

The Brookings Institute

by Julie Wagner
Nonresident Senior Fellow – Metropolitan Policy Program

February 21, 2019

Amendments To Continuing Disclosure Requirements Effective February 27, 2019.

As a reminder, the new amendments to Rule 15c2-12 of the Securities Exchange Act (the "Rule") take effect on February 27, 2019. The amendment, summarized in *Increased Transparency to Continuing Disclosure Requirements*, will change the reporting requirements for issuers (and conduit borrowers) under their continuing disclosure agreements for bonds issued on and after February 27, 2019.

The following two new requirements related to "financial obligations," including private placements and bank loans, were added to the Rule (the Amendment):

- Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material.
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

Additionally, the definition of "financial obligation" was added to the Rule to mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

We recommend that you stay in touch with your counsel to discuss how the new requirements may affect your continuing disclosure obligations.

McCarter & English, LLP

by Sarah Smith

February 20, 2019

Novel Concerns in FINRA's 2019 Risk Monitoring and Examination Priorities Letter.

On January 22, 2019, FINRA released its 2019 Annual Risk Monitoring and Examination Priorities

Letter (the "Priorities Letter"). Late last year, as part of FINRA360 – the organization's ongoing improvement initiative – FINRA announced its plans to consolidate its Examination and Risk Monitoring Programs, integrating three separate departments into a uniform program. As reflected in the title of the Priorities Letter, FINRA's priorities apply to both its examination program and its risk monitoring responsibilities.

In past years, FINRA's priorities consistently focused on areas such as suitability, outside business activities, private securities transactions, private placements, communications with the public, anti-money laundering ("AML"), best execution, fraud, market manipulation, net capital requirements, customer protection, trade and order reporting, recordkeeping, risk management, and supervision. This year, with respect to sales practice risks, FINRA emphasized that it will continue to review and monitor firms' customer suitability reviews, protection of senior investors, and controls relating to outside business activities and private securities transactions. FINRA will also continue to prioritize market and financial risk areas relating to best execution practices; manipulative trading activities; compliance with Exchange Act Rule 15c3-5 risk management controls; short sales and short tender activities; and credit risk and liquidity.

Notably this year, FINRA has highlighted five emerging areas of concern, which we focus on in this alert: (1) online distribution platforms; (2) supervision of digital assets business; (3) compliance with FinCEN's Customer Due Diligence Rule; (4) fixed-income mark-up and mark-down disclosure obligations; and (5) regulatory technology.

Online Distribution Platforms

The first highlighted item in the Priorities Letter pertains to securities offered through websites, which are described as "online distribution platforms." These types of securities offerings most commonly facilitate capital raising efforts under Rule 506(c) of Regulation D and Regulation A of the Securities Act of 1933. FINRA has observed that broker-dealers are increasingly involved in the distribution of securities through online platforms, raising concerns that firms are not complying with FINRA rules in the process. While FINRA has identified varying degrees of broker-dealer participation in such platforms – ranging from limited involvement of broker-dealers performing narrow functions such as custody, escrow, or back-office duties to full participation by broker-dealers that own and operate platforms – any firm participation in these activities will be subject to enhanced regulatory review. If a firm is associated with selling, recommending, or facilitating the sale of securities through an online platform, FINRA may evaluate how the firm:

- Conducts reasonable-basis and customer-specific suitability analyses for clients investing in online offerings. Depending upon the particular offering, a member firm may be required to demonstrate that it evaluated each investor's risk profile, tolerance, investment history, and goals.
- Ensures compliance with AML obligations. In accordance with the particular facts and circumstances of each offering, a member firm should obtain appropriate information regarding the investors and sources of investment funds and determine how the transactions – both individually and in aggregate for the entire deal – will be reviewed.
- Evaluates the risks associated with offering documents and communications with the public. Given the widespread circulation of marketing materials targeting potential investors for participation in these offerings, a member firm should ensure that each offering meets FINRA's advertising regulation standards of being fair, balanced, and not misleading. This includes the disclosures contained in the offering materials, which may not include false or misleading statements, or omit material information.
- Addresses the risk of sales to non-accredited investors, specifically for offerings under Rule 506(c) of Regulation D. Given the variance in size, structure, and requirements of these offerings, guaranteeing participation by only "accredited" investors is essential. A firm should apply a risk-

based approach when verifying that each investor qualifies as accredited (and thus allowed to participate in such offerings).
- Assesses the risk of excessive or undisclosed compensation arrangements between firms and issuers, specifically for offerings under Regulation A. A member firm should ensure that prospective investors have access to all the appropriate information regarding the offerings in which the firm participates, including where and how the funds are allocated.

Supervision of Digital Assets Business

Firms participating in activities related to digital assets are now a key priority for FINRA. The digital assets business encompasses cryptocurrencies, virtual coins, tokens, and any other use of distributed ledger or blockchain technology. In prior years, FINRA expressed concerns regarding the potential for harm to investors in the cryptocurrency and initial coin offering ("ICO") spaces. This year, FINRA has broadened its focus to the entire digital assets sector. As part of its efforts, on July 6, 2018, FINRA issued Regulatory Notice 18-20 which encouraged firms to notify FINRA if they plan to engage in activities related to digital assets. Firms are asked to notify FINRA of their involvement by July 31, 2019, during which time broker-dealers may find themselves subject to this year's examinations. In addition to complying with FINRA's request for information, member firms must ensure that their involvement in the digital assets business complies with FINRA Rules, including those regarding custody, sale, valuation, and AML.

Customer Due Diligence and Suspicious Activity Reviews

This year, FINRA will concentrate on assessing firms' compliance with the Financial Crimes Enforcement Network's ("FinCEN") final rule on Customer Due Diligence Requirements for Financial Institutions (the "CDD Rule"). The CDD Rule adds a "fifth pillar" to the Bank Secrecy Act ("BSA") and is intended to both clarify customer due diligence requirements for covered financial institutions[i] and strengthen their ability to detect, prevent, and report illicit activities. The CDD Rule codifies and expands upon existing BSA/AML requirements by explicitly requiring covered financial institutions to: (i) identify and verify the identities of the beneficial owners of legal entity customers; (ii) understand the nature and purpose of customer relationships in order to develop customer risk profiles; and (iii) conduct ongoing monitoring for suspicious transactions and, on a risk-basis, maintain and update customer information.[ii]

Previously, the BSA required covered financial institutions to develop written AML compliance programs that, at a minimum, consisted of the following four pillars: (i) a system of internal controls to ensure ongoing BSA/AML compliance; (ii) independent testing for compliance; (iii) a designated person or persons responsible for implementing and monitoring the operations and internal controls of the AML program; and (iv) ongoing training for appropriate persons. Consistent with these requirements, FINRA adopted Rule 3310 (formerly NASD Rule 3011) requiring all member firms to maintain AML programs and procedures that satisfy the four pillars of the BSA, as well as put in place policies and procedures that can reasonably be expected to detect and cause the reporting of suspicious transactions. Because the CDD Rule requires firms to maintain appropriate risk-based procedures for conducting ongoing customer due diligence as a required "fifth pillar" for adequate AML compliance programs, FINRA is considering whether FINRA Rule 3310 should be amended to more closely align with FinCEN's CDD Rule.[iii]

FinCEN implemented the CDD Rule on May 11, 2016, and it became effective on July 11, 2016.[iv] Covered financial institutions had until May 11, 2018 to comply with the new provisions. Prior to May 11, 2018, under the BSA, covered financial institutions were required to create customer identification programs that included procedures to conduct due diligence on both individuals and legal entities opening new accounts. However, firms were not explicitly required to perform

customer due diligence on the beneficial owners of legal entity customers. Now, incorporated into the fifth pillar of the BSA, the CDD Rule requires firms to maintain written AML procedures that are reasonably designed to identify and verify the identity of any individual who owns 25 percent or more of a legal entity customer, and at least one individual who controls the legal entity (i.e. the legal entity customer must identify its ultimate beneficial owner or owners and not "nominees" or "straw men.").[v]

With respect to the CDD Rule, FINRA indicated in its Priorities Letter that it will concentrate on the "data integrity [of a firm's] suspicious activity monitoring systems, as well as the decisions associated with changes to those systems." Because FinCEN allowed firms a lengthy two-year period to comply with the CDD Rule, most firms should already have in place systems that incorporate these new customer due diligence obligations. Nonetheless, some best practices for firms seeking to ensure compliance with the CDD Rule include the following:

- Confirm that all AML written supervisory policies and procedures are properly updated to incorporate CDD Rule obligations. The procedures should detail individual responsibilities in connection with the CDD Rule, including what party or parties will review and approve changes to a customer's risk profile. Procedures should also address instances in which the firm has obtained insufficient or inaccurate customer information.
- Conduct ongoing training for compliance professionals on new CDD requirements, including how to properly: (1) gather required customer information; (2) verify and record beneficial owners of legal entity customers; (3) conduct appropriate ongoing risk profiling; and (4) perform periodic customer reviews.
- Confirm that all internal and outsourced technologies used to perform ongoing customer due diligence are CDD Rule-compliant.
- Verify that customer due diligence reporting data is up-to-date and accurate.
- Confirm that customer risk profile information and collected beneficial ownership information is verified, recorded, and incorporated into AML compliance screening programs, and being used in connection with suspicious activity reporting.
- Check that current programs and procedures require the collection of beneficial ownership information for existing clients that open new accounts.
- Review all recordkeeping procedures for customer risk profiles, and beneficial ownership identification and verification information.
- Periodically conduct a sampling of new accounts opened and review customer data for compliance with the CDD Rule.

Fixed Income Mark-ups/Mark-downs on Trade Confirmations

Another focal point for FINRA's examination and risk monitoring programs this year will be firms' compliance with mark-up and mark-down disclosure obligations on fixed-income transactions with customers, pursuant to last year's coordinated amendments to FINRA Rule 2232 (Customer Confirmations) and MSRB Rule G-15 (Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers). Taken together, the amendments require member firms to provide retail customers with additional transaction-related information for certain trades in corporate, agency and municipal debt securities. Firms were previously required to disclose transaction cost information when acting as principal with customers for only equity trades, pursuant to Securities and Exchange Act Rule 10b-10. The amendments added comparable requirements for bond trades.

In its December 2018 Report on FINRA Examination Findings, FINRA noted certain critical failings in some member firms' implementation of changes required under FINRA Rule 2232 and MSRB Rule G-15 as amended. FINRA has included mark-up and mark-down disclosure obligations under revised

Rule 2232 in the "Highlighted Items" section of its 2019 Priorities Letter. FINRA's repeated emphasis on firms' compliance with mark-up and mark-down disclosure obligations indicates that this is a significant area of concern that FINRA exam teams will scrutinize in the coming year.

FINRA Rule 2232 as amended requires member firms to disclose to retail customers the amount of mark-up or mark-down the customer paid for a purchase or sale in a corporate or agency debt security,[vi] if the member firm also executes one or more offsetting principal trades in the same security on the same trading day in an aggregate trading size meeting or exceeding the size of the trade with the customer.[vii] Mark-ups must be disclosed both as a total dollar amount for the transaction and as a percentage of the prevailing market price ("PMP") for the security – to be calculated pursuant to FINRA Rule 2121 (Fair Prices and Commissions). Rule 2232 also now requires customer confirmations to contain the time of execution of the trade and a security-specific link (with CUSIP) to the FINRA or MSRB website, where the customer can find additional details about the transaction.[viii]

For disclosure purposes, firms must "look through" to offsetting principal trades exercised by affiliate broker-dealers if those trades did not occur at arm's-length, and disclose the mark-up associated with those trades. While the amendments to FINRA Rule 2232 contain new disclosure obligations, there are two exceptions: i) member firms need not disclose mark-ups for principal trades executed on a functionally separate trading desk from the one that executes the customer trades (as long as the firm's policies and procedures are designed to ensure that the functionally separate trading desk has no knowledge of the customer trades); and ii) mark-up disclosure is not required for bonds that a member firm obtained in a fixed-price offering and subsequently sold to a retail customer at the same offering price on the same day.

Takeaways and potential pitfalls for member firms seeking to comply with FINRA Rule 2232 are as follows:

- FINRA Rule 2121 defines PMP presumptively as the contemporaneous cost incurred by the dealer when purchasing the debt security. When contemporaneous cost is not indicative of PMP, however, Rule 2121 sets forth nuanced waterfall provisions dictating the manner in which PMP must be calculated. Member firms using third-party vendors or automated systems to perform such waterfall analyses must have a reasonable basis to believe that the resulting PMP calculations are correct. The ultimate responsibility for calculating PMP and disclosing mark-ups in compliance with Rule 2232 lies with member firms.
- Individual brokers should receive adequate training and supervision to ensure that they understand what information to include in customer confirmations pursuant to Rule 2232, and the exceptions to the rule's disclosure requirements. Firms should also take reasonable steps to ensure that brokers do not intentionally delay execution of customer trades to avoid triggering Rule 2232's disclosure requirements.
- Member firms should consider periodically sampling and reviewing customer confirmations falling under Rule 2232's fixed income mark-up disclosure provisions to ensure that the information contained therein is complete and accurate.

Regulatory Technology

Like others in many industries, broker-dealers are turning to new and innovative technology to assist them in meeting their regulatory and compliance obligations. FINRA has identified Regulatory Technology as another highlighted area of focus in 2019. The Priorities Letter incorporates by reference a white paper FINRA published in September 2018 titled "Technology Based Innovations for Regulatory Compliance ("RegTech") in the Securities Industry," which contained a detailed discussion of common applications and implications for firms using RegTech to make compliance

systems more efficient and effective. In doing so, FINRA identified five areas in which it observed member firms applying RegTech tools to conduct traditional compliance activities: (1) surveillance and monitoring; (2) customer identification and AML compliance; (3) regulatory intelligence; (4) reporting and risk management; and (5) investor risk assessment. FINRA noted that replacing traditional compliance functions with RegTech tools may present heightened risk to supervisory control systems, customer data privacy, and cybersecurity, among other areas.

Given the vast opportunities presented by RegTech, including improved surveillance quality and reduced costs, how are firms to decide which technologies to adopt and how aggressively to embrace these innovations? What are the known pitfalls to be avoided? What additional considerations should firms and compliance officers weigh? We provide the following four suggested tips to minimize regulatory exposure when implementing RegTech tools:

- **Maintain an Integration Plan**

Firms that see the long-term benefits of employing RegTech tools to automate compliance systems need to develop a risk-based integration plan. In the short-term, this likely means duplicating certain compliance efforts. Leaving old systems in place and comparing traditional data with results achieved through automated systems will permit firms to understand both benefits and shortcomings of new technology. In addition, to the extent tools engage in so-called "machine learning" to refine processes and increase output quality, those systems should be given a long enough learning curve to analyze what data falls away as false positives or noise. Firms should also conduct ongoing and rigorous testing of automated compliance systems to ensure efficacy.

Firms should also appreciate the disconnect between what FINRA calls structured and unstructured data when implementing RegTech tools. Marrying together data from disparate sources requires a well-planned long-term approach and may require keeping traditional compliance systems in place for years until a holistic RegTech system can be implemented and tested across all of a firm's business lines and information sources.

Though there have yet to be any RegTech-related enforcement actions taken by FINRA, a firm is more likely to avoid formal discipline if it takes a patient approach to implementation and makes several distinct efforts to identify blind spots before abandoning traditional compliance systems.

- **Envision the Worst-Case Scenario**

Firms should evaluate the impact automation has on their compliance systems under a worst-case scenario. When implementing new compliance systems, firms should determine the potential harm that would result from a system failure. For example, firms should ask whether the system impacts high regulatory priorities like protecting retail investors, achieving anti-money laundering compliance or effecting regulatory reporting. Firms should also determine the scope of a potential system failure – is harm limited to a broken trade or failed wire transmission or would it have a widespread impact on market activity? Developing a risk matrix that accounts for these types of questions will enable firms to apply resources to the systems with the greatest potential for harm in areas of high regulatory priority.

- **Appreciate the Dangers of Outsourcing to Third-Parties**

Many of the early entrants in the RegTech tool development space are technology start-ups that offer products to financial institutions through third-party vendor support. This introduces risks concerning third-party data breaches and other data privacy concerns. FINRA has specifically cautioned that firms remain "ultimately responsible for compliance with all applicable securities

laws and regulations and FINRA rules" in connection with outsourced activities or functions.

Step one for minimizing risks related to third-party vendors is to conduct reasonable initial and ongoing vendor due-diligence. Firms should ensure that vendors are technically, operationally and financially sound, and have adequate cybersecurity systems in place to safeguard data. Further, firms should be satisfied that they can adequately supervise the outsourced functions and that vendors understand regulatory requirements for record retention.

Firms must also be vigilant in protecting customer data. Whenever possible, firms should limit data provided to vendors to the minimum information essential to achieve the outsourced activity. For example, if a vendor conducts transaction review that is not related to customer identity, firms should ensure that the vendor cannot access customer-specific information. Firms should also ensure that customers provide consent as needed when new or additional information is collected by or shared with a third-party vendor.

- **Don't Be Afraid to Maintain a Dialogue with FINRA and Other Regulators**

FINRA has expressed a strong desire to foster an open dialogue with its members to help work through growing pains of emerging technologies. Consistent with this approach, FINRA has previously invited member firms and other interested parties to submit comments to identify benefits and risks associated with new financial technologies. FINRA consistently encourages stakeholders to actively engage with it on areas where additional guidance will support adoption of new technologies.

Member firms should take advantage of FINRA's willingness to listen and engage in active dialogue concerning RegTech by, among other things, notifying their regulatory point of contact when considering upgrading traditional compliance systems with new technology tools. Cooperating with regulators to identify potential technology failings not only increases the likelihood of "getting it right" but also helps make the case against formal action if something goes wrong.

FINRA's Priorities Letter, taken together with other recent notices and publications by the regulator, puts member firms on notice of the need to review and revise as appropriate their FINRA compliance programs both in areas of longstanding concern and in emerging areas of risk that FINRA took care to underscore. Firms should expect an increased focus by FINRA in examinations and risk monitoring in the highlighted areas of concern.

[i] The term "covered financial institution" includes U.S. banks, registered brokers or dealers in securities, mutual funds, and future commission merchants and introducing brokers in commodities. See 31 CFR § 1010.605(e)(1).

[ii] See 31 CFR §§ 1023.210(b)(5)(i) and (ii).

[iii] See FINRA Regulatory Notice 17-40, November 21, 2017 (The CDD Rule does not change the requirements of FINRA Rule 3310, but instead "amends the minimum statutory requirements for member firms' AML programs by requiring such programs to include risk-based procedures for conducting ongoing customer due diligence.").

[iv] https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf

[v] 31 CFR § 1023.210.

[vi] The security must also be a TRACE-Eligible Security required to be reported to TRACE under FINRA Rule 6730.

[vii] Because customers purchase bonds from member firms more often than sell them to member firms, for ease of reference our discussion going forward will refer only to mark-ups.

[viii] Firms must also include in the customer confirmation a brief description of the information available on the relevant website.

King & Spalding

February 22, 2019

FINRA Launches First-Ever Self-Reporting Initiative on 529 Plan Share Class Recommendations.

FINRA announced on January 28, 2019, the launch of a new initiative encouraging broker-dealers that offer 529 plans to self-report potential supervisory violations involving share class recommendations to customers (529 Plan Initiative).1 Under the 529 Plan Initiative, in exchange for a firm's assessment of its supervision of 529 plan share class recommendations, self-reporting and remediation of potential violations, and preparation of a restitution plan for harmed customers, FINRA's Department of Enforcement will recommend a settlement that includes restitution and a censure but no fine.2 Broker-dealers that wish to participate in the 529 Plan Initiative must notify FINRA in writing by **April 1** and must submit to FINRA information regarding their systems and procedures for supervising 529 plans (discussed below) by **May 3**.

Investment in 529 Plans

529 plans are tax-advantaged municipal securities that allow individuals to save for a designated beneficiary's future educational expenses. They are typically sold in different share classes, which carry different fees and other costs. While 529 plans have traditionally been used to save for higher education, amendments to the Internal Revenue Code that became effective in 2018 expanded the permitted use of 529 plans to certain kindergarten, elementary school and secondary school (i.e., high school) expenses. Because 529 plan share classes have different fee structures, the financial impact to the customer will depend in part on the class of share purchased and the number of years the customer expects the assets to be invested. For example, Class A shares generally impose a front-end sales charge but have lower annual fees, whereas Class C shares impose no front-end sales charge but have higher annual fees. As a result, a customer who plans to invest in a 529 plan for a period of several years may pay significantly more in fees if invested in Class C shares rather than Class A shares.3

Purpose and Scope of the 529 Plan Initiative

Broker-dealers must have systems and procedures to supervise registered representatives' share class recommendations to customers and ensure they are consistent with those customers' investment goals. However, FINRA's examination of some firms identified supervisory gaps with respect to 529 plans.4 The 529 Plan Initiative is intended to encourage firms to review their systems and procedures governing 529 plan share class recommendations and to self-report and remediate identified gaps. The initiative appears to be modeled after the SEC's 2018 Share Class Selection Disclosure Initiative, under which the SEC offered favorable settlement terms to investment advisers that self-reported potential violations of securities laws relating to their failure to make certain disclosures concerning mutual fund share class selection.5

Firms that offer 529 plans should assess their supervisory systems and procedures and evaluate areas including

- training regarding the costs and benefits of different 529 plan share classes
- understanding and assessing the different costs of share classes for individual transactions
- receiving or reviewing data reflecting 529 plan share classes sold
- reviewing share class information, including potential breakpoint discounts or sales charge waivers in determining the suitability of 529 plan recommendations
- the potential impact of any identified supervisory failures (by either conducting a customer-specific analysis or using a statistical approach to identify customers who received 529 plan share class recommendations that were unsuitable)

Regardless of whether it elects to participate in the 529 Plan Initiative, FINRA encouraged any firm that engages in 529 plan activity to conduct this review — including a firm that is confident that it has established, and is enforcing, 529 plan supervisory systems and procedures. In a video released in connection with the launch of the 529 Plan Initiative, FINRA Executive Vice President of Enforcement Susan Schroeder emphasized that FINRA's review of firms' 529 plan supervision will not be limited to firms that elect to participate in the initiative.6 To the extent violations are identified at a firm that elects not to participate, FINRA will recommend sanctions greater than what would be recommended under the initiative.7

How to Participate

The deadline for broker-dealers participating in the 529 Plan Initiative to submit the results of their assessments to FINRA is May 3. Some broker-dealers have already begun the assessment process and indicated their intention to participate. Given the volume of data FINRA is requiring from participants, firms that timely notify FINRA of their intention to participate but anticipate they will not be able to meet the May 3 submission deadline may request an extension.8

Sidley Perspective

The 529 Plan Initiative is the most recent effort by FINRA to address broker-dealer compliance obligations and is consistent with FINRA's ongoing focus on obligations related to suitability determinations.9 Participating firms should anticipate certain challenges in assessing their supervisory systems and procedures and preparing their submissions to FINRA. For example, many firms that participated in the SEC's ongoing Share Class Selection Disclosure Initiative have found collecting the required data to be challenging and burdensome.

Moreover, as is the case with all suitability reviews, determination of suitability is often a nuanced, fact-dependent process involving numerous considerations. For example, the appropriateness of a share class may vary depending on the availability of breakpoints based on the customer's holdings of mutual funds managed by the 529 plan sponsor. Certain features of 529 plans also may create particular supervision and monitoring challenges including, but not limited to, the availability of information related to beneficiaries10 and the manner in which 529 plan transaction information is tracked internally.

Broker-dealers that offer 529 plans should consult legal counsel to discuss undertaking a self-assessment of their 529 plan supervisory systems and procedures and the benefits and drawbacks of participating in the 529 Plan Initiative.

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1 See FINRA Regulatory Notice 19-04 (Jan. 28, 2019), available here.

2 Broker-dealers that have already been contacted by FINRA's Department of Enforcement as of January 28, 2019, regarding potential violations involving 529 plan share classes are not eligible to participate in the 529 Plan Initiative. See id., n. 12. The 529 Plan Initiative also does not apply to individuals, and FINRA has stated that it provides no assurance that an individual associated with the broker-dealer who sold 529 plans in violation of federal securities laws and regulations or self-regulatory organization rules would be offered similar terms. See FINRA Regulatory Notice 19-04.

3 Importantly, FINRA acknowledges that a recommendation of a higher-expense class share is not per se unsuitable but must be reviewed in light of the customer's particular facts and circumstances. See FINRA Regulatory Notice 19-04, n. 13. Nevertheless, the 2018 amendments to the Internal Revenue Code expanding the permitted use of 529 plans further complicates this analysis.

4 FINRA Executive Vice President of Enforcement Susan Schroeder noted that FINRA's review found supervisory "blind spots" within some firms. See A Few Minutes with FINRA – 529 Plan Share Class Initiative (January 28, 2019), available here.

5 See Announcement, Share Class Selection Disclosure Initiative, SEC Division of Enforcement (Feb. 12, 2018), available here.

6 Additionally, broker-dealers that elect not to participate in the 529 Plan Initiative are still subject to the self-reporting obligations under FINRA Rule 4530.

7 See A Few Minutes with FINRA – 529 Plan Share Class Initiative (stating that FINRA's examination program will continue to review firms that offer 529 plans for share class recommendation and supervisory violations).

8 FINRA Regulatory Notice 19-04, n. 15.

9 See, for example, FINRA 2019 Risk Monitoring and Examination Priorities Letter, at 3 (Jan. 17, 2019), available here.

10 Because 529 plans are municipal securities, they are subject to the oversight of the Municipal Securities Rulemaking Board, which has stated that since investors purchase 529 plans for a beneficiary, registered representatives should also consider information known about the beneficiary in evaluating the investment objectives of the customer in order to recommend a share class that is tailored to the customer's particular circumstances and needs. See FINRA Regulatory Notice 19-04.

Sidley & Austin

February 13, 2019

Know the Situations When Munis Don't Offer Tax-Free Benefits.

Many fixed-income investors gravitate towards municipal debt as an investment option because of the tax-free income; for some, this single benefit is enough to relinquish the potential for higher coupons on other alternatives like corporate debt or equity investments.

These alternatives may produce higher yields; however, the overall tax benefit with municipal debt is often enough to outweigh the higher yields offered on taxable debt. Most importantly, this tax benefit increases as an investor's tax bracket increases.

On the contrary, an investor purchasing municipal debt solely for its tax-free income benefit must be aware of situations where income from municipal debt holdings can be treated like normal interest income, creating a tax liability and cutting into the overall return of the security.

In this article, we will take a closer look at some of these situations and how investors can thoroughly assess their investment options before making any investment decisions.

Continue reading.

municipalbonds.com

by Jayden Sangha

Feb 20, 2019

Coalition of Governors Push to Restore State, Local Tax Deduction.

"This is politics masquerading as tax policy," New Jersey Gov. Phil Murphy said.

A coalition of governors from high-tax states hit hardest by a provision of the Republican tax overhaul said Friday they will join together to push Congress to restore the full federal tax deduction for certain state and local taxes.

The eight states are all led by Democratic governors, but New York Gov. Andrew Cuomo said they are also bound by their belief that the $10,000 cap on the so-called SALT deduction is fundamentally unfair. Cuomo said the 2017 GOP tax law hurts states that already pay more in taxes than they get back from the federal government. These states tax citizens to pay for much-desired services like education and health care, he said.

"This is politics masquerading as tax policy," said New Jersey Gov. Phil Murphy during a news conference at a National Governors Association meeting in Washington, D.C. "It is gutting our middle class. It is just plain wrong."

Along with New York and New Jersey, governors from Connecticut, Hawaii, Illinois, Oregon, Rhode Island and Washington state have joined the coalition. Many of these states are part of a federal lawsuit that challenges the change. Some, too, have attempted to pass tax workarounds through their legislatures to restore the deduction for residents, but the IRS has ruled those out-of-bounds.

Cuomo met with President Trump earlier in February about the issue, although the White House after the meeting tamped down expectations of a change of heart by the administration.

Now, the focus needs to be on lobbying Congress to make clear that restoring the full deduction should be a priority with a new Democratic majority in the House, Cuomo said. He acknowledged that Republican Sen. Chuck Grassley, a key player on tax issues, a couple weeks ago indicated he would not support reworking the SALT cap.

"We need a change to the law. That has to happen in Washington," Cuomo said. "It is on Speaker

[Nancy] Pelosi's radar screen."

Murphy emphasized that there are proposals on the table, such as a bill introduced earlier this month by New Jersey Sen. Bob Menendez and others. In January, two New York House members introduced their own legislation to restore the full deduction.

Tax experts across the ideological spectrum have noted that the SALT problem hits higher-income taxpayers most deeply. The Urban-Brookings Tax Policy Center has estimated that 57 percent of the additional tax from limiting the deduction would be paid by the top 1 percent.

During the news conference, Cuomo emphasized that the state saw a $2.3 billion decline in income tax payments in December and January, a fact that he has tied to the SALT deduction limit. But tax experts interviewed by the New York Times suggested the revenue shortfall more likely was related to volatility in the stock market, for example, with high earners choosing to write off capital losses to reduce their tax burdens.

Route Fifty

By Laura Maggi,
Managing Editor

FEBRUARY 22, 2019

State and Local Individual Income Tax Collections Per Capita.

The individual income tax is one of the most significant sources of revenue for state and local governments. In fiscal year (FY) 2016, the most recent year of data available, individual income taxes generated 23.5 percent of state and local tax collections, just less than general sales taxes (23.6 percent).

The map below shows combined state and local individual income tax collections per capita for each state in FY 2016. Forty-one states and the District of Columbia levy broad-based taxes on wage income and investment income, while two states—New Hampshire and Tennessee—tax investment income but not wage income. Tennessee's tax on investment income—known as the "Hall tax"—is being phased out and will be fully repealed by tax year 2021. Seven states do not levy an individual income tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming.

Continue reading.

The Tax Foundation

Katherine Loughead

February 21, 2019

TAX - NEW YORK

Matter of Foreclosure of Tax Liens by Proceeding in Rem Pursuant to Article

11 of Real Property Tax Law by City of Utica

Supreme Court, Appellate Division, Fourth Department, New York - February 8, 2019 - N.Y.S.3d - 2019 WL 490992 - 2019 N.Y. Slip Op. 01020

After third party that owned parcel of real property on which respondent's automobile-parts business was located defaulted in "in rem" tax foreclosure proceeding commenced by city, default judgment was entered which, inter alia, awarded possession of parcel, as well as "all items of personal property thereon deemed abandoned," to city.

Respondent made application by order to show cause for order vacating, for lack of jurisdiction, that part of the judgment of foreclosure that deemed his personal property abandoned. The Supreme Court, Oneida County, denied application, and respondent appealed.

The Supreme Court, Appellate Division, held that:

- Respondent's application was not subject to the one-month limitations period set forth in the default judgment section of the statute governing foreclosure of tax liens, and
- The court in the tax foreclosure proceeding lacked jurisdiction to enter a judgment disposing of personal property.

One-month limitations period set forth in default judgment section of statute governing foreclosure of tax liens applies only to an application to reopen a default judgment with respect to a parcel of real property described in an underlying petition of foreclosure; it does not apply where the application seeks to vacate for lack of jurisdiction a provision in a judgment disposing of personal property not described in the petition.

Although Supreme Court may exercise in rem jurisdiction over real property in a proceeding to foreclose a tax lien, the court lacks jurisdiction to enter a judgment disposing of personal property; article 11 of Real Property Tax Law (RPTL), governing procedures for enforcement of collection of delinquent taxes, does not grant jurisdiction over personal property located on a parcel of real property that is the subject of an in rem tax foreclosure proceeding, nor does it permit the tax district to obtain a judgment awarding the tax district such personal property.

TAX - SOUTH CAROLINA

CSX Transportation, Inc. v. South Carolina Department of Revenue

United States District Court, D. South Carolina, Columbia Division - January 7, 2019 - F.Supp.3d - 2019 WL 117313

Railroad brought action against South Carolina Department of Revenue alleging that South Carolina's property tax scheme discriminated against railroads in violation of Railroad Revitalization and Regulatory Reform Act (4–R Act) by excluding railroad property from benefit of 15% cap to increases in appraised values under South Carolina Valuation Act, and seeking injunctive and declaratory relief.

Following bench trial, the United States District Court entered judgment in favor of Department. Railroad appealed. The Court of Appeals vacated and remanded.

On remand, the District Court held that:

- Appropriate comparison class to railroad consisted of the other commercial and industrial real

property taxpayers within South Carolina, and
- State provided sufficient justification for Valuation Act's failure to extend cap to railroad.

Provision of South Carolina Valuation Act imposing 15 percent cap on increase in fair market value of real property attributable to a periodic countywide appraisal and equalization program constituted a limitation on increases on ad valorem property taxes in South Carolina and not an exemption from tax, and thus provision was subject to Railroad Revitalization and Regulatory Reform Act (4–R Act) prohibition on any tax that resulted in discriminatory treatment of a railroad; whether or not railroad would be allowed to benefit from 15 percent cap would affect railroad's property tax.

Appropriate comparison class to railroad consisted of the other commercial and industrial real property taxpayers within South Carolina, in railroad's action against South Carolina alleging violation of Railroad Revitalization and Regulatory Reform Act (4–R Act) through South Carolina Valuation Act's exclusion of properties valued by the unit valuation method from a general cap on permissible increases in appraised values of commercial and industrial real properties.

State provided sufficient justification for South Carolina Valuation Act's failure to extend general 15 percent cap on permissible increases in appraised values of commercial and industrial real properties to railroad, and thus failure to extend cap to railroad did not violate Railroad Revitalization and Regulatory Reform Act (4–R Act) prohibition on discriminatory tax treatment of railroad; a 20 percent equalization factor applied to railroads but not to commercial and industrial taxpayers, state law provided various tax exemptions for benefit of railroads, and because sale of commercial and industrial property triggered assessment that set fair market value on property without regard to 15 percent cap, lost value was recouped in whole or in part for tax base at time of sale.

Opportunity Zones Must Work for Working Businesses.

In the first quarter of 2018, we and our colleagues worked with our governors to designate our states' Opportunity Zones. No economic development program is perfect. But this new federal tax tool, which was introduced by over 100 bipartisan congressional co-sponsors, has great potential. We take our responsibility to utilize this new tool to strengthen the economic vitality of our communities and enhance the well-being of our citizens seriously. We selected zones based on the intent of Congress that this new federal capital gains tax incentive attract scarce equity capital to underinvested communities for two purposes: the development of brick and mortar projects and the growth of operating businesses. This program was not designed simply for investments in real estate. It was also created to foster entrepreneurial ventures, to strengthen manufacturers, to draw capital to businesses small and large, and to result in the production of jobs in these designated communities. As key stakeholders in the success of our states' Opportunity Zones, we want to ensure that the regulations the IRS delivers in the coming weeks reflect this same two-part intent.

The scale of need is vast. As recently as 2016, more than three-quarters of all U.S. counties still contained fewer places of business than before the recession, according to the Economic Innovation Group. If current trends continue, some of the country's most distressed census tracts may never recover the jobs they lost to the Great Recession. The status quo would have investors continue to pour capital into the places already doing well. Opportunity Zones have the potential to change investor behavior by providing an incentive to take off blinders and consider investing in spaces and businesses that can bring new vitality and opportunity to places that have been left behind.

We and our peers – a dozen top state economic development officials – have written two letters to Treasury, the IRS, and the regulatory authorities summarizing our suggestions to ensure this new tax incentive delivers what both Congress and our governors have promised their constituents. We make four main recommendations.

First, Opportunity Zone investors should be able to invest in high-impact operating businesses that can generate jobs and wealth at scale by drawing revenue from outside of the community into it. Investors should be able to inject equity into manufacturers and e-commerce companies in addition to the restaurants and storefronts that also make up a community. For example, this means that the 50 percent gross income requirement should be interpreted to require that qualifying entities be active businesses as opposed to holding companies or patent boxes. But it should not require that income be majority derived from a single point of sale in an Opportunity Zone, which would disqualify most e-commerce companies, manufacturers, and other businesses with the potential to create significant numbers of new jobs and wealth for their communities. (The current set of proposed regulations seemingly require such predominantly localized sales.) We agree with proposals that allow businesses the necessary operational flexibility to qualify for these investments, such as the straightforward requirements that 70 percent of a qualifying business's tangible property be in an Opportunity Zone.

Second, the IRS and Treasury must demonstrate a basic understanding of what motivates investors to provide equity to operating businesses by writing rules and regulations that allow Opportunity Funds–the required vehicles for investment under this program–to create diverse investment portfolios. Successful Opportunity Fund managers will naturally seek to spread out their risk by investing in several businesses in case any of them fail. Diversification is particularly important in struggling communities where investors already view projects as riskier and returns are seen as less certain. Because sound funds will make multiple business investments, they will need flexibility in the time allowed to meet the law's twice annual "90 percent asset test" to ensure that the Fund managers can put together a strong portfolio of qualifying business investments that will attract and keep investors interested in zone communities.

Third, Opportunity Funds should be able to buy and sell assets without triggering tax liabilities for their partners that would undermine the 10-year tax benefit. Specifically, the rules should allow funds to reinvest interim gains in a timely manner without incurring a penalty or triggering a taxable event. Successful investing requires a degree of nimbleness to react to new developments. Investors will be reluctant to commit to holding a stake in a single company for 10 years given all the forces that could intervene during that period. Investors should be able to divest from less-than-successful companies if they keep their capital at work in Opportunity Zones. The IRS could consider establishing a minimum hold period for any individual investment in a zone, but requiring an investor to hold each individual business investment for 10 years (rather than simply committing to remain invested in the Fund for 10 years) will significantly undermine the ability to invest in operating businesses.

Finally, we encourage Treasury to adopt simple, unobtrusive reporting requirements to collect data on Funds and their investments. Such reporting will illuminate where the incentive has been successful and will help identify areas for improvement and modification in the future. These data will help us understand whether this program is incentivizing the investments intended by Congress.

We recognize that finalizing new regulations is never as simple as it seems, but by working together, we are confident we can unleash the true potential of Opportunity Zones in these key communities.

THE HILL

BY STEFAN PRYOR, VALE HALE AND DON PIERSON, OPINION CONTRIBUTOR — 02/20/19 02:45 PM EST

THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

Stefan Pryor is the Rhode Island Secretary of Commerce. Vale Hale is Executive Director of the Utah Governor's Office of Economic Development. Don Pierson is Secretary of Louisiana Economic Development.

Distressed Cities Find Hope in Federal 'Opportunity Zones'

A new program may be a boon to struggling cities — if it targets the right ones.

York, Pa., grew up making things. The brick smokestacks that break up the skyline are inescapable reminders of its industrial past. Buildings that once housed factories employing hundreds of workers have now been converted into warehouses that employ only a handful of people, at wages that don't come close to rivaling those of their industrial predecessors.

Mayor Michael Helfrich grew up in York. He remembers when middle-class jobs were only a short walk away from the homes of the men and women who produced everything from Pullman cars to Pfaltzgraff dinner plates to York Peppermint Patties. Those companies are gone. Pullman succumbed to competition from Detroit automakers. Hershey's bought the York candy factory and moved production to its own plants, which eventually landed in Mexico in 2009. Pfaltzgraff was purchased in 2005 and its operations moved to China.

But most of the jobs haven't left because of competition or consolidation as much as they've left to escape York's taxes, which are almost three times the rate in surrounding York County. The taxes have led to a vicious cycle — innovation, development and flight — that has persisted for decades. "We used to build wealth in the city of York," Helfrich says. "In almost 50 years, we have not seen that. Our growth has been, 'Can you come here and give us some jobs?' Meanwhile, the wealth was going somewhere else. It wasn't building in York."

Continue reading.

GOVERNING.COM

BY J. BRIAN CHARLES | FEBRUARY 2019

Amazon HQ2 Was an 'Unfortunate Distraction' From 'Needy Communities'

The online retail giant's plans in New York attracted bad PR for a new federal program aimed at helping economically distressed areas like Long Island City.

Amazon's announcement last week that it would no longer build a corporate headquarters out of New York City was met with harsh criticism from many state and local leaders. Mayor Bill de Blasio condemned the online retail company, while Gov. Andrew Cuomo, also a Democrat, lambasted the progressive politicians whose attacks against Amazon ultimately killed the deal.

“Amazon chose to come to New York because we are the capital of the world and the best place to do business. However, a small group [of] politicians put their own narrow political interests above their community,” Cuomo said in a statement shortly after Amazon’s announcement.

But for backers of so-called opportunity zones, Amazon’s withdrawal removes an unwelcome distraction from a burgeoning effort to attract new investment to low-income neighborhoods.

Opportunity zones were created as part of the 2017 federal tax overhaul. If private investors plop money into these economically distressed neighborhoods, they can shield portions of their capital gains tax liability. There are 8,700 of these zones scattered across the country. One of them is in Long Island City, Queens, in New York, where Amazon was going to locate one of its two new headquarters.

When Amazon made its HQ2 announcement in November, many people questioned the area’s opportunity zone participation. If the neighborhood was attractive enough for the tech giant, then why did it need help from a federal investment program for distressed areas?

“When you first heard about the opportunity zone program, you said, ‘Well this is helpful to poor people,'” says Timothy Weaver, an urban policy professor at the State University of New York at Albany. “But then you hear Amazon’s name and that doesn’t seem like something to help the poor.”

On the same day Amazon announced its plans to move to Long Island City, Goldman Sachs announced that its opportunity zone fund was investing $83 million into the same neighborhood. The pairing of the two announcements, which Goldman Sachs said was a coincidence, led to sharp criticism of the opportunity zone program from the press.

Unlike Goldman Sachs, Amazon is too large to have qualified for an opportunity zone tax break. But the company nonetheless would have benefited from it being an opportunity zone, say Weaver and others. For instance, Goldmans Sachs had already planned to finance construction of apartments in Long Island City.

Now, with the Amazon move off the table, Weaver suggests the opportunity zone plan, at least in Long Island City, can move forward on its merits.

“I certainly think the HQ2 saga has been an unfortunate distraction at the expense of the thousands of needy communities nationwide that stand to benefit from thoughtful opportunity zone implementation,” says John Lettieri, the president and chief executive officer of the Economic Innovation Group, the think tank that helped draft the opportunity zone language in the 2017 tax plan. That group, started by Napster founder and former Facebook executive Sean Parker, has spent more than five years trying to draw investment to economically depressed areas.

“There are outliers, but the national numbers aren’t ambiguous: The vast majority of opportunity zones are facing an array of deep socioeconomic challenges,” Lettieri says. “They deserve far more serious attention than they are getting.”

Neither Lettieri or Weaver will speculate on whether Amazon’s exit will have an impact on investment in the Long Island City opportunity zone. The program is still new. The rules governing opportunity zones are still subject to change, and the market conditions are always in flux, Lettieri says.

And questions remain as to whether the program will deliver jobs or services as intended. Weaver has long been a critic of opportunity zones. His belief is that a tax incentive program like this one naturally will encourage those investments designed to deliver maximum returns. That means high-

yield projects like real estate developments, but not other projects that could perhaps better serve distressed communities.

“The type of things we might want in these neighborhoods — schools, libraries or playgrounds — have nothing to do with investment and profit,” Weaver says.

GOVERNING.COM

BY J. BRIAN CHARLES | FEBRUARY 20, 2019 AT 12:23 PM

Recap of Feb 14 IRS Public Hearing on Opportunity Zones.

This past Thursday, February 14, the IRS Auditorium in Washington DC was packed to capacity with over 200 attendees as stakeholders spoke during the public hearing on proposed regulations: “Investing in Qualified Opportunity Funds” [REG-115420-18].

Hearing participants requested additional guidance on a wide variety of proposed regulations, with many suggesting improvements to the regulations that would allow for more flexibility — particularly in regards to business investment.

Podcast episode on the hearing

This IRS hearing was the focus of on a recent episode of the Opportunity Zones Podcast. Click here to listen to the recap.

Topics covered at the hearing

- Opportunity zone business qualification requirements
- 70% and 90% asset test requirements
- Community impact reporting and program effectiveness measurement
- Reinvestment of interim gains
- Substantial improvement test for operating businesses
- Multi-asset funds
- Combining Opportunity Zones with other credits (HTC, NMTC, and LIHTC)
- How land value exclusion could potentially lead to predatory activity
- Applying SBIC framework to Opportunity Zones
- Using Opportunity Zones for veteran housing
- Gentrification risks and potential for negative impact on minority communities
- How Section 469 would apply to investments made in qualified opportunity funds
- QOF asset sales
- Debt refinance proceeds
- Employee Stock Ownership Plans (ESOPs)
- Feeder partnerships
- Carried interest
- Interaction of Section 752 with qualified opportunity fund liabilities
- Grantor trust tax liability treatment
- Treatment of ground leases, specifically in regards to tribal land

Continue reading.

OpportunityDb

By Jimmy Atkinson

February 16, 2019

Wall Street, Seeking Big Tax Breaks, Sets Sights on Distressed Main Streets.

Distressed America is Wall Street's hottest new investment vehicle.

Hedge funds, investment banks and money managers are trying to raise tens of billions of dollars this year for so-called opportunity funds, a creation of President Trump's 2017 tax package meant to steer money to poor areas by offering potentially large tax breaks.

Little noticed at first, the provision has unleashed a flurry of investment activity by wealthy families, some of Wall Street's biggest investors and other investors who want to put money into projects ostensibly meant to help struggling Americans. The ranks of those starting such funds include Anthony Scaramucci, the New York hedge fund executive who served briefly as Mr. Trump's communications director.

Continue reading.

The New York Times

By Matthew Goldstein and Jim Tankersley

Feb. 20, 2019

Philadelphia Sues Seven Big Banks, Alleges Municipal Bond Collusion.

NEW YORK (Reuters) – The city of Philadelphia has filed an antitrust lawsuit accusing seven major banks of conspiring to inflate interest rates for a type of bond used by cities, towns and other public entities, costing them potentially billions of dollars.

In a complaint filed on Wednesday night, Philadelphia accused Bank of America Corp, Barclays Plc, Citigroup Inc, Goldman Sachs Group Inc, JPMorgan Chase & Co, Royal Bank of Canada and Wells Fargo & Co of secretly manipulating rates for tax-exempt bonds known as VRDOs, or variable-rate demand obligations.

Philadelphia, which said it issued more than $1.6 billion of the bonds, said the banks colluded to collect hundreds of millions of dollars in fees they did not earn, reducing critical funding for public services such as hospitals, power and water supplies, schools and transportation.

"The alleged misconduct of the defendants potentially resulted in Philadelphia – and entities across this country -paying above-market interest rates for years," City Solicitor Marcel Pratt said.

Philadelphia also said the banks' conduct is the subject of a preliminary criminal probe by the U.S. Department of Justice's antitrust division, while the U.S. Securities and Exchange Commission has

contacted four of the banks. The Bond Buyer reported the Justice probe in September, citing unnamed sources.

Bank of America, Citigroup, Goldman, JPMorgan, RBC and the SEC declined to comment on Thursday. The other banks and the Justice Department did not respond to requests for comment. The complaint was filed in the U.S. District Court in Manhattan.

VRDOs are long-term bonds that let issuers borrow at lower short-term rates because they contain a "put" feature.

This lets investors redeem bonds early by tendering them to banks, such as the seven being sued. The banks then remarket the bonds to other investors and charge issuers for their services.

According to the complaint, the banks secretly agreed in person, by phone and electronically not to compete with each other for remarketing services from February 2008 to June 2016, when they controlled about 70 percent of VRDO remarketing.

Philadelphia said the banks did this to keep rates artificially high, ensure investors would not exercise their put options, and collect fees "for doing, essentially, nothing."

The city is represented by Daniel Brockett, a partner at Quinn Emanuel Urquhart & Sullivan who has filed several antitrust lawsuits against banks in the Manhattan court.

That court is home to a wide array of private litigation accusing banks of conspiring to rig various financial markets, interest rate benchmarks and commodities.

The case is Philadelphia v Bank of America Corp et al, U.S. District Court, Southern District of New York, No. 19-01608.

by Jonathan Stempel

FEBRUARY 21, 2019

Philadelphia Sues Seven Banks Over 'Collusion' in Muni Deals.

- **Suit follows others making similar claims in state courts**
- **City alleges that banks fixed prices on variable-rate debt**

Philadelphia sued seven banks including JPMorgan Chase & Co. and Bank of America Corp., accusing them of costing local governments billions of dollars by colluding to fix the prices on floating-rate bonds issued to finance public works.

The city alleges the banks conspired to inflate the interest rates on the bonds from as early as 2008, according to a class-action filed in federal court in Manhattan on Wednesday. According to the complaint, the Justice Department opened a preliminary criminal investigation into the banks' practices after meetings with a whistle-blower in 2015 and 2016. The Securities and Exchange Commission has contacted at least four banks "regarding their conduct in the VRDO market," according to the complaint.

Citigroup Inc., Goldman Sachs Group Inc., Wells Fargo & Co., RBC Capital Markets LLC and Barclays Plc were the other banks named in the suit. Scott Helfman, a spokesman at Citigroup,

declined to comment, while representatives at the other banks were not available for comment.

The lawsuit appears similar to several filed by Edelweiss Fund LLC on behalf of California, Illinois, Massachusetts and New York that center around the pricing of variable-rate demand obligations, a type of long-dated bond that carries low interest rates because buyers have the option to sell them back to banks periodically. Edelweiss, which is backed by an anonymous principal with experience in the municipal-bond industry, is seeking at least $3.6 billion in damages and penalties as part of three of the suits.

The Philadelphia suit seeks to represent a group including municipalities, hospitals and universities, according to the complaint, and a judge must agree to certify the suit as a class action. The city is being represented by Quinn Emanuel Urquhart & Sullivan LLP, a firm that says it has won $30 billion in settlements over the past five years.

Representatives of JPMorgan didn't immediately respond to emailed requests for comment on the suit sent outside regular business hours. Bill Halldin, a spokesman for Bank of America, declined to comment.

Philadelphia and the purported class of issuers paid "billions of dollars" in inflated interest rates, according to the lawsuit.

"By artificially increasing the rates paid by plaintiff and the class, defendants' conduct necessarily decreased the amount of funding available for critical public projects and services, as well as the operations of 501(c)(3) organizations," the city said in the complaint.

Banks that are hired as remarketing agents on the bonds set the rates and often take securities that have been put back into inventory for resale, giving them an incentive to set the rates higher if they want to avoid holding them.

According to the Edelweiss suits, instead of "actively and individually" marketing and pricing bonds at the lowest possible interest rates, the banks "engaged in a coordinated 'Robo-Resetting' scheme where they mechanically set the rates en masse without any consideration of the individual characteristics of the bonds, the associated market conditions or investor demand."

"Defendants 'Robo-Reset' these rates in order to keep the bonds in the hands of their holders, and thus alleviate the need for defendants to remarket the bonds," Edelweiss claimed.

In the early 2000s, issuers sold between $30 billion and $60 billion of such debt annually, often in conjunction with interest-rate swaps, according to Thomson Reuters Deals Intelligence.

In 2008, they sold more than $115 billion in such paper as they refinanced both auction-rate and insured floating-rate debt, as the auction market froze and insurance companies were downgraded. Since then issuance has dwindled, totaling $7 billion in 2018. The total size of the outstanding VRDO market has been estimated at $150 billion.

The case is City of Philadelphia v. Bank of America Corp., 1:19-cv-01608, U.S. District Court, Southern District of New York (Manhattan).

Bloomberg Markets

By Joe Mysak and Amanda Albright

February 21, 2019

— With assistance by Chris Dolmetsch

Philadelphia Sues 7 Banks Alleging Municipal Bond Collusion.

The city of Philadelphia filed a lawsuit Wednesday accusing Bank of America Corp, Barclays Plc, Citigroup Inc, Goldman Sachs Group Inc, JPMorgan Chase & Co, Royal Bank of Canada and Wells Fargo & Co of defrauding the city and public entities out of millions of dollars. The antitrust action claims the banks conspired to inflate the interest rates of tax exempt bonds known as Variable Rate Demand Obligations (VRDOs).

VDROs are issued by public entities as fundraisers for infrastructure and public services like water, public education and transportation. With VDROs, investors receive long term borrowing for short term rates. The banks then "remarket" the bonds to investors and charge the municipality for that service. The city accuses the banks of conspiring to not compete with each other by keeping rates artificially high and not remarketing the bonds. Philadelphia has issued $1.6 billion of VRDOs, therefore the banks may have profited significantly from the accused scheme.

The Antitrust Division of the US Department of Justice has an ongoing a preliminary criminal investigation into defendants' remarketing practices in connection with VRDOs.

jurist.org

by Brianna Bell

FEBRUARY 21, 2019

Philadelphia Sues Banks for Bond Rate Collusion.

The city says seven big banks conspired to inflate rates on VRDO bonds so they could "continue to collect re-marketing fees for doing nothing."

The City of Philadelphia has accused seven of the largest U.S. banks of conspiring to "substantially inflate" interest rates on floating-rate municipal bonds to benefit themselves and money market funds they managed at the expense of issuers.

The harm inflicted by the banks, including JPMorgan Chase and Bank of America, "likely amounts to billions of dollars," the city said in a class-action lawsuit that focuses on the market for bonds known as "variable rate demand obligations."

VRDOs offer a built-in "put" feature that allows investors to redeem the bond at any periodic reset date, making them a low-risk and high-liquidity investment.

According to the city's antitrust complaint, the banks, which acted as "re-marketing agents" (RMAs) for VRDOs, agreed as far back as February 2008 not to compete against each other, and instead to keep VRDO rates artificially high, "to maximize the likelihood that existing holders of VRDOs would not put their bonds back" to them.

"This allowed defendants to continue to collect re-marketing fees for doing, essentially, nothing," the

city said, in part because they did not have to spend time and resources to re-market tendered bonds to new investors.

RMAs typically pocket high annual fees amounting to an average of 10 basis points of the VRDO debt balance. In 2008, issuers sold more than $115 billion in VRDO paper.

Allegations of collusion among RMAs first came to light through a whistleblower who filed a complaint with the U.S. Securities and Exchange Commission in 2015. The city said its own investigation found evidence of direct communications between competing banks, with RMA staff calling each other on the phone before setting rates.

“According to former senior RMA personnel at JPMorgan, it was a ‘dirty little secret’ that RMAs would talk to each other about rates,” the city’s complaint said.

The suit alleges the banks also benefited from the artificially high rates because if an RMA “fails to find a buyer for the tendered VRDO, the RMA is obligated to repurchase the bond and assume the risk that the issuer will default on its payments.”

by Matthew Heller

February 22, 2019 | CFO.com

- When Are Tax Increment Revenues Federally Taxable?
- Asset Monetization and Public Facilities: New Ground for P3s
- S&P Credit FAQ: Criteria Considerations For Mass Transit Agency Ratings
- S&P: Key Questions From The U.S. Not-For-Profit Health Care 2019 Outlook Webcast
- Fitch Internal Liquidity Worksheet.
- Mall of America Water Park Plan a Deep Dive Into Creative Accounting.
- And finally, No Context For You! is brought to us this week by *White v. City of Watertown*, in which the Supreme Court of Wisconsin gifted us the following sentence, “The City is nonplussed by the fact that Chapter 90 allows an alderperson to serve as a fence viewer.” We invite you to bask, yea to luxuriate, in the absurdity.

PUBLIC PENSIONS - ILLINOIS

Johnson v. Municipal Employees', Officers', & Officials' Annuity & Benefit Fund of Chicago

Appellate Court of Illinois, First District, Second Division - December 26, 2018 - N.E.3d - 2018 IL App (1st) 170732 - 2018 WL 6844033 - 2018 Employee Benefits Cas. 478, 046

Counsel for plaintiffs who filed action challenging constitutionality of amendments to Pension Code filed petition, seeking attorney fees against city, Municipal Employees’ Annuity and Benefit Fund (MEABF), and Laborers’ and Retirement Board Employees’ Annuity and Benefit Fund (LABF), under Civil Rights Act, as well as additional sum from alleged common fund created by plaintiff’s action.

The Circuit Court denied petition. Counsel appealed.

The Appellate Court held that:

- Counsel was not entitled to attorney fees under Civil Rights Act;
- Pension Code exempts retirement annuities from attachment for the payment of any debt of an annuitant, which includes attorney's fees; and
- Common fund was not created in plaintiff's action, and thus counsel was not entitled to attorney fees from alleged common fund in connection with action.

LIABILITY - KANSAS

Nash v. Blatchford

Court of Appeals of Kansas - January 4, 2019 - P.3d - 2019 WL 102254

Patient brought action against physician, who practiced at municipal hospital, for medical malpractice alleging physician negligently performed surgery.

The District Court granted physician's motion for summary judgment. Patient appealed.

The Court of Appeals held that:

- Physician was an employee of hospital;
- Provision of Health Care Provider Insurance Availability Act did not apply in patient's claim; Amendments to statutory notice requirement applied to patient's claim; and
- For purposes of equal protection, rational basis existed for statutory notice requirement that medical malpractice victims provide written notice to municipal hospital prior to filing suit against employee physicians.

PUBLIC PENSIONS - KENTUCKY

Bevin v. Commonwealth ex rel. Beshear

Supreme Court of Kentucky - December 13, 2018 - 563 S.W.3d 74

Trustees of teachers' and public employees' retirement systems, education association, police association, and Attorney General brought action against Governor to challenge validity of enactment of bill on public pension reform.

The Circuit Court entered summary judgment in favor of plaintiffs. Governor appealed.

The Supreme Court of Kentucky held that:

- Challenge based on three-reading requirement of state Constitution did not present non-justiciable political question;
- Constitution does not require the words of each bill to be collectively looked at and spoken aloud in its entirety; and
- Reading the bill by title dealing with wastewater services failed to satisfy Constitution.

Supreme Court would abstain from considering whether House of Representatives violated its own rule on amendments to bill when it replaced text of wastewater services bill, which had already been given one or more readings in each chamber, with text of pension reform bill in order to comply with three reading requirement of state Constitution; each House of the General Assembly could determine rules of its proceedings.

Challenge to enactment of senate bill on pension reform as violating three-reading requirement of state Constitution did not present non-justiciable political question; requirement to read each bill on three different days in each House was not a General Assembly rule to be defined, interpreted, and applied exclusively by General Assembly, what constituted a "reading" could be resolved under ordinary rules of constitutional interpretation without involving policy, Supreme Court could resolve issue with no lack of respect for legislature, the question presented no unusual need to adhere to political decisions already made, and no potential for embarrassment existed from multifarious pronouncements by various departments.

"Read at length" phrase in state Constitution stating "Every bill shall be read at length on three different days in each House" does not require the words of each bill to be collectively looked at and spoken aloud in its entirety.

Legislative practice of reading only title of bill and electronically publishing simultaneously the full text of the bill to the electronic legislative journal available on every legislator's desk satisfies constitutional mandate stating "Every bill shall be read at length on three different days in each House."

Reading bill by title stating "AN ACT relating to the local provision of wastewater services" after amendment eliminating provisions on wastewater services and substituting provisions for public pension reform failed to satisfy state Constitution mandate that "Every bill shall be read at length on three different days in each House," and, thus, enactment of the pension reform bill was void; purpose of three-reading requirement was to ensure fair opportunity for every legislator to fully consider each piece of legislation brought to a vote, and that purpose could not be achieved by reading a bill only by its title which had no rational relationship to bill's subject.

ZONING & PLANNING - MINNESOTA

Schulz v. Town of Duluth

Court of Appeals of Minnesota - February 11, 2019 - N.W.2d - 2019 WL 510023

Neighboring landowners brought action seeking judicial review of township commission's approval of a zoning-variance application.

The District Court granted the township's motion to dismiss the action. Neighboring landowners appealed.

The Court of Appeals held that:

- Civil procedure rule governing persons to be joined if feasible applied to the action, and
- Landowners seeking variance from zoning ordinance were necessary and indispensable parties.

Civil procedure rule governing persons to be joined if feasible applied in an action brought by neighboring landowners seeking judicial review of a township's decision on an application for a zoning variance.

Landowners seeking variance from zoning ordinance were necessary and indispensable parties, in action brought by neighboring landowners seeking judicial review of township commission's approval of zoning-variance application; landowners had an interest in the township's zoning-variance decision, landowners had a significant financial investment in the real property that they wished to use as a residence after building, and they clearly claimed an interest relating to the

subject of the action and were so situated that the disposition of the action in their absence could as a practical matter impair or impede their ability to protect that interest.

PUBLIC CONTRACTS - NEW YORK

East Hampton Union Free School District v. Sandpebble Builders, Inc.

Supreme Court, Appellate Division, Second Department, New York - January 23, 2019 - N.Y.S.3d - 2019 WL 288248 - 2019 N.Y. Slip Op. 00420

School district brought action seeking judgment declaring that a contract with construction management company was void and unenforceable because it was never approved by school board or because renovation project was abandoned.

Following jury trial, the Supreme Court, Suffolk County, entered judgment for construction company in amount of $755,767.41. Construction management company appealed.

The Supreme Court, Appellate Division, held that jury award of damages in amount of $755,767.41 in favor of construction management company based on violation of contract with school district was supported by legally sufficient evidence.

Jury award of damages in amount of $755,767.41 in favor of construction management company based on violation of contract with school district to manage renovation project was supported by legally sufficient evidence; contrary to management company's contention, there was evidence from which the jury could have arrived at damages amount based on assumed project cost of $18,000,000 which was never completed, and jury also could have determined that lost profits based on the subsequent $79,000,000 project were not contemplated by the parties at the time of the execution of initial contract for construction management services.

SECURITIES LITIGATION - NEW YORK

In re Barclays Bank PLC Securities Litigation

United States Court of Appeals, Second Circuit - November 19, 2018 - Fed.Appx. - 2018 WL 6040846 - Fed. Sec. L. Rep. P 100, 304

Investor brought class action against corporation, corporate officers, and underwriters based on claim under the Securities Act of 1933 that banking corporation issued securities pursuant to materially false and misleading offering materials.

The United States District Court for the Southern District of New York entered summary judgment for defendants. Investor appealed.

The Court of Appeals held that:

- Corporation's failure to disclose in its offering materials the notional amount of its monoline exposure did not cause losses to class of investors so as to allow them to maintain a claim under the Securities Act, and
- Corporation's failure to disclose in its offering materials an allegedly material decline in its capital ratios did not cause losses to class of investors so as to allow them to maintain a claim under the Securities Act.

Banking corporation's failure to disclose in its offering materials for the issuance of securities the notional amount of its monoline exposure, i.e., exposure to claims on financial guaranty insurance instruments in the event that all of the underlying assets defaulted, did not cause losses to class of investors so as to allow them to maintain a claim against the corporation and underwriters for violating the Securities Act of 1933; after the release of a form that remedied the charged omission, the price of the shares in question decreased marginally, and on one day during the three weeks following disclosure, the share price actually exceeded the pre-disclosure price.

Banking corporation's failure to disclose in its offering materials for the issuance of securities an allegedly material decline in its capital ratios did not cause losses to class of investors so as to allow them to maintain a claim against the corporation and underwriters for violating the Securities Act of 1933; approximately ten weeks after the offering, corporation disclosed an additional capital raise, which increased its Tier 1 capital and equity ratios, which in turn were roughly equivalent to those previously reported to investors approximately four months before the offering, and upon the announcement of the additional capital raise, the price of the shares in question rose by $0.16.

ZONING & PLANNING - NEW YORK

Route 17K Real Estate, LLC v. Zoning Board of Appeals of Town of Newburgh

Supreme Court, Appellate Division, Second Department, New York - January 30, 2019 - N.Y.S.3d - 2019 WL 362126 - 2019 N.Y. Slip Op. 00605

Petitioners brought an article 78 proceeding to annul a determination of town zoning board of appeals granting hotel developer's application for area variances, and issuing a negative declaration, treating the matter as an unlisted action under the State Environmental Quality Review Act (SEQRA).

The Supreme Court, Orange County, denied petition and dismissed proceeding. Petitioners appealed.

The Supreme Court, Appellate Division, held that:

- Part of application dealing with location of hotel's principal frontage constituted a request for an area variance, not a use variance;
- Zoning board's decision to grant area variances was rational, and not illegal, arbitrary, capricious, or an abuse of discretion; and
- Zoning board's decision to issue a negative declaration did not constitute a violation of SEQRA.

Part of hotel developer's variance application pertaining to town code requiring hotel to have its principal frontage on a state or county highway constituted a request for an area variance, not a use variance, where "area variance" was defined under governing statute as authorization for use of land in a manner which is not allowed by dimensional or physical requirements of applicable zoning regulations, and principal frontage requirement was a physical requirement rather than a use restriction.

Town zoning board's decision to grant area variances to developer planning to build a hotel on property was rational, and not illegal, arbitrary, capricious, or an abuse of discretion, where board properly considered all statutory factors in making its determination.

Town zoning board's decision to issue a negative declaration, treating hotel developer's application for area variances as an unlisted action, did not constitute a violation of the State Environmental

Quality Review Act (SEQRA), where the board filed required short environmental assessment form and, in its decision, identified relevant areas of environmental concern, examined them closely, and made a reasoned elaboration of basis for its determination.

MUNICIPAL CORPORATIONS - WISCONSIN

White v. City of Watertown

Supreme Court of Wisconsin - January 31, 2019 - 922 N.W.2d 61 - 2019 WI 9

Farm landowners brought action against city seeking a declaratory judgment that the city was required to assume duties under statutes regulating partition fences on farming land, which required adjoining landowners to share costs and provided dispute resolution procedures under which a governmental entity resolves the dispute.

The Circuit Court entered judgment in favor of landowners. City appealed. The Court of Appeals affirmed. City petitioned for review.

The Supreme Court of Wisconsin held that a city is included in definition of "town" under statutory provisions setting out procedures for a town and town officials to quantify and allocate partition fence costs amongst adjoining property owners, and therefore city has authority to administer those procedures.

When Are Tax Increment Revenues Federally Taxable?

Tax increment financing ("TIF") has had a long and effective history in Colorado. In many cities and towns throughout Colorado, TIF has successfully been used to help remediate environmental issues and spur development in blighted areas where market realities would have prohibited such progress. A great example of a successful TIF development project is Belmar, an open-air shopping center in Lakewood, Colorado, that previously contained a dilapidated shopping center with high vacancy rates. More to the point, the site contained a large chemical plume that was costly to remediate. But for the public-private partnership and the use of TIF, the successful Belmar redevelopment project would have never been feasible. Accordingly, TIF is an important governmental tool to encourage the type of development that supports a thriving community.

In Colorado, many large development projects that are supported by TIF are constructed with the help of a governmental district such as a metropolitan district, or other special improvement district, which has certain tax considerations and treatment that is different than a private developer. The law is clear and undisturbed that most governmental districts can receive TIF revenues for eligible public improvements without, in most cases, a negative tax treatment.

However, not all development projects are of sufficient size and scope to justify the cost and complexity of forming a district, or don't lend themselves to the use of a district or tax-exempt municipal financing for other reasons. Instead, many developments are financed, constructed, owned and managed by private entities.

Prior to the Tax Cuts and Jobs Act of 2017 ("TCJA"), if a private entity was a corporation and received incremental tax funds as part of the project's financing, such revenues were not considered federal taxable income pursuant to the contribution to capital exclusion found in Section 118 of the

Internal Revenue Code ("IRC"). Additionally, a private developer could (and still can) receive TIF as reimbursement for the construction of public infrastructure without immediate taxation of the TIF proceeds irrespective of whether or not the entity is a corporation. The issue that many private developers will have to resolve is that not all TIF revenues received by a private developer can be directly linked to or measured as reimbursement for the limited scope of public infrastructure recognized by the IRC and applicable case law. Many improvements and amenities that are generally considered "public" in the development world are not treated as such by the federal tax code. For those development expenditures by a private developer that are not recognized as public infrastructure costs but have appropriately received TIF revenues for reimbursable costs, will the developer now be taxed on such TIF revenues as ordinary income for the tax year in which the developer receives the TIF revenues? The answer remains unclear.

Historical Safe Harbor for Private Developers

The prior version of IRC Sec. 118 allowed the contribution of capital, such as the receipt of tax increment revenues, to be excluded in most circumstances from the definition of gross income for a corporation (this treatment did not apply to partnerships). Accordingly, before the TCJA, a private developer corporation could receive free land or monetary support from a governmental entity in order to incentivize the developer's real estate project. In the case of a contribution of land, the developer would, in most circumstances, receive a basis of zero in the property and, therefore, would pay taxes on the contributed property at the time of sale. In the case of the receipt of tax increment revenues, the revenues would, in most circumstances, reduce the basis in the property and improvements thereto. Accordingly, taxes were ultimately recovered, to some extent, by the sale; the impact of the incentive contribution, however, wasn't diminished at the outset of the development project by the immediate taxation of the tax increment revenues.

TCJA Changes to IRC Sec. 118

The TCJA gutted the ability of a corporation to exclude tax increment revenues from ordinary income in the tax year received by the private corporate developer entity by adding the following exclusion to the definition of "contribution to capital to the taxpayer" in Section 118 of the IRC: any contribution by any governmental entity or civic group (other than a contribution made by a shareholder). For example, a privately owned parking structure could, in certain circumstances, be funded with TIF revenues but would have to be received by a corporate developer entity as a contribution to capital pursuant to Sec. 118 of the IRC in order to avoid immediate taxation as ordinary income. With the TCJA changes to Sec. 118, it is likely that the foregoing scenario would result in a contribution that is immediately taxable as ordinary income.

The good news is that the revisions to Sec. 118 may not be applicable to many TIF revenues! While the Internal Revenue Service ("IRS") has not yet issued Treasury Regulations on this issue, the revised Sec. 118 provides the following exception:

"The amendments made by this section shall not apply to any contribution, made after the date of enactment of this Act by a governmental entity, which is made pursuant to a master development plan that has been approved prior to such date by a governmental entity." (emphasis added).

Accordingly, it is possible that urban renewal plans approved and in effect in Colorado as of Dec. 22, 2017, could be considered approved master development plans that are not subject to the revisions to Sec. 118. As such, private developers should work with their legal counsel to determine, in the absence of clear guidance from the IRS, whether the anticipated receipt of TIF revenues pursuant to an adopted urban renewal plan may be eligible for beneficial tax treatment under the former version of Sec. 118.

by Catherine Hildreth, Erik Jensen, and Carolynne White

February 7, 2019

Brownstein Hyatt Farber Schreck

Mall of America Water Park Plan a Deep Dive Into Creative Accounting.

Bloomington has spent months devising an intricate plan that officials say will both lower borrowing costs and shield property taxpayers from risk.

The Mall of America's owners have long wanted a supersized water park to complement their shopping behemoth in Bloomington. But customers paying to sunbathe and cascade down giant slides wouldn't generate enough cash for the mall to privately finance the $250 million facility.

Enter the city of Bloomington, which has spent months devising an intricate plan that officials say will both lower borrowing costs and shield property taxpayers from risk. The deal has little precedent in the state, but authorities on public financing say it fits a growing national trend of using tax-free debt in new ways for developments associated with for-profit companies.

The city will also spend public money as part of the water park deal, most notably $50 million to construct a parking ramp and skyway. The financing plan hinges on the option of hiking sales taxes on Mall of America customers if revenue at the water park fall short. The Legislature approved special laws making both arrangements possible.

Continue reading.

Star Tribune

By Eric Roper

FEBRUARY 17, 2019 — 5:45PM

Tax Reform Impacts Call Into Question Coastal Muni Values.

Over a year has passed since the implementation of federal tax reform and high tax states are just beginning to feel the implications. As tax returns are beginning to be filed, residents in the high tax coastal jurisdictions may face some unpleasant surprises, resulting in a realization that the municipal bond tax-exemption is still an efficient way to shield taxable income. However, while limited supply in the municipal market has already led to a rise in bond valuations, budget impacts resulting from federal tax reform will call into question the relative value of bonds from respective high tax states.

The federal tax measure, which placed a $10,000 cap on SALT (State and Local Tax) deductions, led to a flurry of tax prepayments in late 2017, impacting the flow of taxes in states such as California, New York, New Jersey and Connecticut. A secondary impact, which has been the narrowing of bond spreads, has been a result of consistently strong separately managed account inflows and limited municipal new issue supply. For example, as evidenced in the chart below, the spread on 5-Year

California General Obligation bonds narrowed from 7 basis points on November 2017 to -18 basis points in October of 2018.

What this means is that for residents seeking municipal bonds from these states, it has become a more expensive endeavor. However, for the go-anywhere investors less impacted by state taxes, like a Texas or Florida resident, the choice for assessing relative value has become cloudier at times. While the municipal market has thousands of unique obligors, bonds from California, Texas, New York and New Jersey make up a disproportionately large portion of the market. We believe portfolio construction should consist of credit diversification but also relative value calls.

For instance, when looking at the ratio of New York to California bonds, using the yield-to-worst for the Bloomberg Barclays state indices, New York bonds appeared to be a better buy as California paper continued to richen through late 2017 and much of 2018. The trend began to reverse in the back half of 2018 as municipal buyers seemingly voted with their wallets against sky-high pricing in California and helped push the ratio below the 3-year average of 102%.

Based upon recent fiscal news coming from Albany, we would not be surprised to see renewed trend of relative cheapening of New York paper versus California. While perceived weakness in the near term for state tax collections may widen New York spreads, we ultimately think that demand for New York municipal bonds will continue to strengthen as the tax season gets underway.

In Governor Cuomo's latest budget update, he detailed that New York had a larger-than-anticipated decline in revenues that will approach almost $3 billion, citing the federal tax plan as a contributing factor. While some drop in revenues versus last year is attributable to a flurry of prepayments, the state, which derives over 40% of its revenues from less than 1% of the population, is also keeping a watchful eye on the equity markets, which are a large source of investment income for top earners. This puts the state in a bit of a bind in that they are unable to raise taxes fully on the wealthy without causing revenue to fall even further, leaving spending cuts as one alternative to budget balancing.

The impacts of the Tax Cuts and Jobs Act are wide ranging and will continue to be felt throughout this tax season and beyond as states adjust to new revenue levels and patterns of collections. The limitation on federal deductions should make the tax-exempt income from municipal bonds more valuable as munis become one of the last vestiges of a true tax shelter. We believe that continued active management can help insulate a portfolio from both extremes in pricing as well as excessive allocations to any one obligor. For example, should New York State budget issues trickle down to funding cuts on the local level, preference would be given to those local credits with strong fund balances, management, and trends of positive operations.

by CLARK CAPITAL MANAGEMENT GROUP

FEBRUARY 15, 2019

Public Pensions and Infrastructure: A Match Made in Heaven

During the State of the Union address, President Trump issued a renewed call for an infrastructure bill. Two days later, the House Committee on Transportation and Infrastructure held its first hearing of the new Congress to address the state of U.S. infrastructure.

Confronting the nation's infrastructure gap is one of the rare bipartisan issues in Washington today.

It is a priority for the American public and for elected officials at the federal, state and local levels, all of which make it a likely legislative focus for both the 116th Congress and the administration.

That U.S. infrastructure needs improvement is not news. Any discussion about closing the $2 trillion 10-year investment gap quickly zeros-in on funding — revenue streams in the form of dedicated taxes or user fees — and financing solutions.

While there are perfectly suitable public finance tools, a large pool of untapped available capital resides in the retirement funds of public-sector workers.

In a new, detailed study of the $4.3 trillion U.S. public pension system, we've investigated the infrastructure investments undertaken by the largest public pension systems in the country.

Our findings suggest now might be the perfect time to match pension capital with infrastructure investment needs, creating winners on both ends of the financial chain.

Infrastructure assets have features that are appealing to pension investors. They are long-duration and offer some degree of inflation protection. They are not correlated with the other asset classes, so they offer much-needed diversification.

Best of all, they generate steady cash flows to meet the needs of current retirees. These are among the reasons pension funds have cited when establishing programs to invest in infrastructure, and our analysis bears out most of these benefits.

Still, infrastructure investment programs in big American public pension funds are relatively recent, and they remain small — averaging less than 1 percent of fund assets.

Implicit in public pensions' investment objectives is to accumulate cash flow-generating assets and hold them for a long time. Yet when pension funds invest in infrastructure, they typically invest in private equity-type funds that often have first-rate expertise but seek capital gains, not current income.

The funds usually buy infrastructure assets from other private owners. These investments have generated strong returns in the form of capital gains, benefitting substantially from rising valuations. Infrastructure assets now trade at multiples well in excess of those in other investment classes, such as real estate and private equity.

But these investments don't generate much in the way of the cash-flows pension funds need to support current retirees. The bottom line is that there has been insufficient investment in infrastructure as an asset class, using the wrong investment vehicles and for the wrong purpose. There are better solutions.

To explore ways in which pension capital might evolve into a financing solution for U.S. public infrastructure, we might look to models that have been successful in other countries.

In Australia, asset recycling is a financing tool that has been used successfully to "repurpose" infrastructure capital. Public-sector agencies sell long-term concession rights on existing infrastructure to investors (including pension funds) and use the proceeds to finance development of new infrastructure.

The public sector retains ownership of the legacy assets, receives cash proceeds to develop new infrastructure and avoids burdening its public finances with more debt. Private investors get a stream of proven cash flows from existing infrastructure over a fixed period of time. The federal

government often provides an incentive in the form of a top-up of the proceeds from the concession sale.

True, institutional investors like pension funds are wary of investing in ground-up development. They are properly concerned about cost overruns, delays and unpredictability of revenue streams. But pension systems are uniquely positioned as informed and influential players in regional and local economies.

Just one example: The Quebec pension fund, CDPQ, developed and operates Montreal's light-rail system and was able to assemble the financial and technical resources and muster the political support to pull it off.

Among the other ways to deal with infrastructure project risk is partnering pension capital with the knowhow of engineering, procurement and construction firms, which have extensive experience in designing and delivering new projects. Dutch pension funds, for example, have invested alongside engineering firms in new road construction projects.

Of course, using pension capital on public works requires strong governance to avoid waste and bloated costs. The presence of private capital can provide necessary transparency and discipline. And there is an argument for investing pension capital locally.

If done right, it can generate economic development, which in turn leads to more jobs and more tax revenues — ultimately favorable to sustainable pension finance. Additionally, when pension funds invest directly in infrastructure, they don't introduce the political risk of transferring "crown jewels" to private investors.

Most important is to put in place mechanisms that will allow for an improved flow of investable U.S. infrastructure assets. When that becomes evident to pension fund administrators, they will become more comfortable expanding their allocations to this attractive asset class — perhaps to the 5-10 percent levels that are common in Canada.

This will provide hundreds of billions of dollars in incremental financing, which will go a long way to reducing our infrastructure gap.

THE HILL

BY INGO WALTER AND CLIVE LIPSHITZ, OPINION CONTRIBUTORS

02/14/19 05:30 PM EST

Ingo Walter is professor emeritus of finance at NYU's Stern School of Business. Clive Lipshitz is managing partner of Tradewind Interstate Advisors, long-term institutional investing, infrastructure finance and policy consultants. Their study, "Bridging Public Pension Funds and Infrastructure Development," will be released in the spring.

[If You Wanted the Best Muni Trade, You're Three Hours Late.]

- **BondWave analyzed every municipal bond trade in 2018**
- **It found the best time is when volume peaks around 10:50 a.m.**

When's the best time to buy municipal bonds? Around three hours ago, according to an analysis of

daily trading patterns by BondWave LLC, a financial technology company.

The par volume of broker purchases from customers soars between 10 a.m. and 11 a.m. New York time and peaks around 10:50 a.m., when investors sell securities to free up cash for new issues that are being priced at 11 a.m., according to the Wheaton, Illinois-based firm's analysis of every municipal-bond trade in 2018.

The buildup in volume, especially on days with big new issues coming to market, can be a boon for buyers who can get better prices from brokers who don't want to hold the securities they've purchased in their inventory, said Paul Daley, a managing director of BondWave's Fixed Information Lab.

"If I'm in the market and I'm not buying a new-issue bond it seems to me to make a lot of sense that I would time my purchase for whenever everyone else is selling," said Daley. "I'm probably going to get better deals on average if I do that."

By contrast, investors like bond-fund managers looking to raise money to buy new issues should start selling sooner, before broker inventories rise, the analysis suggests.

Unlike stocks, which trade on exchanges, bid-ask spreads — the difference in price between the highest amount a buyer is willing to pay and the least a seller is willing to sell — aren't publicly available before trades in the fragmented and relatively illiquid state-and-local government debt market.

While the cost of trading bonds has declined since electronic trading expanded and regulators injected more transparency into the market, asset managers who seek market-beating returns are under pressure to reduce fees. Looking at volume patterns after trades occur can help then make educated bets on when bid-ask spreads tighten, signaling the odds of getting better deal, Daley said.

The average spread between what a seller receives and a buyer pays for a security with dealers acting as an intermediary dropped to 73 basis points in April, less than half what it was in 2005, according to an analysis by the Municipal Securities Rulemaking Board.

To be sure, the decline was most pronounced in retail sized trades of $25,000 or less, while spreads on trades of more than $1 million average about 18 basis points and have remained constant, according to MSRB data.

Experienced professionals may well know that the mid-morning is a good time to trade in a qualitative sense. But Daley, a former head of execution at an algorithmic equity trading technology firm and onetime head of derivative and portfolio trading sales at Merrill Lynch, is relatively new to the bond market and wanted to use his experience to understand it.

"My background is 100 percent in the equity market. I'm used to that level of data, clarity and granularity," he said. "How do I better understand the municipal marketplace?"

BondWave, a unit of closely held investment manager First Trust Portfolios LP, provides portfolio and trading analytics to traders and advisers. Bloomberg LP provides similar services.

Bloomberg Markets

By Martin Z Braun

February 14, 2019, 10:32 AM PST Updated on February 14, 2019, 11:18 AM PST

Nothing Is Certain But Death, Taxes and Muni Bond Advantages

It's an annual reminder about the debt's obvious benefits.

If the last few days are any indication, the denizens of Wall Street either aren't as sharp as they seem or they're dreading the prospect of paying more in taxes. I say this because two of the most popular articles on the Bloomberg terminal this week boiled down to the simple fact that U.S. municipal bonds offer income that's exempt from federal taxes, and often state and local ones as well.

Consider the first article, "Invesco Money Manager Faces SALT Bite, Turns to This Tax Break." It chronicles Mark Paris's dismay that as a New Jersey resident, he's going to end up paying more in taxes because of the new $10,000 federal cap on state and local tax deductions. So what's the head of municipal strategies at Invesco going to do about it? Buy more tax-free munis, of course.

Just two days later, Bloomberg readers couldn't click fast enough on another article, "Your New York Taxes Are Too High? Muni Bonds May Offer an Answer." In it, Anthony Roth, chief investment officer of Wilmington Trust Investment Advisors, said some people in high-tax states like California, Connecticut, New Jersey, New York and Massachusetts would find that they owe more, which should boost demand for — you guessed it — tax-exempt municipal bonds.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

February 14, 2019, 4:00 AM PST

Read About the MSRB's Renewed Focus on Retrospective Rule Review.

MSRB Retrospective Rule Review Overview.

Fitch Ratings: If Home Prices Drop, Will U.S. Local Government Revenues Follow?

Fitch Ratings-New York/Chicago-13 February 2019: Despite recent investor concern, Fitch Ratings does not expect that local governments will be exposed to large revenue declines if home prices drop, according to a new report.

Property tax revenues barely declined in aggregate after the housing bust of the mid-2000s. And the housing market of today is very different with far less speculative construction and much more sustainable home price growth. However, not all local governments were immune to the precipitous home price declines during the last economic downturn.

"Weak housing market trends did create fiscal stress for some local governments during the last

downturn so it's reasonable to expect that this stress could return," said Managing Director Amy Laskey.

A state to watch is California, where property tax revenues should be well protected if home prices were to fall again despite recent frothiness in some parts of the state. Offsetting a lack of tax rate flexibility, most areas have built up substantial cushion under Prop 13. This means assessed values would likely decline only mildly in the next downturn. Conversely, home prices in parts of Michigan, which has similar assessment and taxation restrictions, have not recovered from the last downturn. As such, some Michigan local governments are more susceptible to large revenue declines over time.

Recent caps on SALT deductions and mortgage interest deductibility are not likely to precipitate large, en masse home prices declines. "Employment, wage growth, consumer confidence, affordability and life events play a bigger role in home buying decisions than tax incentives," said Director Robert Rulla. The ripple effect of housing disincentives, however, would be felt more acutely in housing markets with high home prices and/or high taxes.

A longer-term demographic worth keeping a close eye on over time will be millennials as they will represent a higher proportion of homebuyers. In fact, most homebuilders are already repositioning communities to target these first-time homebuyers by offering more affordable homes. This likely means median prices for new homes would decline while existing entry level homes would become more expensive. "The large number and high homeownership rate of baby boomers may put downward pressure on prices as this group ages and millennials and Generation Z do not pick up the slack," said Rulla.

'What Investors Want to Know: Housing Market Trends' is available at 'www.fitchratings.com'

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Additional information is available on www.fitchratings.com

Fitch Ratings: Quiet 4Q Caps Stable 2018 for US Municipal Rating Actions

Fitch Ratings-New York-11 February 2019: Stable economic growth led to another solid year for U.S. public finance with annual upgrades exceeding downgrades for the year, according to Fitch Ratings in a new report.

Both upgrades and downgrades in total were down for the year. Fitch reports 89 muni downgrades in 2018 versus 166 downgrades in 2017. Upgrades finished lower year-over-year with 168 for 2018 from 293 in 2017. Ratings movement again largely emanated from not-for-profit hospitals and health systems.

Rating Outlook revisions, by contrast, increased slightly in 2018. U.S. public finance securities with Negative and Positive Outlooks both increased to nearly 3% at the end of last year. Positive Outlooks totalled 103 at the end of 2018 (up from 84 in 2017) while 108 credits carried a Negative Outlook (up from 94 at year-end 2017).

As in past years, affirmations dominated the sector with 90% of U.S. public finance rating reviews by Fitch resulting in no change to the rating. Furthermore, 93% of the ratings had a Stable Outlook at the end of the year.

'U.S. Public Finance Annual Rating Actions 2018' is available at 'www.fitchratings.com'.

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Fitch Ratings Updates Report Defining Credit Opinions.

Link to Fitch Ratings' Report(s): Credit Opinions

Fitch Ratings-London-15 February 2019: Fitch Ratings has updated its special report that defines Credit Opinions (COs) and their limitations compared with the agency's credit ratings. The report also explains their purpose, the process under which they are assigned, how they are communicated and certain other considerations.

The report has been updated to provide greater clarity with respect to certain points, for example, by specifying that some COs provided as inputs to certain collateralised loan obligations (CLOs) may be assigned using a model-based approach. COs are provided by Fitch on its primary rating scale, but under a process that is narrower in scope than credit ratings.

The full report, Credit Opinions, is available at www.fitchratings.com, or by clicking on the link above.

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Fitch Updates U.S. Public Finance Letter of Credit Supported Bonds and Commercial Paper Criteria.

Link to Fitch Ratings' Report(s): U.S. Public Finance Letter of Credit-Supported Bonds and Commercial Paper Rating Criteria

Fitch Ratings-New York-15 February 2019: Fitch Ratings has published the following updated report, "U.S. Public Finance Letter of Credit Supported Bonds and Commercial Paper Rating Criteria". This report updates the previous report dated Feb. 22, 2018. The key elements of Fitch's letter of credit-supported bonds and commercial paper rating criteria remain consistent with those of its prior criteria report.

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Fitch Ratings: Updated U.S. Public Finance Structured Finance Criteria

Link to Fitch Ratings' Report(s): U.S. Public Finance Structured Finance Rating Criteria

Fitch Ratings-New York-15 February 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Structured Finance Rating Criteria." This report updates the prior report published on Feb. 22, 2018. The key elements of Fitch's public finance structured finance rating criteria remain consistent with those of its prior criteria report.

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Fitch Internal Liquidity Worksheet.

Access the worksheet.

Bloomberg Brief Weekly Video 2/14/19

Amanda Albright, a reporter for Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

Watch video.

Bloomberg

February 14th, 2019, 10:48 AM PST

S&P Credit FAQ: Criteria Considerations For Mass Transit Agency Ratings

In most cases, the obligor or related entity is also the issuer. However, in others–for instance, when the issuer is primarily a vehicle for issuing and servicing debt or has relatively little control over pledged revenues apart from payment of debt service–we may exercise analytic judgment to identify

the obligor or related entity in evaluating the operating linkage.

Continue Reading

Nov. 14, 2018

S&P: U.S. States May See Negative Revenue Effects From Aging Demographic Trends.

In S&P Global Ratings' opinion, the aging of the U.S. population has significant implications for future state tax revenues. State governments will need to adapt their revenue structure and service levels to accommodate the growing elderly population.

Continue Reading

Feb. 14, 2019

S&P: Key Questions From The U.S. Not-For-Profit Health Care 2019 Outlook Webcast

On Jan. 17, 2019, S&P Global Ratings held a webcast to discuss its 2019 stable outlook on the U.S. not-for-profit health care sector. Here, we answer the most frequently asked questions from the registration and the call, and provide results from our real-time polling questions.

Continue Reading

Feb. 4, 2019

Be Aware of Fraud in the Muni Bond Market.

The municipal bond market is often seen as a safe-haven among investors. After all, the bonds are issued by governments and are often backed by taxpayer dollars. Investors may be aware of default risks in rare cases, but for the most part, they remain unaware of the rampant securities fraud taking place.

In recent years, it has become increasingly apparent that fraud is commonplace in the $3.7 trillion muni bond market. The Securities and Exchange Commission (SEC) described the market as "too opaque" in a 2012 report and has taken action against large and small governments to curb the problem.

Let's take a look at some common types of fraud in the muni bond market and how the proper due diligence can avoid it.

Continue reading.

municipalbonds.com

Justin Kuepper

Feb 06, 2019

TAX - WASHINGTON

Eyman v. Ferguson

Court of Appeals of Washington, Division 2 - January 23, 2019 - P.3d - 2019 WL 299767

Tax protester sought declaration that separate advisory votes were required for each tax increase in tax legislation.

The Superior Court dismissed the action. Protester appealed.

The Court of Appeals held that:

- Protester's appeal was moot;
- Public interest exception to mootness doctrine applied;
- Phrase "not subject to appeal" applied only to short description to be placed on ballot for advisory vote; and
- Protester's petition for declaratory judgment was untimely.

Tax protester's appeal from trial court's denial of his petition seeking declaration that a separate advisory vote was required for each tax increase enacted by tax legislation was moot, where the legislation had been voted on in a single advisory vote in which a majority of voters advised its repeal, so that the Court of Appeals could no longer provide effective relief.

Exception to mootness doctrine for matters of continuing and substantial public interest applied to tax protester's appeal from trial court's denial of his petition for declaratory judgment as untimely, in protester's action claiming that a separate advisory vote was required for each tax increase enacted by tax legislation; the content of a ballot and issues of statutory interpretation were generally matters of substantial public interest, the timeliness and appealability issues did not depend on the nature of the tax increases at issue, and whether separate advisory votes were required was an issue that would likely recur with each package of legislative tax increases.

Phrase "not subject to appeal," as used in statute governing the short description to be placed on a ballot for an advisory vote on tax legislation, applied only to the Attorney General's formulation of the short description and not to other matters such as a decision to consolidate multiple tax increases in a single advisory vote; the phrase was placed in the middle of a clause requiring the Attorney General to prepare a short description for an advisory vote, and the phrase only appeared in the short description statute and was not found in sections addressing other steps in the preparation of advisory votes.

Tax protester's petition seeking declaration that a separate advisory vote was required for each tax increase enacted by tax legislation was untimely after the Attorney General transmitted the short description for the advisory vote to the Secretary of State; statutes governing short descriptions and their filing and transmittal established that the transmitted description would be used in upcoming ballots, and any challenge necessarily affected the description and how it appeared in a ballot, so that allowing challenges after transmittal would have injected self-contradiction into the statutory

scheme and potentially jeopardized timely preparation of ballots.

MSRB Update: Winter 2019

Read the Newsletter.

CUSIP Request Volume Sends Mixed Signals to Kick Off 2019.

Corporate CUSIP Volume Trends Down While Municipal Volume Rises

NEW YORK, Feb. 13, 2019 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for January 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found significant year-over-year volume decreases in requests for new corporate identifiers and significant year-over-year increases in requests for new municipal identifiers.

CUSIP identifier requests for the broad category of U.S. corporate offerings, which includes both equity and debt, decreased 8% year-over-year versus January 2018. On a monthly basis, corporate identifier request volume through January 2019 was 27.4% higher than December 2018 levels. December 2018 volumes were historically low.

Municipal CUSIP requests increased in January after experiencing a volatile year in 2018. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – saw a 10.5% increase versus January 2018.

“Uncertainty over the future of interest rates has been visible in CUSIP request volume for the past several months and appears to be continuing into 2019,” said Gerard Faulkner, Director of Operations for CUSIP Global Services. “Overall, volumes are healthy as we kick off the new year, but we expect to continue to see continued swings in volume in the face of ongoing economic and geopolitical uncertainty.”

Requests for new international debt and equity CUSIP International Numbers (CINS) decreased on an annualized basis in January. International equity CINS were down 58.1% versus January 2019, while international debt CINS fell 40.7% during the same period.

To view a copy of the full CUSIP Issuance Trends report, please click here.

CUSIP Request Volume Sends Mixed Signals to Kick Off 2019.

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Read Report.

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Read Press Release.

BDA Releases Index of Fixed Income Activity (June 2018 – Dec. 2018)

The BDA recently released the results of its Index of Fixed Income Activity covering the period June 2018 through December 2018, as compared to the previous six months of activity in 2018. As a result of this survey, we were able to produce a report comparing such activity from two dozen BDA member firms.

The survey results can be found here.

Bond Dealers of America

February 15, 2019

Short-Term Rentals - A Tale Of Two Cases.

Courts across the country have been hearing cases about short-term rentals of homes and condominium units, and there is not much consistency in the decisions made. Sometimes, it is the homeowners' association that is trying to enforce its covenants in a manner that prohibits short-term rentals, and sometimes it is a municipality trying to enforce its zoning ordinances. In the two cases discussed below, we have one of each—and in both cases, the language of the covenant and the ordinance made all the difference.

(1) HOA Seeking to Enforce its Covenants to Prohibit Short-Term Rentals of Homes

Facts. A homeowner advertised several properties he owned in a subdivision for short-term recreational use, placing ads on a local short-term rental website. In the ads, he described the properties as being available for "vacation rental per night," and listed the rental fees he would charge. The short-term rentals got the attention of the HOA due to other residents' complaints of occasional excessive noise, vehicles being parked on the street, and the renters' damaging the subdivisions golf course, to name a few. The HOA's Declaration of Covenants did not specifically prohibit short-term rentals, but it did say "No trade or business, or profession of any kind shall be carried out upon any residential lot nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood." The Covenants also stated that the lots owned by

this particular homeowner were to be "single family residential lots and shall be used only for residential purposes." By contrast, the Covenants allowed one of the lots (not owned by this owner) to be used for commercial purposes, including a hotel.

Court Rulings. The court dug in to the plain or common meaning of the words used in the Covenant and determined that a "residence" is a "dwelling place or abode of a single person or family unit;" or, defined another way, a "personal presence at some place of abode with no present intention of definite an early removal and with purpose to remain for undetermined period…" Using these definitions, the court ruled that using these lots for one-night, two-night, weekend, or weekly rentals cannot fit within the requirements of the residential use required by the Covenant. As such, the Court found that the short-term rentals violated the Covenant.

(2) Municipality Seeking to Enforce its Ordinances to Prohibit Short-Term Rentals of Homes

Facts. A number of homeowners within a municipality were renting out their lake homes as vacation houses for short-term intervals, typically for about a week in duration. At first, the municipality had a long-standing zoning ordinance affecting these homes that simply required that they be used as "single-family dwellings." The homeowners, wanting to continue their vacation rental practices, argued that as long as it was just one family renting at a time, they were following the single-family dwelling ordinance. The municipality then decided to stop all the guess work and amended the ordinance to explicitly prohibit short-term rentals. The homeowners filed suit against the municipality, arguing that they had a "prior nonconforming use" right to rent their homes short term, because the previous zoning ordinance allowed short-term rentals as long as it was to one family at a time.

Court Rulings. The court again analyzed the language of the previous ordinance to determine if there was really a right to rent the homes short-term—and just like with the other case, the devil was in the definitions. The court found that the definition of "single-family dwelling" under the ordinances came down to the definition of "family" within the ordinances, which was defined as "relationships of a non-transient domestic character," excluding those "whose domestic relationship was of a transitory or seasonable nature or for an anticipated limited duration…" The court ruled that since short-term vacation rentals are inherently transitory, no matter who was renting they could not meet the definition of "family" under the prior zoning ordinance; therefore, the homeowners lost their case—and all the future vacation rental income they could have made.

Lesson. While these cases are interesting in how the various courts parse through the language used in the association documents and the ordinances, the lesson we can draw for Wisconsin Condominium and Homeowners Associations is that if you want to limit or prohibit short-term rentals in your community, it is best to specifically say so within your Declaration or Bylaws. These cases show us that relying on "single family" or "residential use" to justify prohibition of short-term rentals will only lead to lengthy litigation.

by Lydia Chartre

February 13, 2019

Husch Blackwell LLP

Municipalities Still Need To Play The Subsidies Game (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, on infrastructure, Amazon, and high speed rail. Hosted by Abramowicz and Paul Sweeney.

Running time 06:00

Play Episode

Bloomberg Radio

February 15, 2019 — 11:30 AM PST

Hedge Funds See Windfall From Bets on Puerto Rico After Storm.

- **Debt swap provided seven times more than post-hurricane lows**
- **New sales-tax debt traded heavily Friday as some lock in gains**

In late 2017, while Puerto Rico was reeling from Hurricane Maria, the government's bonds went into a free fall as Wall Street speculated that much of the bankrupt island's debt would need to be forgiven, leaving some of it trading for pennies on the dollar.

But hedge funds including GoldenTree Asset Management, Tilden Park Capital Management and Taconic Capital Advisors started plowing hundreds of millions of dollars into the U.S. territory's subordinate sales-tax-backed bonds — a well-timed wager that's delivering big gains.

Puerto Rico's restructuring of $17.5 billion of debt this week allowed investors to exchange sales-tax bonds with the weakest claim to the revenue for 56 cents on the dollar. That's seven times more than what they traded for in December 2017, after President Donald Trump rattled the market by suggesting that Puerto Rico's finances were so devastated that its debts would need to be written off completely in court. Owners of senior-lien sales-tax bonds recovered 93 cents on the dollar.

Continue reading.

Bloomberg Markets

By Michelle Kaske

February 15, 2019, 9:12 AM PST

Your New York Taxes Are Too High? Muni Bonds May Offer an Answer.

- **Wilmington Trust's Roth sees munis as 'tail risk' hedge**
- **Filers in high-tax states may shelter more income in munis**

One of the most banal-sounding investments for U.S. investors may be one of the best opportunities, at least according to Anthony Roth, chief investment officer of Wilmington Trust Investment Advisors.

Roth is referring to the $3.8 trillion municipal bond market, which he calls one of the few places where investors can find a haven from the risks buffeting the market, and an area he expects to

“hold up really well if we go through a down cycle.”

Another draw for wealthy investors: the opportunity for residents of high-tax states to shelter more income, now that state and local property and income tax deductions are capped at $10,000. Roth expects overall tax refunds in 2019 to exceed those of 2018 by some $60 billion, but notes that some people in high-tax states like California, Connecticut, New Jersey, New York and Massachusetts will find that they owe more than ever. That could increase demand for municipal bonds on the margin, Roth said.

Muni finances are generally strong, with supply limited over the past year and tax receipts pretty healthy, said Roth.

“If you’re careful with credit research, it’s not hard to find high-quality muni issuers that have a very low chance of defaulting through the next credit cycle,” he said. “If we’re at the end of the cycle, just keeping your money intact and having a real positive return is not a bad result.” He recommends that clients buy bonds with maturities between three and five years.

Munis are also attractive as a way to hedge tail risk, said Roth, which he defined as the chance of a significant drop in equities, perhaps accompanied by a recession. He isn’t forecasting either in 2019, but if something like that does come to pass, “munis will hold up quite well because municipal balance sheets are generally very strong at this time, much more so than corporates,” Roth said.

The after-tax returns for high-net-worth investors would be about 3 percent. “In an environment where inflation is 1.9 percent over the long term, getting a real return of more than 1 percent with very little risk, in order to wait out the cycle until things improve — that is not uncompelling,” said Roth. “There aren’t many places to hide today.”

Bloomberg Wealth

By Suzanne Woolley

February 13, 2019, 6:43 AM PST

Amazon’s Pivot Raises Scrutiny of Incentive Deals.

New York bills call for compacts with other states promising to not provide any company-specific subsidies

The collapse of Amazon.com Inc.’s plan to build a second headquarters in New York City has the potential to damp some states’ willingness to offer tax breaks.

Spurred by Amazon’s second-headquarters selection process, politicians and groups long opposed to incentive packages have launched legislative efforts to prohibit them in some states. In New York, bills proposed in the State Assembly and Senate call for compacts with other states promising to not provide any company-specific subsidies.

Recent pivots by large companies, including Foxconn Technology Group and General Electric Co. , will likely lead to increased attention to incentives tied to performance and timelines, with an emphasis on long-term commitments, said Jeff Finkle, president of the International Economic Development Council, a group that represents economic-development officials across the U.S.

Continue reading.

The Wall Street Journal

By Valerie Bauerlein, Kate King and Cameron McWhirter

Updated Feb. 15, 2019 3:57 p.m. ET

2019 Ohio Infrastructure Funding: How to Get It and Spend It Wisely

On January 14, 2019, the President signed the Water Infrastructure Improvement Act (H.R. 7279), granting municipalities new statutory tools to affordably confront expensive infrastructure challenges using Integrated Planning.

Bricker & Eckler, McMahon DeGulis and Muskingum Watershed Conservancy District are hosting a free series of public infrastructure planning events to discuss these tools and the integrated planning process.

This program will be offered in various Ohio locations February through May. For more information, including schedule, location details and to register, visit the event page.

Bricker & Eckler LLP

February 14, 2019

With Amazon Out of New York, Some Lawmakers Seek Multistate Ban on Corporate Tax Breaks.

Lawmakers in at least a half-dozen states are considering forming a compact in which they would agree to end efforts to lure companies with tax incentives.

- **SPEED READ:**
- **Legislatures in Florida, Illinois, New York and several other states are considering or may take up a version of the End Corporate Welfare Act, which would stop the practice of offering tax incentives designed to woo certain corporations to relocate.**
- **Supporters say such a multistate compact would end the "race to the bottom" of states trying to outbid one another in corporate giveaways.**
- **The effort is part of a backlash to the $2 billion in tax breaks promised to Amazon by New York and Virginia for its second headquarters.**

Amazon's yearlong, nationwide contest for its second corporate headquarters netted the internet retail giant more than $2 billion in promised tax breaks from New York state and Virginia. But after mounting public resistance to such "corporate welfare," Amazon announced Thursday that it will abandon its plans for New York City.

This, as the End Corporate Welfare Act is circulating in several states, including New York. The bill would essentially call a cease-fire on awarding tax incentives to certain companies by creating an interstate compact of states that agree to end the practice.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 14, 2019 AT 5:05 PM

Could a Market Penalty Shrink Lag Time on Municipal Bond Audits?

While public corporations are required to file an annual audit within 60 days after the close of the year, municipal bond borrowers often take close to triple that time or longer.

Although this issue has been lingering for decades, the time it takes to complete and sign an audit after the close of the fiscal year hasn't changed much over the last 10 years. The county, state and city sectors are the poorest performers even amid an improvement since 2015.

While investors need the audit documents for credit evaluation and securities pricing purposes, they are not the only stakeholders that have a need to see timely audited financial reports.

Governing boards associated with public bodies and not-for-profit organizations need to review the audits in order to fulfill their duty for proper oversight. Like municipal bond analysts and investors, they are better able to respond to issues disclosed in an audit if the documents are timelier.

Audit timeliness is a simple, common sense principle based on the expectation that accountability and transparency are best achieved if audited financial reporting is swiftly dispatched. That should hold true not only as a standard for responsible government but also for investors and taxpayers.

There's an added fiduciary responsibility for municipal bondholders in that late or stale audits inhibit accurate bond pricing and cloud assessments of risk. The absence of significant improvement in the overall speed in which are audits are signed and delivered begs the question as to why the market is not imposing a greater penalty on those that consistently are late to report.

Merritt Research Services, LLC, an independent municipal bond credit data and research company based in Hiawatha, Iowa and Chicago has been tracking the time it takes municipal bond borrowers to complete their audits since Merritt Research released its first report in 2010. Its latest findings looked at more than 10,500 Fiscal Year 2017 audits by credit sector and over 110,000 audits since 2008.

Latest Results

The latest analysis focused on 2017 audits found a modicum of good news in that there was a modest improvement in completion time rates over the past two years as governmental audits have made the adjustments to more detailed pension reporting in line with changes in GASB rules 67 and 68 that occurred mostly in the 2015 audits. Audits from non-governmental municipal bond borrowers, such as power agencies, hospitals and private universities, finished much faster than those for governments.

As has been the case in other years, the median completion time for reports related to governmental type municipal bonds still hovers between 170 and 180 days. That's still a long way from the target reporting times in the corporate bond market and well below what the municipal bond industry considers to be a muni guideline of 120 days.

Merritt Research's latest report continues to show that certain types of municipal bond borrowers, mostly associated with corporate like enterprise entities and not-for–profit organizations (issued under the IRS 501c-3 code), are consistently faster to finish their audits than the governmental state and local governmental sectors. These non-governmental issuer sectors have median times which range from 99 days to 161 days.

Consistently placing fastest on the list of all municipal bond credit sectors are (1) public power wholesale electric agencies (also known as joint action agencies and quasi-government enterprises), (2) hospitals, (3) private higher education institutions and (4) Tollroads. Each of these sectors show a median audit completion time of 120 days or less, meeting the unofficial municipal bond guideline most frequently cited as best practice.

Fastest Reporting Sectors for Fiscal Year 2017

Public Power Wholesale electric audits achieved the best sector reporting time, boasting a median completion time of 99 days after the close of the fiscal year.

Hospitals, which often carry higher interest rates since many consider them as one of the riskier major credit sectors in the muni market, annually place nearly as well as wholesale electric entities in the audit time contest. As a group, they recorded a median audit completion time of 111 days, the same as the prior year.

The Private Higher Education sector took the third best sector finish for fiscal year 2017 with a median audit time of 115 days. Again, this sector has consistently completed its audits in a narrow range of between 107 and 115 days since 2008.

The Tollroads sector showed the best gain of any of the categories by improving its median from its already good audit time level of 126 days to 120 days. Fifty-one percent of the sector completed their audits in 120 days.

Slowest Reporting Sectors in Fiscal Year

On the other side of the speed continuum were the main governmental sectors – counties, states and cities.

Despite their absolutely disappointing finish times, each of these sectors showed a modest improvement and reduction in their median audit times from last year and further progress since 2015.

That's the year in which governments were required to apply more detailed pension accounting information in line with the new Governmental Accounting Standards Board (GASB) 67 and 68 rules concerning pension accounting that went into effect.

The County Sector showed the slowest financial reporting as a group. The median sector audit time came in at 179 days, several days better than two years ago and one day better than last year, but still nothing to boast.

States & Territories, which was the second slowest sector in 2017 and the tardiest of all sectors in the previous two years, inched up a notch with a median audit time of 175 days. Only 5.7% of this sector was able to have their audits signed for completion within 120 days.

The City Sector was the third slowest sector, albeit the best, among the major governmental categories. Its median audit time was 173 days. Like states and counties, it has fallen among the

bottom three in each of the last 10 years. It tied states for having the same 5.7% of signed audits within 120 days of the end of the fiscal year.

By Richard Ciccarone

BY SOURCEMEDIA | MUNICIPAL | 02/14/19 09:00 AM EST

SEC Official Tackles Muni Disclosure.

AUSTIN, TEXAS – A Securities and Exchange Commission Official tried Tuesday to provide some clarity on disclosure issues in the municipal market, as the effective date of a major amendment to the disclosure requirements looms in two weeks.

Ahmed Abonamah, senior counsel to the director in the SEC's Office of Municipal Securities, discussed the soon-to-be effective amendments to the SEC's Rule 15c2-12 and other disclosure topics during a panel discussion at The Bond Buyer's Texas Public Finance Conference being held here this week. The amendments, which add two new material events to the list which issuers must agree to disclose on a continuing basis, take effect Feb. 27.

Abonamah, who arrived at the SEC in 2016 after several years in the private sector, told conference attendees that the SEC does not endorse any particular way for underwriters to fulfill their duties to reasonably determine that issuers for whom they underwrite bonds will comply with the new material events in their continuing disclosure agreements. Event 15 says issuers have to disclose when they incur material financial obligations, while event 16 says that issuers have to disclose events connected to those obligations which "reflect financial difficulties," such as a default or modification of terms.

One bright line rule is that underwriters can't rely solely on an issuer's reputation to determine whether the representations in the offering document are accurate, Abonamah said, though he allowed that the determination includes an element of judgment on the underwriter's part.

Abonamah said the commission has received a lot of requests to clarify what sort of "non-debt debt" might qualify as requiring disclosure under event 15. The key determination is whether there is a borrowing in the transaction such as in those that involve a lease development corporation. The rule was not intended to capture more straightforward leases, such as those of city vehicles, he said.

Other panelists also weighed in on disclosure topics. Bill Oliver, a spokesman for the National Federation of Municipal Analysts, said the SEC could be helpful by providing the market with clarity on how comfortable the commission is with issuers disclosing unaudited financial information. The industry is wrestling with how to overcome the stale nature of the numbers in issuers' comprehensive annual financial reports, and Oliver said unaudited data could be useful to analysts. Such information is already routinely disclosed in certain sectors, such as healthcare, he noted.

The SEC could further offer issuers some reassurance on the permissibility of talking to investors, when investor-issuer communication is "at an all-time low," Oliver said. Some buy-side analysts have said they believe issuers are hesitant to speak to them in any detail because they are afraid of "selectively disclosing" non-public information over the phone.

Panel member Gregg Bienstock, the CEO and a Co-Founder of Lumesis, said that whatever regulators might do to try to improve the timeliness of issuer disclosure, including technological

investments, they have to keep in mind that disclosure is only as good as the data provided. Many of documents posted to EMMA aren't actually word-searchable, Bienstock said.

"Data has to be useful to the market participants," said Bienstock.

Abonamah said the SEC is studying those disclosure issues, but did not commit to any commission action.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 02/12/19 03:45 PM EST

Asset Monetization and Public Facilities: New Ground for P3s

As municipalities, state agencies, and educational institutions look for creative ways to fund needed capital improvements, leveraging the value of underutilized public real estate assets through commercial development is a viable strategy. There is concern as to whether this type of project constitutes a Public-Private Partnership (P3) and is authorized or prohibited under states' P3 enabling legislation.

This concern hovers amidst the growth of the social infrastructure market, a class of public-facing facilities such as schools and courthouses, for which government agencies are increasingly seeking alternative funding sources. To address aging social infrastructure, some state and municipal governments are exploring P3 solutions, but many states' enabling legislation is either restrictive of or silent on the use of private capital and private delivery for social infrastructure projects. Even fewer states contemplate monetization of underutilized public assets as an allowable P3 structure.

Currently, 38 states have P3 enabling legislation, but few of these statutes allow monetization of public assets through commercial development. Legislators have assumed that P3 only applies to alternative delivery of an asset or service for public use through an availability payment or a concession model.

As an example, the State of Pennsylvania is delivering one of the nation's most significant transportation P3 projects, intended to replace over 500 aging bridges across the state, but its restrictive, transportation-focused P3 statute does not enable the delivery of social infrastructure, much less doing so by monetizing underutilized assets.

This limited approach to alternative financing, taken by so many states, results in missed opportunities to renew critical public facilities.

Asset Monetization as a P3

To demonstrate the viability of asset monetization projects as P3s, consider the alignment of a recent project in the City of Falls Church, Virginia and the definition of a P3, as promoted by the National Council for Public Private Partnerships (NCPPP). The City of Falls Church recently selected a team of private partners to develop a commercial economic development project on 10 acres of city-owned land, the proceeds of which are intended to offset the cost of delivering a new high school adjacent to the commercial site. NCPPP offers three primary criteria for any P3 project, each of which the City of Falls Church project meets:

- A contractual agreement between a public agency (federal, state or local) and a private sector entity.
- The City of Falls Church will enter into a Comprehensive Agreement and a 99- ground lease with its private partner, dictating the uses to be constructed and the terms of payments.
- The skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public.
- The City of Falls Church is contributing the land and assisting with entitlement; the private partner is contributing capital and real estate development and operational expertise. Additionally, the project will fund the development of the new high school and provide significant civic space.
- Each party shares in the risks and rewards potential in the delivery of the service and/or facility. The City of Falls Church and private partner share in development risk as the City of Falls Church receives payments over time and as phases of development are completed. The City of Falls Church also shares in the long-term upside of the project through on-going capital event fees. The City of Falls Church project is being executed under the authority of the Commonwealth of Virginia's Public Private Education Act (PPEA). Virginia was an early adopter of broad-sweeping P3 legislation, passing the PPEA in 2002.

Some states are following Virginia's lead to address mounting capital improvement and deferred maintenance needs. In August, the State of New Jersey expanded its P3 authority, previously focused exclusively on public higher education institutions, to include a broad set of local governments, school districts, public authorities, and state and county colleges. These entities can now enter into P3s for capital projects, including both social infrastructure and transportation. While regulations are still under development, New Jersey should look at the City of Falls Church's example and create regulations that support and encourage monetization of underutilized public assets as one of the P3 tools available to municipal and educational institutions seeking to raise funds for critical facilities.

Conclusion

At a time when states are increasingly considering alternative financing or revisiting existing laws, recognizing asset monetization transactions that generate significant public benefit, like the City of Falls Church project, may encourage legislators to broaden the scope of allowable alternative financing projects, thereby allowing more social infrastructure projects to be funded by monetizing underutilized public and institutional assets.

By Jay Brown

BY SOURCEMEDIA | MUNICIPAL | 02/06/19 09:00 AM EST

EPA Accelerates Investments in America's Water Infrastructure.

LENEXA, KS, FEB 8, 2019 — As highlighted in President Trump's State of the Union address and in support of the President's Infrastructure Initiative, the U.S. Environmental Protection Agency (EPA) has accelerated investment in the nation's aging water infrastructure.

"EPA is delivering on President Trump's promise to jump-start critical infrastructure projects that will not only enhance environmental protections but also grow the economy," said EPA Acting Administrator Andrew Wheeler. "Under President Trump, EPA has issued seven WIFIA loans to help finance over $4 billion in water infrastructure projects that will improve water quality and create up to 6,000 jobs. By clearly defining where federal jurisdiction begins and ends, our new proposed

Waters of the U.S. definition will provide states and the private sector the regulatory certainty they need to develop and streamline projects that will modernize our nation's aging infrastructure."

Over the past year, EPA has moved President Trump's infrastructure agenda forward by working to get the financing, tools and resources EPA's state, local, tribal and other partners need to modernize outdated water infrastructure while improving local water quality, creating jobs and better protecting public health.

"Supporting states in their efforts to modernize and upgrade water infrastructure is key to providing Americans with clean and safe water and protecting public health and the environment," said Region 7 Administrator Jim Gulliford. "The SRF programs have historically been the primary source of funds to support states and needed infrastructure improvements. With the addition of WIFIA, significant additional funding has been made available. EPA is committed to supporting the states and their public and private infrastructure programs and assuring that the highest health and environmental standards possible are achieved."

Together with the agency's state, local, tribal and other partners, EPA achieved the following major water infrastructure accomplishments in 2018:

WIFIA

Established by the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014, EPA's WIFIA program is the agency's newest water financing program, which provides long-term, low-cost supplemental loans for regionally and nationally significant projects. In 2018, EPA issued seven WIFIA loans totaling nearly $2 billion to help finance over $4 billion for water infrastructure projects and create up to 6,000 jobs. In November 2018, EPA invited 39 additional projects in 16 states and Washington, D.C. to apply for a WIFIA loan. Together, these selected borrowers will receive WIFIA loans totaling approximately $5 billion to help finance over $10 billion in water infrastructure investments and create up to 155,000 jobs.

Omaha, Neb. and St. Louis, Mo. were two communities in Region 7 awarded WIFIA loans in 2018. The Metropolitan St. Louis Sewer District received $47.7 million to help construct a new pump station and replace or rehabilitate sewer pipes to address overflows and improve the water quality in Deer Creek. This project will provide storage for excessive inflow and infiltration during wet weather events, alleviate basement backups, and save the district an estimated $15 million by financing with a WIFIA loan compared to a bond issuance. The City of Omaha's Saddle Creek Retention Treatment Basin Project received $69.7 million to help finance the construction of a wastewater pump station. This project will decrease the number of overflow events into Little Papillion Creek and reduce the volume of untreated combined sewer overflow and E. coli bacteria entering the waterway, all while saving the City of Omaha nearly $20 million in interest costs.

Five additional projects in EPA Region 7 have submitted letters of interest in applying for WIFIA loans as well: Kansas City, St. Louis, and Joplin, Mo., and Wichita and Frontenac, Kan. EPA has offered these communities the opportunity to discuss and negotiate loans supporting up to 51 percent of their project costs. Combined, these five projects could receive WIFIA loans totaling approximately $513 million in water infrastructure investments serving a population of more than 2.3 million.

State Revolving Funds

The Clean Water and Drinking Water State Revolving Funds (SRFs) play an integral role in EPA's efforts to help communities replace or upgrade aging or inadequate drinking water and wastewater

infrastructure through low-interest loans. Together, in 2018, the SRFs committed $9.6 billion in drinking water and clean water infrastructure loans and refinancing and disbursed $8.8 billion for drinking water and clean water infrastructure. This level of funding was facilitated through EPA's contribution of $2.2 billion to the state revolving funds in 2018.

Region 7 EPA works closely with the states of Kansas, Missouri, Iowa and Nebraska in the implementation of the SRF program. In 2018, Region 7 states received over $150 million in SRF funding from Congress that helped finance 339 loan agreements for water quality projects totaling $408 million.

In addition to funding large-scale infrastructure projects, EPA has also taken a leading role in the administration's initiative to promote greater efficiencies in the infrastructure permitting process. These actions include working to provide a clear and predictable approach to identifying waters that are subject to federal authority through the Department of the Army's and EPA's proposed "Waters of the United States" rulemaking, implementation of the administration's One Federal Decision initiative and through other improvements to the Clean Water Act permitting process. EPA will take these actions by cooperatively working with its state and tribal co-regulators with a goal of streamlining environmental permitting and increasing investments in critical water and other infrastructure projects.

Learn more at epa.gov.

WATER WORLD

February 8, 2019

S&P: Proposed New York State Budget Cuts AIM Funding, May Spell Long-Term Financial Stress For Municipalities

New York State's proposed fiscal 2020 budget contains funding changes for municipalities, that, if passed, could create revenue volatility over the long term. The proposed modifications don't change S&P Global Ratings' overall near-term view of the municipalities' credit quality…

Continue Reading

Feb. 6, 2019

Can Cities Set a Local Minimum Wage? Florida Supreme Court Says No.

A growing number of jurisdictions have overturned local minimum wage ordinances and the state of Florida has now waded into the minimum wage waters.

Florida has a long-standing state statute that expressly prohibits municipalities from enacting local wage ordinances. Section 218.007 provides that **"a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage."** While the statute does permit local wage ordinances for local government employees, a Florida municipality cannot pass legislation that seeks to impose a higher

wage upon private employers operating within the city/county.

In 2004, Florida voters approved a state constitutional amendment that established a higher, statewide minimum hourly wage. The constitutional amendment authorized the state of Florida to increase Florida's minimum wage above the federal minimum wage established by the Fair Labor Standards Act. However, the amendment did not supersede (or even address) Section 218.077 with regard to whether local municipalities could establish their own minimum wage scales. Pursuant to this constitutional amendment, the Florida Department of Economic Opportunity is charged with adjusting the state's minimum wage rate annually based on the Consumer Price Index. Effective January 1, 2019, the current Florida minimum wage is $8.46/hour.

In June 2016, the city of Miami Beach enacted a local ordinance establishing a minimum hourly wage significantly exceeding the current Florida minimum wage. Attempting to rely on Florida's constitutional amendment, the city of Miami Beach approved a local minimum wage ordinance for all employers operating with the city. The ordinance, which was scheduled to take effect on January 1, 2018, established both a local minimum wage of $10.31/hour and annual increases to $13.31/hour effective January 2021.

The Florida Retail Federation, Florida Restaurant & Lodging Association, and Florida Chamber of Commerce promptly filed a lawsuit on the grounds that the Miami Beach ordinance was preempted by state statute. Judges in both the Miami-Dade Circuit Court and Florida's Third District Court of Appeals agreed and that struck down Miami Beach's local wage ordinance.

Even more interesting is that the Florida Supreme Court initially agreed in August 2018 to exercise jurisdiction and hear the city of Miami Beach's appeal. However, last month three of the justices who had voted in favor of hearing the case retired. On February 5, 2019, the Florida Supreme Court issued a perfunctory order that stated simply: "Upon further consideration, we exercise our discretion and discharge jurisdiction. Accordingly, we hereby dismiss this review proceeding." As a result, the Florida appellate court's decision invalidating Miami Beach's local wage ordinance stands.

The Florida Supreme Court's decision does not bar other Florida municipalities from establishing their own respective minimum wages. However, the ruling certainly establishes that any such ordinances very likely would be struck down on preemption grounds just like the city of Miami Beach.

by Jennifer Williams

February 14, 2019

Cozen O'Connor

92nd Arkansas General Assembly/SB 289: Municipal Jurisdiction Over Utilities.

Senate Bill 289 has been introduced which would amend certain provisions of Chapter 200 (Municipal Authority Over Utilities) of the Arkansas Code.

The bill's sponsors include:

- Senator Jane English (North Little Rock)
- Representative Mark Lowery (Maumelle)
- Representative Carlton Wing (North Little Rock)

Provisions of the bill include an amendment to Ark. Code § 14-200-101(a) addressing municipal jurisdiction over utilities. This definition is revised to include water utilities, adding it to electric, gas, sewer, or telephone companies.

The bill also amends Ark. Code 14-200-101(b)(1)(A)(iii) addressing franchise fees for utilities. The word "public" is added, along with a revision addressing the cap on the franchise fee.

The bill also addresses Ark. Code § 25-30-319(b) regarding franchise fees by deleting (b) and adding the following language:

A participating public agency shall not require a public body created under this subchapter to pay a franchise fee under authority of other law.

A copy of the bill can be found here.

by Walter Wright

February 13, 2019

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Public Design-Build Projects in Arkansas (Part Two): Statutory Procurement Authority.

Part One of this series focused on the Arkansas Department of Transportation's ("ARDOT") first major project using the design-build project delivery method – 30 Crossing. Since then, ARDOT has awarded the 30 Crossing Project to a Kiewit Infrastructure South and Massman Construction joint venture. However, the question remains: what statutory authority does ARDOT have to procure construction through design-build? Furthermore, is there statutory authority to use design-build for other types of public construction? Part Two answers these questions, discussing when the State of Arkansas or one of its subdivisions may use a single company to provide the architecture, engineering, and construction for a project.

ARDOT, through the highway commission, has statutory authority to use "[q]ualification-based, design-build services" for "design-build project contracts" under A.C.A. § 27-67-206(j)(2)(A)(i). After receiving statements of qualifications (or proposals without competitive bidding), ARDOT may "[a]ward a project contract on a qualification basis that offers the greatest value for the state… and [c]ontract with an authorized entity to design, construct, improve, and maintain qualified projects," pursuant to subsections C and D.

Excluding ARDOT, Arkansas's state agencies may use design-build under Arkansas's P3 legislation. Under A.C.A. § 22-10-103(10)(B)(ii), a state agency has statutory procurement authority, provided the project is "designed and built, in whole or in part, by a private entity."

A school district may also use design-build for school buildings. Under A.C.A. § 19-11-807(b)(1), any "school district may use design-build construction as a project delivery method for building, altering,

repairing, improving, maintaining, or demolishing any structure, or any improvement to real property owned by the school district."

At the end of the competitive bidding provisions of the Arkansas Code, municipalities and water authorities constructing wastewater treatment, storm water treatment, or water treatment plants have been given authority to use design-build as a project delivery method under A.C.A. § 22--203(j). As stated in subsection 2, the municipality or water authority "contracts may include provisions for the design, financing, construction, repair, reconditioning, replacement, operation, and maintenance of the system, or any combination of those services and functions."

There are several options for Arkansas design-build public projects, depending on the project type. As the statutes reveal, however, compliance with the specific procurement requirements may be cumbersome. Although Arkansas does not have comprehensive design-build legislation, this State is moving in the right direction.

by Larry Watkins

January 3, 2019

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

New Sales Tax Bonds Issued Under Latest Puerto Rico Debt Restructuring.

SAN JUAN, Feb 12 (Reuters) – Puerto Rico's Sales Tax Financing Corporation, known as COFINA, issued $12 billion of new bonds on Tuesday as a federal court-approved deal between the bankrupt U.S. commonwealth and its creditors took effect, according to island officials.

The plan of adjustment approved by U.S. District Court Judge Laura Taylor Swain on Feb. 4 restructures about $17 billion of sales tax-backed debt, leaving senior bondholders to recover 93 percent of their original investment, while junior bondholders recover only 56 percent. The island, which is trying to restructure about $120 billion of debt and pension liabilities through a form of municipal bankruptcy that Swain is overseeing, previously won court approval for a consensual deal with creditors over about $4 billion of debt related to its Government Development Bank (GDB).

According to Puerto Rico's federally created oversight board, the COFINA plan will slash debt service on the sales tax-backed debt by $17.5 billion over nearly 40 years, saving the island an average $456 million annually.

Future sales tax revenue previously pledged exclusively to COFINA will be split, with 53 percent going to COFINA bondholders and 46 percent flowing to the commonwealth government.

The new COFINA bonds were listed on the Municipal Securities Rulemaking Board's disclosure website with maturities in 2047 and 2054.

"Today's achievement is proof that the Government of Puerto Rico can accomplish creative restructuring solutions that safeguard the interests of the people of Puerto Rico," Governor Ricardo Rosselló said in a statement.

The oversight board said on Tuesday it has certified a fiscal 2019 budget for COFINA that includes money to cover the entity's past and future operating expenses.

S&P Global Ratings said last week that the credit quality of the restructured COFINA bonds is tied to Puerto Rico's long-term credit picture.

"While the COFINA settlement provides a degree of certainty with respect to the commonwealth's balance sheet, the absence of audited financial statements and continuing uncertainty around retirement obligations stands in the way of our ability to assess its long-term creditworthiness," S&P said.

The oversight board has turned its attention to the island's core debt of roughly $13 billion of general obligation bonds and almost $50 billion in unfunded pension liabilities.

Last month, the board asked Swain to invalidate more than $6 billion of GO bonds, contending the debt had been issued in violation of the Puerto Rico Constitution.

(Reporting by Karen Pierog in Chicago and Luis Valentin Ortiz in San Juan Editing by Matthew Lewis)

Illinois Housing Development Authority Launches New Initiative to Attract Bond Investors in 2019.

Illinois Housing Development Authority issued the following announcement on Feb. 8.

The Illinois Housing Development Authority (IHDA) launched a new initiative today aimed at attracting more investors to its municipal bond offerings.

IHDA introduced a new investor relations site providing access to over 1,000 pages of data and documents, providing a single location for investors to access their credit fundamentals: www.buyihdabonds.com.

"It's our fiduciary responsibility to raise capital at the lowest possible cost to taxpayers," said Audra Hamernik, IHDA's Executive Director. "With hundreds of municipal bond sales each week, we know investors have a choice as to where to invest. Our commitment to transparency and disclosure will enable IHDA to reach more investors and optimize long-term relationships with the buy-side, helping to better price our bonds. We are happy to announce that we will kick-off IHDA's investor platform with the release of a Preliminary Official Statement this week with respect to single-family bonds financing single-family mortgage-backed securities, the proceeds of which will be used to finance first time homebuyers across Illinois."

Regulators recommend a strong investor relations program for issuers. Academic research also shows improved disclosure leads to lower borrowing costs, which will improve IHDA's ability to finance affordable homeownership and rental opportunities throughout the state.

"We're extremely proud to partner with IHDA," said Colin MacNaught, co-founder and CEO of BondLink, which powers the state's investor relations site. "Sophisticated issuers like IHDA understand the edge of heightened transparency when selling bonds. We're excited to help drive additional investor demand for the state's bond programs, and those of its related agencies."

About the Illinois Housing Development Authority

IHDA (www.ihda.org) is a self-supporting state agency that finances the creation and the

preservation of affordable housing across Illinois. Since its creation in 1967, IHDA has allocated over $18 billion and financed approximately 255,000 affordable housing units for residents of Illinois.

About BondLink

Led by founders Colin MacNaught, CEO, and Carl Query, CTO, BondLink's cloud-based IR platform provides efficiencies to issuers and investors in the $4 trillion municipal bond market. Since the launch of its first investor platform two years ago, BondLink has expanded its network across more than 25 states, as well as the District of Columbia and the U.S. Virgin Islands. Headquartered in Boston, BondLink is backed by top investors, including Franklin Templeton Investments, one of the largest municipal bond fund managers in the country. BondLink is also the founder of the world's first investor relations conference for the municipal bond industry. For more info, visit www.bondlink.com.

Financial Accounting Foundation Board of Trustees Notice of Meeting.

Read the notice.

Illinois Explores Ways to Pay Down Pension Debts.

- **Governor mulls steps to reduce unfunded retirement liability**
- **Pension strains have pushed Illinois rating to cusp of junk**

Illinois needs $134 billion and may hold a yard sale to raise it.

Governor J.B. Pritzker, a Democrat who took office last month, is turning to business experts to figure out how to chip away at the massive debt to the state's employee retirement system that's left the government's credit rating dangling just one step above junk. Among the options it will weigh: How to use the state's other assets — like buildings and roads — to pump more money into the pensions.

No state is struggling more with its retirement obligations than Illinois, but the steps it's exploring aren't unprecedented. New Jersey handed its lottery system over to its pensions, ensuring that politicians won't shortchange them as badly as they have in the past, and Connecticut has considered following suit. Arizona sold its capitol to raise cash after the last recession. And former California Governor Arnold Schwarzenegger proposed selling 11 state office buildings, though the plan was scrapped by his successor.

Continue reading.

Bloomberg Markets

By Danielle Moran, Claire Ballentine, and Martin Z Braun

February 12, 2019, 10:39 AM PST

Illinois Governor Eyes Bond Sale, Tax Hike to Save Pensions.

Illinois Governor J.B. Pritzker is considering a broad plan to inject cash into the state's struggling pensions by selling $2 billion of bonds, implementing a progressive income tax and using billions of dollars of government assets to reduce the massive debt owed to the retirement system.

At the same time, the Democrat, who took office last month, wants to extend the state's timetable for paying down the debt by seven years to prevent swelling pension payments from crowding out spending on other priorities, Deputy Governor Dan Hynes said in a statement. His administration also wants to encourage workers to accept early retirement buyouts.

The plan provides the greatest detail yet for how Pritzker will contend with the financial challenge posed by Illinois's $134 billion unfunded liability to its workers retirement plans. The shortfall built up from years of failing to set aside enough money to cover all the promised benefits, leaving the government facing escalating annual contribution payments. That has left Illinois's credit rating dangling just one step above junk, lower than any other state, and caused investors to demand large penalties on its bonds.

Hynes said that the administration would use the proceeds of any bond sale to increase its payments to the retirement system, not as a means of covering its annual contribution. That would prevent Illinois from repeating the mistake it made more than a decade ago, when it issued $10 billion of such debt only to see the shortfall reemerge.

'We can lower the cost of our pension debt and inject cash immediately into the system by issuing a small-scale pension bond of about $2 billion,' Hynes said in a statement. 'The bond proceeds would be used for no purpose other than to be deposited directly into the funds — and would be used only for paying down our more expensive pension liabilities. No skimming off the top to pay this year's pension payment.'

The pension shortfall is the biggest financial problem facing Illinois. With the state mired in partisan gridlock for much of the past four years under Republican Governor Bruce Rauner, Wall Street analysts have seen the return to a unified Democratic government as providing Pritzker with an opportunity to contend with issues that eluded his predecessor.

Pritzker has formed a panel of business experts to look into ways to use the state's assets — like buildings and roads — to raise cash for the pension system, and Hynes said some revenue generated by scrapping the flat income tax in favor of a progressive one would also be directed there.

While a graduated income tax is the norm in most states, Illinois has a constitutionally-protected flat tax, which would require a voter-approved amendment to implement. If the change is successfully enacted, Hynes said Illinois would increase its contributions to the retirement system by $200 million a year over what it's legally obligated to pay.

'The state government needs to show the people they are behaving responsibility, because if they don't, any proposal that requires a statewide vote will go down because they don't trust them,' said Howard Cure, head of municipal bond research at Evercore Wealth Management. 'Pritzker doesn't have a lot of time to prove his worth.'

Friday, 15 February 2019 10:43 AM

- FINRA 529 Plan Share Class Initiative Encourages Firms to Self-Report Violations.
- `Question Everything': Puerto Rico Hits $3.8 Trillion Market
- P3 and Your Tax Dollars: Federal Government Makes Next Foray into Public Private Partnerships.
- U.S. Army Corps of Engineers Seeks to Establish P3 Pilot Program – Webinar **(Tomorrow! 2/13)**
- P3 Connect: Denver, CO
- *Snodgrass v. City of Wichita, Kansas* – After landowners filed suit against city and law firm, alleging that the proceeds resulting from the refinancing of general and special obligation bonds benefitting their properties should be refunded to them by reassessing the special assessments levied against their property, the District Court granted plaintiff's motion to remand the matter to state court, holding that the special assessments are taxes under the Tax Injunction Act and that plaintiffs have an adequate remedy in state court.
- And finally, Your Editor Sets The Bar Low (And Promptly Trips Over It) is brought to us this week by *Ventura v. Town of East Haven* and *Rand Resources, LLC v. City of Carson*, in which Your Editor encountered a couple of ghosts of law school past. We noticed that the opinion in *Ventura* was written by Justice Palmer of the Connecticut Supreme Court. After I gave the opening argument in a moot court trial presided over by Justice Palmer, he called me over to the bench and announced, "That was the funniest thing I have ever heard from the bench, but of course I would have had to declare a mistrial." And the opinion in *Rand* was written by Your Editor's friend and classmate Justice Cuellar (hey, Tino!) who's currently occupying a seat on the California Supreme Court. So perhaps we fell a bit short of our potential, but we still have each other, right? Right? Fine, I'm gonna go get a beer with Brett.

CONTRACTS - CALIFORNIA

Rand Resources, LLC v. City of Carson

Supreme Court of California - February 4, 2019 - P.3d - 2019 WL 418745 - 19 Cal. Daily Op. Serv. 1055

Stadium developer brought action against city, mayor, and developer's competitor, alleging tortious breach of an exclusive agency contract, promissory fraud, fraud, and intentional interference with contract and prospective economic advantage after city replaced developer with competitor as representative in negotiations with National Football League (NFL) regarding potential football franchise for city.

The Superior Court granted anti-SLAPP motion to strike. Developer appealed, and the Court of Appeal reversed and remanded. The Supreme Court granted review.

The Supreme Court of California held that:

- Mayor's alleged false statement that he did not know of competitor, and city attorney's alleged false statement that, so long as developer showed reasonable progress, exclusive agency agreement would be renewed, were not made "in connection with" an issue before the city council as required for anti-SLAPP motion;
- Alleged false statements misrepresented the identity of the city's agent and thus did not concern an issue of public interest as required for anti-SLAPP motion;
- City attorney's statement to developer that agreement would be extended so long as developer showed reasonable progress, followed by the city council's denial of an extension to the agreement, could not constitute a statement in connection with an issue "under consideration or

review" within meaning of anti-SLAPP statute;
- City attorney's statement to stadium developer that agreement would be extended so long as developer showed reasonable progress did not constitute a statement "in connection with a public issue or an issue of public interest" within meaning of anti-SLAPP statute;
- City attorney's statement that agency agreement would not be renewed because city "did not need" developer anymore and have been "walking on eggshells" with developer's competitor could not provide basis for liability for promissory fraud;
- Intentional interference with contract and intentional interference with prospective economic advantage claims based on competitor's alleged meeting with city attorney regarding how to breach city's exclusive agency agreement with developer were subject to anti-SLAPP motion to strike; and
- Intentional interference with contract and intentional interference with prospective economic advantage claims based on competitor's alleged contact with NFL representatives were subject to anti-SLAPP motion to strike.

EMINENT DOMAIN - COLORADO

Allen v. State

Supreme Court of Colorado - January 22, 2019 - P.3d - 2019 WL 332985 - 2019 CO 6

Former property owner filed an inverse condemnation action seeking compensation for an alleged loss of property rights.

The District Court dismissed the action based on lack of subject matter jurisdiction. Former property owner appealed.

The Supreme Court of Colorado held that the water division trial court lacked subject matter jurisdiction to consider former property owner's inverse condemnation action seeking compensation for the deprivation of his rights in shares of ditch company; the dispute involved a property interest, not any water use matter.

IMMUNITY - CONNECTICUT

Ventura v. Town of East Haven

Supreme Court of Connecticut - January 22, 2019 - A.3d - 330 Conn. 613 - 2019 WL 254698

Pedestrian, who was struck by truck driven by motorist, brought personal-injury action against town, alleging that town police department's rules regarding towing of vehicles imposed clear ministerial duty on police officer to, after investigating an unrelated domestic-violence incident involving motorist, tow motorist's truck, because truck had invalid registration and improper plates.

Following jury trial, the Superior Court entered judgment in favor of pedestrian. Town appealed. The Appellate Court reversed and remanded. Pedestrian petitioned for certification to appeal.

The Supreme Court of Connecticut held that:

- Question whether town police department's rules regarding towing of vehicles imposed ministerial duty on police officer to tow motorist's truck gave rise to a question of law for resolution by trial court, abrogating *Strycharz v. Cady*, 148 A.3d 1011, *Bonington v. Westport*, 297 Conn. 297, 999

A.2d 700, *Martel v. Metropolitan District Commission*, 275 Conn. 38, 881 A.2d 194, *Lombard v. Edward J. Peters, Jr., P.C.*, 252 Conn. 623, 749 A.2d 630, and *Coley v. Hartford*, 312 Conn. 150, 95 A.3d 480;

- Police department's rules regarding towing of vehicles did not impose clear ministerial duty on police officer to tow motorist's truck, as required to show that town did not enjoy governmental immunity from pedestrian's claim; and
- Testimony of municipal employee designated by town as the person most knowledgeable about police department rules and procedures was insufficient to establish a ministerial duty on the part of police officer to tow motorist's truck.

Town police department's rules regarding towing of vehicles did not impose clear ministerial duty on police officer to tow motorist's truck following officer's investigation into unrelated domestic-violence incident involving motorist, and pedestrian thus failed to show that town did not enjoy governmental immunity from pedestrian's claim that injuries he sustained when motorist resumed driving truck, and subsequently struck pedestrian with truck, resulted from violation of such duty, even though truck had invalid registration and improper plates, since, when read together, rules made sense only with understanding that the rules regulated tow truck operators, not police officers.

ELECTIONS - FLORIDA

Orange County v. Singh

Supreme Court of Florida - January 4, 2019 - So.3d - 2019 WL 98251 - 44 Fla. L. Weekly S102

Constitutional county officers of a charter county brought action for declaratory and injunctive relief, challenging validity of ordinance providing for nonpartisan election of certain county constitutional officers.

The Circuit Court entered a final judgment striking a portion of the ordinance. County appealed. The District Court of Appeal affirmed. County appealed.

The Supreme Court of Florida held that:

- Election Code did not expressly preempt county's authority to determine that county constitutional officers be elected without partisan affiliation;
- Portion of ordinance requiring election of such officers at primary election was inconsistent with Election Code section requiring general election; and
- Portion of ordinance that conflicted with Election Code could be severed without rendering the remainder of ordinance incomplete.

Election Code did not expressly preempt the home rule authority of charter county to determine that county constitutional officers be elected in a general election without partisan affiliation; Election Code mandated that county constitutional officers be elected at a general election, but did not contain language requiring the election to be partisan.

Portion of county ordinance requiring that the election of county constitutional officers be held at the primary election was inconsistent with Election Code section requiring that county constitutional officers appear on the general election ballot, and thus, that portion of ordinance was unconstitutional.

The unconstitutional portion of county ordinance that was inconsistent with Election Code, in

requiring that county constitutional officers be elected at the primary election rather than the general election mandated by Election Code, could be severed without rendering the remainder of the ordinance incomplete, where the purpose of ordinance was to provide for election of county constitutional officers on a non-partisan basis, and there was a way to achieve that goal consistently with Election Code by having the candidates for those offices appear on the general ballot without party affiliation.

AUTOMATED TRAFFIC ENFORCEMENT - IOWA

Behm v. City of Cedar Rapids

Supreme Court of Iowa - January 25, 2019 - N.W.2d - 2019 WL 320511

Owners of motor vehicles who received notices of citations for traffic violations brought putative class action against city and private contractor that operated automated traffic enforcement (ATE) system, challenging constitutionality of city ordinance that created ATE system, and for unjust enrichment.

The District Court entered summary judgment for defendants on all claims and owners appealed. On transfer from Supreme Court, the Court of Appeals affirmed.

On rehearing, the Supreme Court of Iowa held that:

- Challenges to ordinance as violative of equal protection, substantive due process, and privileges and immunities under Iowa Constitution were subject to rational basis review, and not strict scrutiny;
- Ordinance did not violate substantive due process;
- Ordinance did not violate equal protection;
- Ordinance was not conflict preempted by statute governing proceedings on municipal infractions in district court;
- Ordinance, which excluded government-owned vehicles from reach of ATE system, was not preempted statute stating that traffic laws applied to drivers of all government vehicles;
- Ordinance did not violate procedural due process on its face; and
- Ordinance did not involve unlawful delegation of city authority.

BOND REFINANCING - KANSAS

Snodgrass v. City of Wichita, Kansas

United States District Court, D. Kansas - November 15, 2018 - Slip Copy - 2018 WL 6019344

The City of Wichita issued general obligation and special obligation bonds under Kansas law to finance certain street, sewer, and water improvements. The City spread special assessments across all of the lots in the improved parcel to pay for the bonds.

Sometime later, the bonds were refinanced and the City has allegedly reaped savings of more than $60 million as of December 2017 due to interest savings. Plaintiff landowners alleged that this resulted in the misappropriation of their tax payments and that the City should have refunded the tax payments by reassessing the special assessments levied against their property. Plaintiffs sought a declaratory judgment that Defendants (City, Law Firm, etc.) had “fraudulently, intentionally and

willfully misappropriated the millions of dollars of 'saved' tax payments gained from the refinancing of general obligation and special obligation bonds."

Defendant Law Firm filed a response brief asserting that the District Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331. Law Firm argued that the Tax Injunction Act (TIA) or the principle of comity is not applicable as the special assessments levied in this action were not taxes or, alternatively, Plaintiffs do not have an adequate remedy under state law.

Plaintiffs moved to remand this action to state court on the basis that it was not ripe for federal review.

The District Court found that the special assessments are taxes under the TIA and that Plaintiffs have an adequate remedy in state court, and therefore this action must be remanded.

"Therefore, because this is an action for a refund of tax payments, and because Plaintiffs have a plain, speedy, and efficient, remedy in Kansas courts, this action must be remanded to state court under the TIA and the principle of comity."

FINRA ARBITRATION - MICHIGAN

Lebenbom v. UBS Financial Services, Inc.

Court of Appeals of Michigan - October 23, 2018 - N.W.2d - 2018 WL 5275314

Brokerage account holder brought action against brokerage for statutory and common law conversion.

The Circuit Court denied brokerage's motion for summary disposition, or in the alternative, to compel arbitration. Brokerage appealed.

The Court of Appeals held that:

- Account holder's claims were subject to arbitration;
- Terms of arbitration agreement were not ambiguous;
- Arbitration clause was not substantively unconscionable;
- Arbitration clause was not procedurally unconscionable; and
- Arbitrability of account holder's claims under Financial Industry Regulatory Authority (FINRA) regulations was a question to be determined in FINRA arbitration proceedings.

Brokerage account holder's claims against brokerage for wrongful conversion, alleging that brokerage wrongfully froze and withheld funds in the account after receiving a tax levy, were subject to arbitration pursuant to a mandatory arbitration agreement between account holder and brokerage; the agreement compelled into arbitration "any and all controversies" between the parties, account holder's allegations presented a disagreement between the parties with respect to whether brokerage's actions were lawful and appropriate, and the agreement did not provide any positive assurances that arbitration would not cover claims of wrongful conversion.

Terms of mandatory arbitration agreement between brokerage account holder and brokerage were not ambiguous, where the agreement provided that "any and all controversies" that arose between the parties "concerning any account, dispute, or transaction" would be submitted to and decided by arbitration.

Arbitration clause in brokerage agreement form was not substantively unconscionable, regardless of whether it disadvantaged the brokerage account holder, where the clause contained a mandatory arbitration provision for "all controversies" arising between the parties and contained no language that could have been construed as inherently unreasonable.

Arbitration clause in brokerage agreement form, executed between trustor and broker, was not procedurally unconscionable, despite brokerage account holder's contention that she thought the form was for free checks and that she was not asked to consent to the arbitration clause's inclusion in the brokerage agreement; as a matter of law, account holder was presumed to have known the nature of the document and to have understood its contents and, despite account holder's advanced age, there was no evidence to suggest coercion, mistake, or fraud or that she had no realistic alternative but to accept the disputed terms.

Question as to whether brokerage account holder's conversion claims against brokerage were arbitrable under Financial Industry Regulatory Authority (FINRA) regulations was one to be determined in FINRA arbitration proceedings; as a matter of law, disagreement as whether the parties' mandatory arbitration agreement settled the question of FINRA arbitrability was to be resolved in favor of arbitrability, the arbitration agreement itself was broadly worded to include "any controversy" arising between account holder and brokerage, and a FINRA arbitrator would have been better equipped than a court to settle interpretation of FINRA regulations.

ANNEXATION - MISSISSIPPI

Enlarging, Extending and Defining the Corporate Limits and Boundaries of City of Clarksdale, Coahoma County v. City of Clarksdale

Supreme Court of Mississippi - January 17, 2019 - So.3d - 2019 WL 244426

City filed annexation petition, and county and neighboring town opposed the petition, with town initiating its own annexation proceeding and property owners petitioning for inclusion in town.

The Chancery Court approved, ratified, and confirmed city's proposed annexation in part, and denied town's and owners' petitions. County appealed and city cross-appealed.

The Supreme Court of Mississippi held that:

- City's need to expand supported partial grant of city's petition;
- City's path of growth supported partial grant of city's petition;
- Septic tank problems supported partial grant of city's petition;
- City's financial stability supported partial grant of city's petition;
- Need for planning and zoning supported partial grant of city's petition;
- Need for municipal services supported partial grant of city's petition; and
- Economic fairness to residents of proposed annexation areas supported partial grant of city's petition.

EMINENT DOMAIN - NEW YORK

Noghrey v. Town of Brookhaven

Supreme Court, Appellate Division, Second Department, New York - January 23, 2019 - N.Y.S.3d - 2019 WL 288072 - 2019 N.Y. Slip Op. 00450

Property owner brought action against town to recover damages for a regulatory taking of property without just compensation.

The Supreme Court, Suffolk County, denied property owner's motion to set aside jury verdict in favor of town and for judgment as a matter of law, or in the alternative, to set aside the verdict as contrary to the weight of the evidence and for a new trial. Property owner appealed.

The Supreme Court, Appellate Division, held that:

- Collateral estoppel did not apply to establish a regulatory taking by town with regard to parcel of real property on which property owner intended to build shopping plaza;
- Testimony of town's expert with regard to his appraisal of the subject parcel of real property could not be excluded on the basis it was unreliable or consisted of inadmissible hearsay; and
- Jury verdict in favor of town was not contrary to the weight of the evidence.

PUBLIC RECORDS - OHIO

Sheil v. Horton

Court of Appeals of Ohio, Eighth District, Cuyahoga County - December 20, 2018 - N.E.3d - 2018 WL 6818547 - 2018 -Ohio- 5240

Television journalist made request under Public Records Act for actress's contract with community college foundation for speaking at fundraising luncheon.

The Court of Claims refused to accept special master's recommendation that foundation was functional equivalent of a public office, but agreed that the contract was not a trade secret. Appeal and cross-appeal were taken.

The Court of Appeals held that:

- Foundation was functional equivalent of public office and was subject to Public Records Act, and
- Contract was not a trade secret and could be disclosed to television journalist under Public Records Act.

Community college foundation, which raised money for college scholarships, was responsible for college's public records, and, thus, foundation's speaking contract with actress could be obtained from foundation under Public Records Act, although college did not control foundation's day-to-day activities or property and foundation's fundraising database was on a separate server; foundation prepared records in order to carry out public office's responsibilities, college was able to monitor foundation's performance through ex officio board members and accounting requirements linking college and foundation, college's executive director kept foundation financial records, and college had access to foundation's financial records.

Actress's speaking contract with community college foundation for raising money to fund scholarships was not a "trade secret" and could be disclosed to television journalist under Public Records Act; key information about similar contracts was publicly available, including information revealing actress's speaking fee, a guaranteed fee, terms for reimbursement of travel and expenses, and other requirements, and others were able to easily duplicate and acquire the information.

NUISANCE - WISCONSIN

Yacht Club at Sister Bay Condominium Association, Inc. v. Village of Sister Bay

Supreme Court of Wisconsin - January 18, 2019 - N.W.2d - 2019 WL 273390 - 2019 WI 4

Condominium association brought action against village alleging that concerts held at village park were a public and private nuisance.

The Circuit Court dismissed complaint for failure to state a claim. Association appealed. The Court of Appeals affirmed. Association sought review.

The Supreme Court of Wisconsin held that:

- Each concert was a new nuisance that gave rise to new opportunity for association to file notice of injury with village, but
- Period for association to file notice of claim began to run on date of last concert alleged to be a nuisance.

Puerto Rico's Bleak Finances Brighten with Debt Restructuring.

Four years after Puerto Rico defaulted on billions of dollars in bonds, a federal judge has approved a debt restructuring deal that will help bondholders recoup their losses and help the island's government gain credit – both with investors and Puerto Ricans.

A federal bankruptcy judge approved a major debt restructuring plan for Puerto Rico on Monday in the first deal of its kind for the United States territory since the island's government declared nearly four years ago that it was unable to repay its public debt.

The agreement involves more than $17 billion worth of government bonds backed by a sales-and-use tax, with officials saying it will help the government save an average of $456 million a year in debt service. The deal allows Puerto Rico to cut its sales-tax-backed debt by 32 percent but requires the government to pay $32 billion in the next 40 years as part of the restructuring.

Senior bondholders, who hold nearly $8 billion, will be first to collect, receiving 93 percent of the value of the original bonds. Junior bondholders, many of whom are individual Puerto Rican investors and overall hold nearly $10 billion, will collect last and recover only 54 percent.

"Puerto Rico has taken an important step toward its total financial recovery," Gov. Ricardo Rossello said in a statement. "This represents more than $400 million annually that will be available for services in critical areas such as health, education, pension payments, and public safety, in compliance with other obligations."

The deal was previously approved by bondholders but prompted hundreds of people to write and email Judge Laura Taylor-Swain, who held a hearing on the issue nearly three weeks ago, to express concerns about the government's ability to make those payments and the effect it will have on public services. In her ruling, she wrote that she reviewed and carefully considered all those messages before making a decision.

"Many of the formal and informal objections raised serious and considered concerns about the

Commonwealth's future ability to provide properly for the citizens of Puerto Rico who depend upon it," she wrote. "They are not, however, concerns upon which the Court can properly act in making its decision … the Court is not free to impose its own view of what the optimal resolution of the dispute could have been."

The judge said that the deal represents a reasonable compromise and that further litigation would present a "significant gamble" for Puerto Rico. The island is mired in a 12-year-old recession and struggling to recover from hurricane Maria as the government tries to restructure a portion of its more than $70 billion public debt load.

A US government report issued last year said Puerto Rico's public finance problems are partly a result of government officials who overestimated revenue, overspent, did not fully address public pension funding shortfalls, and borrowed money to balance budgets. The Government Accountability Office also reviewed 20 of Puerto Rico's largest bond issuances over nearly two decades and found that 16 were issued solely to repay or refinance debt and fund operations, something many states prohibit.

Ms. Taylor-Swain's ruling said the compromise is "admittedly, deeply disappointing to countless citizens of Puerto Rico and investors in Commonwealth bonds."

A federal control board that oversees the island's finances praised the ruling, saying in a statement that the bond restructuring will help revive Puerto Rico's economy.

"The deal demonstrates … our determination to resolve Puerto Rico's debt crisis and establish sustainable foundations for [the] island's economic road to recovery," said Natalie Jaresko, the board's executive director.

Antonio Fernos, a Puerto Rico economist, said in a phone interview that the agreement is a good deal.

"It's positive because it brings some clarity to bondholders and what the board and government are willing to accept in negotiations," he said.

More challenges remain, with Puerto Rico's government still negotiating with those who hold general obligation bonds.

Last month, the control board asked the judge to invalidate $6 billion worth of that debt, including all general obligation bonds issued in 2012 and 2014, alleging that issuance violated debt limits established by the island's constitution. Taylor-Swain has held hearings on the issue, but has not ruled yet.

In November, Puerto Rico's government reached a debt-restructuring deal with creditors holding more than $4 billion in debt issued by the now-defunct Government Development Bank.

Associated Press

By Danica Coto

February 6, 2019

Hedge Funds Bask in Puerto Rico Bond Deal.

Bondholders offering debt relief in $18 billion renegotiation gain substantial profits

A small group of hedge funds are being rewarded for backing an $18 billion restructuring of Puerto Rico's sales-tax debt that saddled other investors with losses.

Tilden Park Capital Management LP and GoldenTree Asset Management LP are among the credit-market specialists that have reaped hundreds of millions of dollars in paper profits on those revenue bonds and are poised to collect more under settlement terms that provide them with stronger claims to repayment than before, according a Wall Street Journal analysis of court records and trading information.

The deal slashed $6 billion in value from the bonds known as Cofinas, a painful outcome for individual investors who bought them at full price starting in 2007. But as some investors gave up hope of being repaid, hedge funds bought top-ranking Cofina bonds at beaten-down prices, betting they would fare better than others in a restructuring.

Continue reading.

The Wall Street Journal

By Andrew Scurria

Feb. 9, 2019 7:00 a.m. ET

Puerto Rico Oversight Board Tries To Repudiate GO Bonds (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, on the Puerto Rico bonds. Hosted by Abramowicz and Paul Sweeney.

Running time 06:10

Play Episode

February 8, 2019 — 11:17 AM PST

PR Bonds Poised To Rally On Big Fund Involvement (Radio)

Dan Solender, Partner and Head of Municipal Bonds at Lord Abbett, and Michelle Kaske, Puerto Rico reporter for Bloomberg, on Puerto Rico winning approval for its plan to restructure more than $17 billion of sales-tax bonds. Hosted by Lisa Abramowicz and Paul Sweeney.

Running time 06:20

Listen to audio.

February 5, 2019 — 9:44 AM PST

S&P Bulletin: Puerto Rico's COFINA Restructuring Rests on Credit Fundamentals

DALLAS (S&P Global Ratings) Feb. 5, 2019–On Feb. 4, 2019, the federal court overseeing Puerto Rico's (NR) Title III bankruptcy approved its settlement with COFINA bondholders and its COFINA plan of adjustment, resolving multiple claims on nearly $18 billion in COFINA debt.

Continue Reading

Chicago Whistleblower Team Defeats Wall Street Banks' Motion to Dismiss Municipal Bond Fraud Suit.

Whistleblower Edelweiss LLC and its team of attorneys, led by attorney Michael Behn, scored an early victory in this False Claims Act lawsuit filed on behalf of the State of Illinois.

The whistleblower suit against multiple Wall Street banks, including JPMorgan Chase, Citibank, and Bank of America, cleared a major hurdle after an Illinois court rejected the defendants' motion to dismiss the case. The suit was filed by Edelweiss LLC under the Illinois False Claims Act, by Chicago attorney Michael Behn of Behn & Wyetzner, Chartered. (State of Illinois ex rel. Edelweiss LLC (Case No. 2017 L 000289).

Judge Diane Shelley of the Illinois state court in Chicago stated after reviewing the arguments, that Edelweiss' whistleblower "complaint articulates in myriad detail how false claims could have been presented to the State of Illinois."

Judge Shelley's decision means the case against the banks will move forward. If successful, the State of Illinois could recover hundreds of millions of dollars in fines and damages from the defendants.

Behn described the ruling as "a major victory for Illinois tax payers and municipalities."

"We welcome Judge Shelley's decision, and intend to prove that defendants defrauded the government as alleged," added Dan Hergott, also of Behn & Wyetzner and another of Edelweiss' attorneys.

The banks will now have to answer Edelweiss' complaint, which alleges that the defendants engaged in a deliberate scheme to overcharge government entities while providing financial services relating to municipal bonds.

Behn founded the law firm Behn & Wyetzner to represent whistleblowers under the False Claims Act. Behn was formerly a federal prosecutor with the U.S. Attorney's Office in the Southern District of New York (Securities and Futures Fraud Unit) and with the Commodity Futures Trading Commission.

Behn & Wyetzner has achieved extensive recoveries for state and federal taxpayers on behalf of the firm's whistleblower clients. The firm is of counsel to Siprut PC and based out of Chicago, Illinois.

CHICAGO (PRWEB) FEBRUARY 06, 2019

S&P Upgrades Detroit's Credit Rating One Notch Closer to Investment Grade.

- **S&P upgrades Detroit's credit rating from B+ to BB-**
- **City's credit rating remains three notches below investment grade**
- **Rating upgrade follows $135 million bond sale solely using Detroit's credit**

Detroit's credit rating is one step closer to exiting the Wall Street doldrums of junk bond status that has hampered the city's ability to borrow for years.

S&P Global Ratings on Thursday upgraded Detroit's credit rating on unsecured debt from B+ to BB-, which is still three notches below the highly coveted status of investment grade for municipal bonds.

"The rating improvement reflects our view of the city's stabilizing financial position, whereby we feel it is well situated to absorb increasing pension commitments and scheduled increases in debt service in the coming years, as well as possible revenue setbacks, while still sustaining year-to-year budget balance and very strong reserves," S&P analysts wrote in a note to investors published Thursday.

S&P analysts cited several economic and budgetary factors that continue to restrain Detroit's credit rating, including a looming increase in pension payments set to escalate in 2024 after a 10-year post-bankruptcy pension holiday ends.

"We feel that stabilizing these neighborhoods will be key to long-term stability," S&P analysts wrote. "A major factor still holding back this progress continues to be the struggling state of the Detroit public school system."

At the end of June, the Detroit Police and Fire Retirement System was 77 percent funded, while the larger General Retirement System for city civil servants was 70 percent funded, according to the S&P report.

Detroit has set up a trust fund to cushion the blow of increased pension payments in 2024 when the city has to resume making full payments to the retirement systems after getting a 10-year reprieve in its 2013-2014 bankruptcy.

"In our view, despite the longer-term planning involved, there remains a pension funding gap that constitutes a structural imbalance, resulting in a management score of weak under our local (general obligation) criteria, which caps the rating," S&P analysts wrote.

The improved credit rating was issued for $135 million in unlimited-tax general obligation (UTGO) bonds Detroit sold in December — first bond sale solely using the city's credit in more than 20 years. S&P's new credit rating applies all city bonds that aren't secured by a specific revenue source.

The S&P upgrade — the second in 14 months — follows credit-rating upgrades by Moody's Investors Service in October 2017 and May 2018.

"We believe an improved credit rating is a strong reflection that our strategies to improve the quality of life in Detroit are working," Detroit Mayor Mike Duggan said in a statement.

S&P also issued rating downgrades for two separate Detroit-related bonds issued by the state of Michigan.

Michigan Finance Authority's financial recovery bonds issued in 2014 for the city were downgraded from an A rating to S&P's BB+ rating.

The rating agency also downgraded the credit rating for the Michigan Finance Authority's Local Government Loan Program bonds for the Detroit Public Lighting Authority from A to BB+.

CRAIN'S CHICAGO BUSINESS

CHAD LIVENGOOD

February 07, 2019 02:20 PM

`Question Everything': Puerto Rico Hits $3.8 Trillion Market

• Bankruptcy case casts doubt on bonds backed by revenue pledges
• Judge approves deal that shifts sales-tax money to government

America's local governments frequently pledge a slice of their revenue to investors to make their bond deals more attractive by adding an extra layer of security. But Puerto Rico's record-setting bankruptcy has cast that safety in doubt.

That's because bondholders who were promised a dedicated share of the island's sales-tax revenue have seen that rolled back in court, where creditors since 2017 have been squaring off over who has the highest claim to the distressed government's cash.

On Monday, U.S. District Judge Laura Taylor Swain approved a restructuring of more than $17 billion of sales-tax-backed bonds that will leave owners of the securities with the lowest claim receiving about 56 cents on the dollar. While investors supported the deal because it gives them far more than what the debt was once trading for, it rests on an agreement that steers nearly half of the revenue that was pledged for the securities to the central government instead.

That's left some investors worried the approach could be used by other distressed governments. "It makes us question everything," said Jonathan Mondillo, head of municipal securities at Aberdeen Standard Investments, which owns insured Puerto Rican debt.

Puerto Rico's bankruptcy is the latest to trigger a reassessment of which bonds are the most iron-clad in the $3.8 trillion state and local government debt market, a haven where bankruptcies are rare enough that each one is closely watched for possible clues to how creditors will be treated the next time a government goes broke.

Detroit's bankruptcy undermined investors' faith in general-obligation bonds, which were once seen as the safest since they are backed by the unlimited ability of a government to raise taxes. That led some to favor bonds backed by dedicated revenues like sales taxes instead — a view that's now being challenged by what's happened in Puerto Rico. Last year, S&P Global Ratings began pushing the ratings on so-called priority lien debt closer to those of the underlying governments, reflecting the risk that officials could try to tap the funds if they experience distress.

Such bond issues are used by issuers because it allowed them to borrow at lower costs. The Puerto Rico sales-tax bonds, known as Cofinas, are similar to those issued by Chicago's Sales Tax Securitization Corp., which says it's insulated even if the city were given the power to go bankrupt.

While those Chicago bonds have AAA ratings from Fitch Ratings and Kroll Bond Rating Agency, investors demanded yields of as much as 4.79 percent on debt due in 2048 when the city sold the

securities last month, according to data compiled by Bloomberg. That was about 1.7 percentage points more than benchmark debt, nearly twice the premium investors demanded a year earlier.

“Ultimately if the municipality gets into a distress situation, it’s my belief, much like the Cofinas, they would be brought into the bankruptcy proceeding, or there would be a possibility” of that, said Mondillo.

In some ways, though, the outcome of the Cofina ruling — if not the precedent — is a win for investors who favor revenue-backed deals over general-obligation bonds. The most-senior Cofina bondholders will recover an estimated 93 cents on the dollar when they exchange their debt for new securities. They’re trading for around 85 cents.

That’s well above the current price for Puerto’s general-obligation bonds, with those due in 2026 at about 57.5 cents. Owners of those securities have yet to reach such a restructuring deal, leaving potential recoveries uncertain. Some complained in court that the sales-tax deal was too generous, diminishing what other creditors stand to gain.

James Spiotto, managing director of Chapman Strategic Advisors LLC, said Puerto Rico’s bankruptcy may also be a unique case, given the severity of the island’s financial and economic strains, that may not apply elsewhere. Municipal bankruptcies have also been extremely unusual, with only a few cities seeking court protection from creditors even after the big financial hit of the last recession.

“They used tried, true and well-accepted structures but they’re not going to fulfill what those structures represent,” Spiotto said of Puerto Rico. “That’s not indicative of the market and not indicative of the history.”

Puerto Rico’s bankruptcy may lead to still more reckonings over the protections municipal-bondholders have as it restructures the rest of its $74 billion debt load. The island’s federal oversight board is seeking to invalidate more than $6 billion of general-obligation bonds sold since 2012 on the grounds that it was issued illegally. If the judge agrees, that could heighten already-existing concerns around the safety of the pledge and prompt another round of reassessments.

“This is a near-term headline — we don’t know how it’s going to play out over the next one, two or five years,” said David Ashley, a portfolio manager at Thornburg Investment Management, which holds $10 billion in municipals. “You’ve made the sales tax folks fairly happy, you still haven’t addressed the other part of the debt waterfall.”

Bloomberg Markets

By Amanda Albright

February 6, 2019, 5:30 AM PST Updated on February 6, 2019, 7:50 AM PST

— With assistance by Michelle Kaske

S&P: Why California Special Assessment Ratings Are Bolstered By New Criteria

On April 2, 2018, S&P Global Ratings released its criteria “Special Assessment Debt” detailing implementation of new methodology across its rated portfolio. Ratings nationwide have so far met

expectations stated in the report, but ratings in California have undergone slightly more changes than expected, and mostly positive.

Continue Reading

Feb. 5, 2019

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) convened on January 29–31, 2019, to discuss its market oversight activities and fiscal year 2019 strategic initiatives that support the MSRB's mission to protect municipal securities investors, issuers and obligated persons and promote a fair and efficient municipal market.

This year, the Board has renewed its commitment to stakeholder engagement to further inform its retrospective rule review, compliance support and other initiatives. In an outreach effort unprecedented in its scope, Board members this year are meeting with municipal securities dealers and municipal advisor firms around the country. At the Board's meeting last week, the full Board met with leadership of the Securities Industry and Financial Markets Association (SIFMA) Municipal Securities Division, the National Association of Municipal Advisors (NAMA) and the Government Finance Officers Association (GFOA) Debt Committee. "These meetings were a tremendous advancement in our stakeholder engagement efforts," said Board Chair Gary Hall. "The conversations we are having both with industry representatives and critical market participants allow for a necessary and valuable exchange of information about municipal market oversight."

Retrospective Rule Review

Another strategic MSRB initiative is the prioritization of its retrospective rule review. Since 2012, the MSRB has been conducting a retrospective rule review to ensure MSRB rules are up-to-date, effective and reflective of the current reality of the municipal market. Chair Hall in October 2018 elevated the retrospective rule review initiative to a strategic priority and at last week's meeting, the Board agreed on a formal approach and the highest priority rules to review in 2019. "The municipal market is evolving, and we recognize—and indeed are acting on—the imperative to keep our rules current," he said.

The Board has prioritized an analysis of MSRB Rule G-23, on activities of financial advisors, MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements and MSRB Rule G-29, on availability of Board rules. The retrospective rule review plan also includes a goal to eliminate outdated information and references in the full rule book. The MSRB will publish a notice this week with details of the 2019 retrospective rule review plan designed to achieve its objectives while obtaining critical feedback from stakeholders in a way that respects their competing priorities.

As part of the MSRB's ongoing retrospective rule review, it has been evaluating whether interpretive guidance concerning the application of MSRB Rule G-17 to underwriters of municipal securities to ensure and promote fair dealing practices by underwriters with issuers should be amended. The Board discussed feedback received on a second request for comment on draft amended interpretive guidance and plans to further review possible amendments to the guidance.

The MSRB is also working to clarify existing guidance on its rule on best execution of municipal securities trades. At its meeting, the Board discussed comments received on draft amendments to

the guidance and, as a result of feedback received, agreed to clarify guidance that dealers' do not need to post bid-wanteds on or through multiple alternative trading systems (ATSs) or broker's brokers to satisfy their best-execution requirements. The MSRB expects to publish this guidance this week.

The Board discussed comments received on its November 2018 notice on draft interpretive guidance about the potential harms of "pennying." This practice involves a dealer's purchase of bonds for its own account from a customer seeking to sell a municipal security—after the dealer has reviewed other dealers' bids—by matching a high bid or purchasing the bond at a price that is nominally higher than the highest bid. The Board directed staff to conduct additional analysis before considering next steps.

Market Transparency

The Board discussed the topic of the timeliness of financial disclosures by municipal securities issuers and agreed to begin a project to improve the form (MSRB Form G-32) through which underwriters provide information about the expected availability of annual financial information to the Electronic Municipal Market Access (EMMA®) website. The improvements will be aimed at helping underwriters fulfill their existing regulatory requirements and provide accurate data. The Board also agreed to continue to evaluate how to leverage the EMMA website and the MSRB's ability to educate investors to enhance understanding about the timeframes for municipal financial disclosures. "This is an important and complex issue," Chair Hall said. "The MSRB is committed to working within its Congressional authority to ensure that investors have the information they need regarding financial disclosures."

The Board also discussed adding third-party evaluated pricing services to the EMMA website. These services, used to estimate the value of individual bonds and to price fixed income portfolios including mutual fund holdings, would provide investors with an additional set of market data and enhance EMMA's existing tools and resources. The Board directed staff to continue to explore adding evaluated pricing services on EMMA.

As a result of outreach efforts and the MSRB's request for information on municipal market benchmarks, the Board directed staff to continue to engage with market participants on ways to promote transparency and availability of benchmarks.

Financial Oversight

As part of its commitment to long-term financial sustainability, the Board continued its ongoing discussion of the MSRB's reserve levels, which as previously communicated, are above the organizational target. The Board will continue its evaluation of reserve levels—incorporating input from an outside expert's reserves analysis—and determine additional steps to responsibly manage reserves to appropriate target levels. "The level of MSRB reserves is a high priority for the Board," said Chair Hall. "We are getting close to addressing this important issue."

Date: February 4, 2019

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

XBRL US CAFR Taxonomy Released for Review.

XBRL US recently released its draft CAFR taxonomy for public comment.

San Francisco Selling Bonds for Broken $2.2 Billion Terminal.

- **Booming real estate taxes backing debt trump project concerns**
- **California bonds are sought by those seeking tax shelter**

San Francisco is such a seller's market that the city is marketing municipal bonds for a new $2.2 billion transit terminal that's been shut down for months while crews make emergency repairs to cracked support beams.

The city's offering of $184 million of taxable municipal bonds Wednesday will finance work at the Salesforce Transit Center, where buses from throughout the Bay Area are supposed to drop off and pick up tens of thousands of daily commuters. The terminal was closed in September, a month after it opened, after crews found cracks in two structural steel beams. There's still no re-opening date scheduled and the cause of the fissures remains unknown.

The bonds are backed by special taxes levied on the buildings in the district around the regional bus and train hub, formerly known as Transbay. The assessed value of the properties for this fiscal year is more than $3 billion, deal documents show.

Even with the terminal closed, tax collections continue and development is underway on buildings around the facility that would fall under the levy that supports the bond payments. Fitch Ratings ranks the new securities AA+, second highest. The train and bus hub itself doesn't fall under the levy.

Wealthy California residents seeking tax shelters have helped drive down yields on bonds issued in the state. 10-year California general obligations are yielding just 10 basis points over AAA securities.

San Francisco — where the assessed value of property has risen by 57 percent in six years — is seeing "exceptional" demand for its debt, said Tom Lockard, head of investment banking at 280 CapMarkets. He expects investors will snap up the new securities.

From his office window in the City by the Bay, Lockard says he can see busy construction cranes raising buildings all around the terminal. "We can complain about the affordability, but it's a pretty special place to be here right now in terms of development and progress and Transbay is part of it," he said.

Bloomberg Business

By Romy Varghese

February 5, 2019

U.S. Army Corps of Engineers Seeks to Establish P3 Pilot Program - Webinar

U.S. Army Corps of Engineers Civil Works has been directed to establish a public private partnership (P3) pilot program. There will be an information webinar **February 13, 2019 from 1400 – 1530 EST**.

To learn more, click here.

NCPPP

FEBRUARY 8, 2019

P3 Connect: Denver, CO

Denver, Colorado

May 15 – 16, 2019

Click here to learn more and to register.

National Center for Public Private Partnerships

TAX - NEW YORK

Verizon New York, Inc. v. Supervisors of Town of North Hempstead

Supreme Court, Appellate Division, Second Department, New York - February 6, 2019 - N.Y.S.3d - 2019 WL 453961 - 2019 N.Y. Slip Op. 00925

Property owner filed actions against town, seeking refunds of special ad valorem levies for garbage and refuse collection services against certain "mass" properties, and town filed third-party actions against county and its board of assessors, seeking indemnification under county guaranty.

Following consolidation of actions, the Supreme Court, Nassau County, denied county's motion for leave to renew its opposition to property owner's motion for leave to renew its motion for summary judgment, denied county's successive motion for summary judgment, granted property owner's motion for summary judgment, and entered judgment in favor of town against county. County appealed.

The Supreme Court, Appellate Division, held that:

- County failed to offer new evidence in support of its motion to renew;
- County's reimbursement of town pursuant to county guaranty was not prohibited by state constitution's gift and loan clause; and
- County failed to make sufficient showing to warrant consideration of its successive motion for summary judgment.

CDFA EDA Revolving Loan Fund Webinar Series: Utilizing the Toolbox Approach

March 5, 2019 @ 2:00 PM Eastern

Hundreds of development finance programs exist at the federal, state, and local level. These programs have been created to address the financing needs of business, industry, real estate, housing, environmental and community development entities. Individually, none of these programs are a silver bullet solution to economic development challenges. The toolbox approach brings together the best of these financing concepts and techniques to provide a comprehensive response to capital and resource needs. Listen as our expert speakers discuss the various development finance tools that can be utilized to enhance the efforts of your Revolving Loan Fund.

Speakers:

Harry Allen, Moderator
Director, Research & Technical Assistance
Council of Development Finance Agencies

Toby Rittner
President & CEO
Council of Development Finance Agencies

Register in advance to confirm your participation and receive login information. Registration is free and open for all EDA RLF grantees.

Register Now

FINRA 529 Plan Share Class Initiative Encourages Firms to Self-Report Violations.

On January 28, the Financial Industry Regulatory Authority (FINRA) issued a Regulatory Notice announcing the 529 Plan Share Class Initiative, a self-reporting initiative to promptly compensate harmed investors and promote firms' compliance with the rules governing the recommendation of 529 savings plans ("529 Plans") (the "Initiative").1 Under the Initiative, broker-dealers are encouraged to review their supervisory systems and procedures governing 529 plan share-class recommendations, self-report supervisory violations and provide FINRA with a plan to remediate harmed customers. In response, FINRA's Department of Enforcement will recommend that FINRA accept a settlement that includes restitution for the impact on affected customers and a censure, but no fine, consistent with one of FINRA's principal aims—investor protection.

With the publication of the Notice, FINRA also issued a video interview with Susan Schroeder, Enforcement Chief, titled "A Few Minutes With FINRA: 529 Plan Share Class Initiative."2 Together, the Notice and the interview introduce this new type of self-reporting program. To be eligible for the Initiative, firms must self-report by providing written notification to FINRA Enforcement by April 1 and submit required information by May 3.

Background and Discussion

529 Plans are tax-advantaged municipal securities designed to encourage saving for the future

educational expenses of a designated beneficiary. As municipal securities, the sale of 529 Plans are governed by the rules of the Municipal Securities Rulemaking Board (MSRB), including MSRB Rule G-19 (Suitability of Recommendations and Transactions)3 and MSRB Rule G-27 (Supervision).4

As Schroeder explained in the interview, FINRA learned through its examination process that 529 Plans can be a "blind-spot" for some firms. Given the importance of 529 Plans to the investing public and the importance of expedited restitution, FINRA designed this Initiative to inform member firms of its concerns, and ask the firms to be proactive about assessing, correcting and reporting its processes.

529 Plans are commonly sold in different classes with varying fee structures. Class A shares typically impose a front-end sales charge but with lower annual fees comparative to other classes, whereas Class C shares typically impose no front-end sales charge but have higher annual fees than Class A shares. The recommendation of suitable share classes of 529 Plans were made more complex upon amendments made to the Internal Revenue Code (the "Code") in January 2018, that expanded the use of 529 Plans for tuition for grades K-12, subject to certain limitations. Instead of a "one-size fits all" approach to 529 Plan share classes, the changes to the Code underscore the importance of recommending a share class that is uniquely tailored and suited to the needs of the individual customer and beneficiary, in addition to the importance of supervising these recommendations.

The 529 Plan Share Class Initiative

Firms are encouraged to review their supervisory systems and procedures, including the failure to:

- provide training regarding the costs and benefits of different 529 Plan share classes;
- understand and assess the different costs of share classes for individual transactions;
- receive or review data reflecting 529 Plan share classes sold; and
- review share-class information, including potential breakpoint discounts or sales charge waivers, when reviewing the suitability of 529 Plan recommendations.

Further, firms are encouraged to assess and self-report the potential impact of such supervisory failures.

Eligibility for the Initiative

To qualify for the Initiative, firms must self-report by providing written notification to FINRA Enforcement on April 1 and provide additional, specified information by May 3.

The Notice explains that if a firm is deemed to meet the requirements of the Initiative, and FINRA Enforcement decides to recommend formal action based on the firm's compliance with the self-reporting obligations encouraged by the Initiative, *FINRA Enforcement will recommend that FINRA accept a settlement that includes restitution for the impact of affected customers and a censure, but no fine*. Schroeder explains in the interview that a settlement under this Initiative would be to supervisory violations and would not trigger a statutory disqualification.5

It is worth noting that FINRA intends to continue to examine and investigate firms' supervision of these issues. If a firm does not self-report under the Initiative and FINRA uncovers supervisory failures by that firm, any resulting disciplinary action and sanctions imposed in connection therewith are likely to exceed those contemplated by the Initiative. Further, FINRA *does not* offer the same initiative to *individuals* associated with member firms who sold 529 Plans to customers in violation of MSRB rules, or violated any state or federal securities laws. Individual liability will be assessed on a case-by-case analysis of the facts and circumstances.

Conclusion

The Initiative presents a unique and limited opportunity for firms to assess their supervisory systems and procedures governing 529 Plan share-class recommendations, to identify and remediate any defects, and to compensate any investors harmed by supervisory failures, while possibly avoiding fines for such conduct. As the deadline to take advantage of this program approaches, we recommend working with legal counsel to review and assess eligibility for the Initiative and for preparing the FINRA submission.

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1 FINRA Regulatory Notice 19-04.

2 FINRA video: "Video: A Few Minutes With FINRA – 529 Plan Share Class Initiative."

3 MSRB Rule G-19.

4 MSRB Rule G-27.

5 Section 3(a)(39) of the Securities Exchange Act of 1934

————————————————————————

by Leonard Licht, Susan Light, and James Normile

February 7, 2019

Katten Muchin Rosenman LLP

IRS Notice Offers Good News for State Colleges and Universities (at Least for Now).

In January 2019, the Internal Revenue Service (IRS) issued Notice 2019-09, which provides interim guidance for Section 4960 of the Internal Revenue Code of 1986. As a reminder, Section 4960 imposes an excise tax of 21 percent on compensation paid to a covered employee in excess of $1 million and on any excess parachute payments paid to a covered employee. A "covered employee" is one of the organization's top-five highest-paid individuals for years beginning after December 31, 2016. An organization must determine its covered employees each year, and once an individual becomes a covered employee, that individual will remain a covered employee for all future years.

Of particular interest to state colleges and universities is the answer to Q–5 of the notice. It provides that the Section 4960 excise tax does not apply to a governmental entity (including a state college or university) that is not tax-exempt under Section 501(a) and does not exclude income under Section 115(l). What does this mean? Basically, if an institution does not rely on either of those statutory exemptions from taxation, the institution will not be subject to the excise tax provisions of Section 4960. This exclusion from Section 4960 means the institution could compensate its athletic coaches (or other covered employees) in excess of the $1 million threshold and not be subject to the 21 percent excise tax.

As we discussed previously, some institutions rely on political subdivision status for tax purposes.

Importantly, the notice also provides that any institution relying on its political subdivision status to avoid taxation, as opposed to relying on either of the above-mentioned exemptions, will be subject to the Section 4960 excise tax if the institution is "related" to any entity that does rely on either of the exemptions.

Although the IRS's guidance is helpful in determining Section 4960's application to state colleges and universities, it appears not to reflect "Congressional intent." On January 2, 2019, the Committee on Ways and Means of the U.S. House of Representatives released a draft technical corrections bill that seeks to correct "technical and clerical" issues in the Tax Cuts and Jobs Act of 2017. The corrections bill seeks to clarify Section 4960's application by stating that any college or university that is an agency or instrumentality of any government or any political subdivision, or that is owned or operated by a government or political subdivision, is subject to Section 4960. Given the current state of affairs in Washington, D.C., we are not confident that the corrections bill's expanded application to state colleges and universities will ever come to fruition, but we will continue to monitor the situation.

by Taylor Bracewell & Robert Ellerbrock, III

February 6, 2019

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

NAST Sends Letter to New Congress.

Read the Letter.

National Association of State Treasurers

February 1, 2019

NABL Suggests a Dozen Tax Tweaks for the Muni Market.

NABL suggests a dozen tax tweaks for the muni market

WASHINGTON — The National Association of Bond Lawyers has a dozen suggestions for tax code tweaks that the Internal Revenue Service tax could make to benefit the municipal bond market, including clarification about the ability of local and state governments to engage in public-private partnerships.

None of the 12 requires congressional action and all are within the scope of the service's administrative powers, according to NABL.

Seven of the proposed changes relate toIRS Revenue Procedure2018-26, 2018-18 IRB 546 published last April regarding remedial actions to preserve the tax-advantaged status of bonds when non-qualified uses occur.

Five other NABL suggestions for are unrelated measures, including the ability of state and local governments to engage in public private partnerships.

All 12 were developed by an ad hoc committee of bond attorneys chaired by David Cholst, a partner at Chapman and Cutler in Chicago.

NABL President Dee Wisor sent the 35-pages of detailed suggestions and an accompanying two page executive summary to IRS Commissioner Charles Rettig and nine other top officials of the IRS earlier this month.

“The revenue procedure did a number of good things,” Cholst said in an interview. “That’s the way we started our comments. One big part was the ability to remediate for direct pay bonds without actually calling in bonds or defeasing bonds. People realize there ought to be a way to say the bond doesn’t qualify anymore so I’m not going to ask for the subsidy payment.”

Many Build America Bond issuances had what Cholst described as “onerous call provisions such as a make-whole calls at a premium.”

“There is no reason from the U.S. government’s policy point of view why the bond should be called so long as they can stop making the tax subsidy,” he said.

The IRS revenue procedure also offered a cure for nonqualified uses that occur under long-term leases that’s similar to the cure for a sale of property that was financed by tax-exempt bonds.

The NABL letter suggests that the cure should include shorter term leases as well.

“If it works for a 20-year lease it ought to work for a 10-year lease as well,” Cholst said. “We don’t see a policy reason for it to be longer term.” NABL suggested there be no specific time limit.

The executive summary of the recommendations related to the 2018 IRS Revenue Procedure suggests that Treasury:

- Eliminate the double remediation that seems to be currently required by Rev. Proc. 2018-26 in the context of the remediation via removal of the tax advantage;
- Expand anticipatory remediation to apply to all permitted remedial actions;
- Make rules more consistent to avoid needless complexity;
- Limit required remediation to the amount of available funds created by the violation;
- Make the yield reduction mechanism of the Revenue Procedure more consistent with the arbitrage rules (and clearer at the same time);
- Modify the trigger for determining when nonqualified use occurs to be more consistent with Treas. Reg. §1.141-12; and
- Clarify the determination of the amount of nonqualified bonds resulting from a nonqualified use.

The other five recommendations propose that Treasury:

- Eliminate current expensive requirements, such as defeasance escrows, that do not further the purpose of the remediation provisions;,
- Expand the remedial action provisions to allow remediation of private payments;
- Add direct payment to the United States Treasury of taxpayer exposure as an alternative to redemption of nonqualified tax-exempt bonds;
- Expand anticipatory remedial action to cover all types of remediation otherwise available; and
- Provide more flexible remediation when a change in use preserves public access and some control over the financed facilities following the change in use.

The last recommendation is intended to make it easier for governments to engage in public private partnerships.

“If you do are doing something to improve public infrastructure that is going to be continued to be used by the public even though it is going to be privately used in some way….it shouldn’t require any additional actions,” Cholst said. “That’s really what’s going to allow the country to rebuild its roads and bridges and other public structures.”

Congress has the authority to enact legislation to also accomplish the same goal, but this administrative action by the IRS “would be more direct and easier to implement,” he said.

BY SOURCEMEDIA | MUNICIPAL | 03:11 PM EST

By Brian Tumulty

OZ Overload.

Confusion is mounting over real estate’s most buzzed-about federal program, but there still may be an excess of players trying to get in on the action.

It was a telling moment for those fixated on Opportunity Zones.

“Who the hell is EJF and their expertise as it relates to real estate?” Anthony Scaramucci asked on a December conference call to promote his $3 billion Opportunity Zone fund.

The rhetorical question seemed to be an attempt to reassure potential investors that EJF Capital would be a qualified partner for Scaramucci’s firm, SkyBridge Capital. But the former White House communications director’s swagger wasn’t enough to move the needle — and the two hedge funds parted ways a month later.

SkyBridge attributed the split to concerns from its distribution partners that EJF didn’t have enough experience managing real estate funds. “It’s a difficult investment environment,” the firm’s president, Brett Messing, told *The Real Deal*. “People get more risk-averse. And being risk-averse means bringing your clients a track record and someone who might be a little more known for being associated with real estate.”

Continue reading.

therealdeal.com

By Rich Bockmann and Eddie Small | Research by Yoryi De La Rosa and Kyna Doles

February 01, 2019 09:00AM

OZFramework.

We are committed to evaluating and amplifying the long-term outcomes benefiting those living and working in Opportunity Zones today.

About the Framework

The Opportunity Zones Reporting Framework is a voluntary guideline designed to define best practices for investors and fund managers looking to invest in Opportunity Zones. It includes a set of first principles and a detailed impact measurement framework.

Learn More and Download the Framework

S&P Public Finance Outlook Sees Slower Growth Impacting Muni Market.

Robin Prunty, head of analytics and research at S&P Public Finance, discusses how an expected economic slowdown may impact state spending and municipal bonds. She speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg Markets TV Shows

February 6th, 2019

Why Wall Street's Muni-Bond Desks Welcome the Tax-the-Rich Push.

- **Presidential hopefuls' plans include higher rates on wealthy**
- **Higher rates would likely boost demand for tax-exempt debt**

Politics aside, one corner of Wall Street is likely welcoming Democrats' talk of raising taxes on the rich.

Higher rates tend to be a good thing for the $3.8 trillion state and local government bond market, a haven for investors looking for income that's exempt from federal taxes. And progressive Democrats looking to define their party's platform ahead of next year's presidential election have made boosting rates on the wealthiest Americans a key part of their agenda, seeking to seize on discontent with rising income inequality.

If history is any guide, that might provide a boost to returns, at least temporarily. Municipal bonds outperformed Treasuries soon after the election of Bill Clinton, who raised the top marginal rate in 1993, according to Bloomberg Barclays indexes. The same thing happened under Barack Obama, when the expiration of previous cuts for the highest earners in 2013 was followed by a run of outperformance.

Continue reading.

Bloomberg Markets

By Danielle Moran and Claire Ballentine

February 4, 2019, 10:28 AM PST

City, Meet County: St. Louis Weighs Historic Merger

A measure to consolidate St. Louis City and County could go before Missouri voters as soon as 2020. But St. Louisans are mixed on what that means.

On Monday, the St. Louis think tank Better Together unveiled a formal proposal to combine the City of St. Louis and St. Louis County in a new type of local government for Missouri: a metropolitan city. Governed by an elected "Metro Mayor" and a 33-member council, the new Metro City of St. Louis would have sweeping powers to enact new laws, tax residents, and oversee law enforcement, justice, planning, zoning, and economic development. This proposal, which would be decided by voters across Missouri, would essentially do away with the present government of the City of St. Louis, including the city's 29-member Board of Aldermen and the office of Mayor Lyda Krewson.

Such a consolidation would overnight transform St. Louis into the 10th largest city in the U.S., with 1.3 million people—larger than San Jose and right behind Dallas.

The idea is rekindling a longstanding debate in several cities that are pondering the virtues and potential pitfalls of joining up with their surrounding counties. There have been about 40 city-county mergers in the U.S.; in recent decades, major examples include Nashville (1962), Indianapolis (1970), and Louisville (2003). They're rare because they're difficult to pull off: Voters may be skeptical of the money-saving arguments for consolidation and susceptible to fears over changing borders between segregated communities. Louisville only got their union done on the fourth try.

Continue reading.

CITY LAB

JACK GRONE JAN 30, 2019

Stakes are High for Cities and Regions Ahead of an Unsettled 2020 Census.

A little over one year from now, the United States will participate in a democratic tradition that stretches back to the founding of the republic: the once-a-decade census of its population.

From 1790 (U.S. population: 3.9 million) to 2010 (U.S. population: 309 million), the decennial census has changed alongside the nation itself. From the territory it covers, to the questions it asks, to how it collects the information, the census has reflected evolution in technology, the role of the federal government, and the size of the country itself.

As we approach 2020, however, both technical and political changes in the census are introducing unprecedented new challenges. The stakes are high for cities and regions, which depend on a full and accurate count of their populations to ensure their fiscal health and political strength. Three areas of concern stand out.

Continue reading.

The Brookings Institute

by Alan Berube

Senior Fellow and Deputy Director – Metropolitan Policy Program

February 7, 2019

North Carolina Court of Appeals Takes Insurer to Task For Sloppy Drafting.

Last month, the North Carolina Court of Appeals released its decision in *Meinck v. City of Gastonia*, — S.E.2d —, 2019 WL 114054 (N.C. Ct. App. Jan. 2, 2019), holding a policy exclusion to be ambiguous because of poor drafting by the insurer.

The case started in 2013, when plaintiff Joan Meinck fell while walking down the steps of a historic building owned by the City of Gastonia, suffering injuries including a broken hip. While the city owned the property and was responsible for maintaining the exterior of the building, it had leased the property to the private non-profit Gaston County Art Guild, which had subleased the building for use as an art gallery and gift shop.

In 2015, Meink sued the city, alleging specifically that the city was not entitled to governmental immunity because it was engaged in a proprietary (not governmental) function, and alternatively, if the City had governmental immunity, it had been waived by the purchase of liability insurance. Under North Carolina's doctrine of governmental immunity, a county or municipal cooperation is immune from suit for the negligence of its employees in the exercise of governmental functions absent waiver of immunity. *Evans ex rel. Horton v. Hous. Auth.*, 602 S.E.2d 688 (N.C. 2004). However, a city may waive its government immunity in tort by the act of purchasing liability insurance. N.C. Gen. Stat. § 160A-485(a).

The trial court granted summary judgment in favor of the city, finding that the city's use of the building was a governmental function and that therefore the city was entitled to sovereign immunity. The trial court also held that the city had not waived that immunity by purchasing liability insurance because the city's insurance policy contained an "express non-waiver provision."

In a 2017 decision, the Court of Appeals reversed, holding that the city was not engaged in a proprietary, not governmental function in renting the building, and therefore was not entitled to governmental immunity. Based on this holding, the Court did not address any insurance coverage issues. *Meinck*, 798 S.E.2d 417 (N.C. Ct. App. 2017).

However, the Supreme Court granted the City's petition for discretionary review and reversed on the governmental function issue, remanding the case to the Court of Appeals to determine if the City had waived governmental immunity by purchasing liability insurance. *Meinck*, 819 S.E.2d 353 (N.C. 2018).

In an opinion written by Judge Tyson and joined by Judges Elmore and Dietz, the Court of Appeals concluded that the non-waiver provision in the city's insurance policy, issued by Argonaut Insurance Company, was ambiguous and must be construed in favor of coverage, and that therefore, the city had waived its governmental immunity.

The relevant policy endorsement read as follows (emphasis supplied):

> 12. Sovereign Immunity and Damages Cap

> ***For any amount for which the Insured would not be liable under applicable governmental or sovereign immunity but for the existence of this Policy***; the issuance of this insurance shall not be deemed a waiver of any statutory immunities by or on behalf of any insured, nor of any statutory limits on the monetary amount of liability applicable to any Insured were this Policy not in effect; and as respects to any "claim", we expressly reserve any and all rights to deny liability by reason of such immunity, and to assert the limitations as to the amount of liability as might be provided by law.

The Court of Appeals concluded that the italicized portion of the endorsement was ambiguous. Judge Tyson called the clause "ungrammatical" and wrote that it did "not clearly convey whether governmental immunity is waived under the policy. It is not a complete sentence of clause, and does not convey any clear meaning on its own." Further, Judge Tyson noted that of fourteen provisions in the "North Carolina Common Policy Conditions" endorsement, only this provision did not begin with a complete, grammatical sentence.

The Court of Appeals then set out a hypothetical clause which, in its view, would suffice to preserve the city's governmental immunity, replacing the italicized language in the actual policy with the following: "This policy does not apply to any amount for which the Insured would not be liable under applicable governmental or sovereign immunity but for the existence of this Policy."

The Court of Appeals then reviewed three prior decisions in which it had concluded that policy language preserved governmental immunity: *Hart v. Brienza*, 784 S.E.2d 211, rev. denied, 793 S.E.2d 223 (N.C. 2016), *Estate of Earley v. Haywood Cty. Dep't of Soc. Servs.*, 694 S.E.2d 405 (N.C. Ct. App. 2010), and *Patrick v. Wake Cty. Dep't of Human Servs.*, 655 S.E.2d 920 (N.C. Ct. App. 2008), concluding that in each case "the relevant language was unambiguous . . . and those policies did not cover claims for which sovereign immunity would otherwise be waived by the purchase of insurance." By contrast, the court stated, "[u]nder the endorsement at issue, it is unclear whether the exclusion for coverage applies to claims for which sovereign or governmental immunity would apply." Accordingly, the policy must be "strictly construed" in favor of coverage.

by Joshua Davey

February 7, 2019

McGuireWoods LLP

Why Green Bonds May Be Our Best Hope For Tackling Climate Change.

- **Green bonds appeal to investors who are looking for a safe place to park their money and do some good for the world.**
- **Investors are willing to accept a lower rate of return in exchange for the environmental benefits.**

Municipalities have been selling bonds to pay for public works projects—fire stations, parking garages, sewage treatment systems—for 200 years. It's only in the past decade or so, however, that they've been selling them with an extra perk: helping the environment.

In the absence of a global carbon pricing scheme, bond markets will be central to financing climate

change and other environmental interventions. Green bonds appeal to investors who are looking for a safe place to park their money and do some good for the world.

Harvard Business School professors George Serafeim and Malcolm Baker have long been interested in investor motivations that go beyond pure financial return to include environmental, social, and governance (ESG) criteria. With the recent uptick in green bonds, they wondered how that might improve municipalities' ability to help the environment by accessing finance at better terms.

"The whole idea of ESG investing is predicated on the notion that by tilting their portfolios towards securities that have better ESG properties, investors might be able to change who has access to lower-cost capital," says Baker, Robert G. Kirby Professor of Business Administration at HBS. "In the process, they jump-start investing in areas that might be important for the environment."

They examine the phenomenon in a new paper for the National Bureau of Economic Research, Financing the Response to Climate Change: The Pricing and Ownership of U.S. Green Bonds, written with Daniel Bergstresser of Brandeis University and Jeffrey Wurgler of NYU's Stern School of Business.

While green bonds have been issued by banks and corporations as well, the researchers focused on municipal bonds, which are the most ubiquitous green bonds historically in the United States, and the easiest to track thanks to the availability of government data.

For starters, determining what bonds truly qualify as green—as opposed to just greenwashing—wasn't straightforward.

"There isn't a crisp definition about what is a green bond and what isn't," says Serafeim, a professor in the Accounting and Management Unit. "The test we used was to look at how the money from the bond flows into actual projects, and whether those projects are going to deliver environmental benefits."

The projects include efforts to create alternative energy by building solar panels and wind turbines, as well as projects to improve water efficiency, control pollution, create sustainable agriculture and forestry, or provide infrastructure for electric vehicles.

While not all projects have a climate-change benefit, many help reduce future carbon emissions or even remove carbon emissions from the atmosphere. In addition to looking at bonds self-labeled as green by municipalities, the researchers also considered certification by the nonprofit Climate Bonds Initiative, which provides a Climate Bond Standard (CBS) rating.

Green bonds priced at a premium

In the past eight or nine years, they found, the green bond market has gone from nonexistent to $160 billion. (The first green bond was issued in 2007 by the European Investment Bank.) When the researchers compared green bonds with other bonds issued by the same municipality, they found a slightly lower yield of 6 basis points (.06 percent) for self-identified green bonds, and up to 20 basis points (.2 percent) for certified green bonds. Investors are willing to accept a lower rate of return in exchange for the environmental benefits.

"The story is supply and demand," says Baker. "If there is an element of a security that the investor desires for nonfinancial reasons, it will trade at a higher price than other securities."

In addition, the researchers found that green bonds were more concentrated in their ownership in a small group of investors—reflecting the smaller subset of investors who place value on

environmental benefits, such as funds that have some green or social investing orientation.

While the difference in return is admittedly small, it could be a factor in tipping the scales for municipalities favoring green bonds.

“If I’m an entrepreneur or state government and I have to choose between a project that is green and one that isn’t, one factor in that decision will be the terms at which I can finance it,” Baker says. “That is the sense in which green bonds can theoretically push firms and municipalities in the direction of doing something environmentally friendly.”

HBS Working Knowledge

by Michael Blanding

Feb 8, 2019

Verizon Has Bond Market Seeing Green After Billion-Dollar Deal.

- **Green bond drew orders for eight times offering amount**
- **U.S. companies sluggish to tap $600 billion green-bond market**

Verizon Communications Inc.’s billion-dollar entrance into the green-bond market this week is fueling optimism that more U.S. corporations will begin tapping into the growing pot of money seeking to invest in sustainable projects.

The telecommunications giant on Tuesday issued $1 billion of 10-year green bonds in a deal that drew orders for eight times the amount offered, a person with knowledge of the matter said. The sale was one of the most oversubscribed corporate-bond offerings this year and allowed Verizon to lower its borrowing cost as investors jockeyed for a piece of the debt. Bank of America Corp. and Goldman Sachs Group Inc. managed the sale.

“This really opened up a whole new investor base and funding source for us,” said Jim Gowen, chief sustainability officer at Verizon.

Continue reading.

Bloomberg Markets

By Emily Chasan

February 6, 2019, 7:43 AM PST

Wisconsin Governor Promises to Close ‘Dark Store’ Tax Loophole.

Walmart, Target, and other big-box retailers around the U.S. are deploying “dark store theory” to slash property taxes. Now the state at the center of this fiscal threat may take action.

In November, CityLab investigated the practice of "dark store theory," the novel legal argument big-box retail chains like Walmart, Target, and Menards use to slash their property taxes by assessing active stores as if they were vacant. The practice has resulted in the loss of millions of dollars in taxable value to communities in Wisconsin, Michigan, Minnesota, Indiana, and beyond.

Now Wisconsin Governor Tony Evers is pledging to shut it down: His proposed state budget will close the "dark store" legal loophole.

CityLab's story was followed by additional reports about the issue by the New York Times, Slate, and others. These articles, and the practice itself, have generated vigorous debate about what big-box properties that proliferate across the urbanized U.S. should be worth.

Lawyers representing retailers say that big-box stores are effectively worthless at the point of sale, which should be reflected in the taxes they pay—even while the stores are still active. And many companies file repeat tax assessment appeals until municipalities capitulate. Tax assessors say that this argument defies common sense, and that the lost revenue will eventually force a heavier tax burden onto other homeowners.

State tax boards weighing the two sides have largely been split about who's right. And municipal finance experts have warned that fiscal havoc lies ahead for local governments across the U.S. if the issue isn't resolved by state tax laws.

The commitment to close the loophole by Evers, Wisconsin's newly elected Democratic leader, also follows statehouse lobbying by the Wisconsin League of Municipalities and the Wisconsin Counties Association, two groups representing the interests of local units that levy property taxes. In 2018, state lawmakers considered a bill that would have blocked the practice, but the measure failed to reach a vote.

"Having large big box stores have the property tax levied at a level as if the building is empty is absolutely a non-starter with me," he told reporters this week. "It should be fair for all and in order to do that we have to close that loophole."

Still, this element of Evers' budget proposal is likely to find a challenger in Wisconsin Manufacturers & Commerce, the trade group representing retailers that have benefited from this tax appeal tactic. And Indiana, the only state that has enacted legislation to combat dark store theory, has continued to see challenges by commercial property tax payers using the same type of argument.

To Robert Hill, a Minnesota-based attorney who is perhaps the nation's top lawyer propagating dark store theory on behalf of big-box stores, the issue is a matter of rebalancing the property tax burden that currently weighs too heavily on successful businesses. Corporations must defend themselves from being "discriminated against" by assessors, Hill told CityLab last year.

"We eat what we kill," he said. "We kill only because they need to be killed."

Evers' budget proposal is expected later this month.

CITYLAB

LAURA BLISS FEB 8, 2019

BDA Participates in U.S. Chamber National Infrastructure Forum.

On February 5, 2019, the U.S. Chamber of Commerce hosted a major policy event titled, "America's Infrastructure: Time to Invest," in partnership with the Bond Dealers of America, at the Chamber Headquarters in Washington, D.C. The forum focused on encouraging federal investment in infrastructure, specifically to increase economic growth while updating the country's lagging infrastructure systems.

The full webcast of the event can be viewed here. ***BDA's participation begins at the 2:09:42 mark.***

BDA Participation

BDA member Alan Polsky, SVP, Dougherty & Company, LLC, participated in a panel discussion alongside Councilwoman Melanie Piana, City of Ferndale, Michigan and Jennifer Aument, President, Transurban. The panel titled, "Utilizing Public-Private Partnerships" focused on the P3 model and how it can be successful in the United States and on how bonds can be used more efficiently to supplement infrastructure investment in the U.S., including within the P3 model and other cost-savings they may present to local, state, and federal government.

Chairman Peter Defazio (D-OR) of the House Transportation and Infrastructure Committee spoke briefly before the panel and set the stage to discuss the need for variety in financing mechanisms needed to tackle our nations infrastructure deficit. Mr. Polsky built off these remarks and expounded on BDA priorities as cornerstones to any federal infrastructure package.

Mr. Polsky's remarks focused primarily on the reinstatement of tax-exempt advance refundings, expansion of private-activity bonds, direct-pay bonds and the continued protection of the tax-exempt status of municipal bonds. Also highlighted was the ability for bonds to finance infrastructure at little to no cost to the federal government, an important point as the national debt continues to climb.

Bond Dealers of America

February 6, 2019

Fitch Rtgs: Oakland Teachers Strike Vote Will Not Trigger Downgrade; Highlights Pressures.

Fitch Ratings-San Francisco-07 February 2019: Fitch Ratings does not expect to take rating action on the Oakland Unified School District's 'BBB+' Issuer Default Rating (IDR) based solely on the Oakland Education Association's (OEA) vote to authorize a strike as early as Feb. 15. The IDR, which already incorporates slow revenue growth and pressured budgets, assumes the district will maintain solid expenditure flexibility and adequate financial resilience throughout economic cycles, including at least a 2% reserve for economic uncertainties as required by the state.

The strike vote comes after months of negotiations, mediation and fact finding have failed to settle new agreements for contracts that expired June 30, 2017 and as the district is attempting to reduce ongoing expenditures by about $30 million in fiscal 2020 (equal to about 7% of estimated fiscal 2020 expenditures). Fitch will incorporate the impact of any eventual agreement and other implications of the labor impasse on the district's ability to balance its fiscal 2020 and 2021 budgets and, more

broadly, on its expenditure flexibility and expectations for operating performance over time.

OUSD's planned expenditure reductions would help accommodate cost increases associated with the final agreement. The district had offered a 5% pay increases over three years which OEA rejected. OEA is seeking a 12% pay increase over three years. The district estimates each 1% salary increase costs about $1.9 million per year for teachers and $3.5 million per year for all employees.

Based on unaudited information, the district ended fiscal 2018 with a $17.4 million unreserved fund balance, equal to 3.3% of spending, an improvement from the $3 million, or 0.6% at the end of fiscal 2017.

Operating pressures do not affect the 'AAA' rating and Stable Outlook that Fitch maintains on the district's unlimited tax general obligation (GO) bonds, which are based on a dedicated tax analysis, without regard to the district's financial operations. The distinction between the 'AAA' ratings on the GO bonds and the 'BBB+' IDR reflects Fitch's assessment that the pledged special revenues for repayment of the GO bonds meet the definition of "pledged special revenues" under the U.S. Bankruptcy Code, and therefore bondholders are legally insulated from any operating risk of the district.

For more information on Fitch's analysis of the OUSD, see "Fitch Affirms Oakland USD, CA's GOs at 'AAA' and IDR at 'BBB+'; Stable Outlook," dated April 18, 2018.

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Fitch Ratings: Alaska Proposals to Limit Budget Flexibility Could Pressure Rating.

Fitch Ratings-New York-05 February 2019: Potential amendments to Alaska's constitution proposed by the governor last week would constrain the state's ability to proactively manage its financial operations and could result in negative pressure on the state's Long-Term 'AA' Issuer Default Rating

(IDR)/Stable Outlook, according to Fitch Ratings.

The proposed amendments would require voter approval for new or increased taxes; enshrine the Permanent Fund (PF) dividend (PFD) formula, which is currently controlled by state statute, in the state constitution; place a more restrictive cap on annual growth in state expenditures; and prioritize the deposit of any fiscal year's unappropriated state general fund surplus to the PF ahead of the budget reserve fund, reducing funds available to cure any future budget shortfalls.

Fitch believes the enactment of these amendments, which require approval by two-thirds of each legislative chamber and a state-wide vote, could weaken assessments for key rating drivers related to budget control (i.e., independent legal ability to raise revenues, expenditure flexibility, financial resilience, and budget management), and therefore, exert pressure on the 'AA' IDR for the state. Removing legislative discretion over the PFD formula alone would require a $1.9 billion dividend payment to residents in fiscal 2020, well ahead of the $1.2 billion payment proposed by the prior governor in his $6.9 billion executive general fund budget. Barring other offsetting action, this would result in a more significant draw on the approximate $16 billion PF Earnings Reserve (PFER) than currently expected. The maintenance of reserves is a significant rating consideration for Alaska given the volatility inherent in the economic and resource base (see "Fitch: Depletion of Alaska's PF Earnings Reserve a Possibility" dated July 2, 2018).

Separate legislation submitted on behalf of the governor seeks to appropriate additional funds from the PFER over the next several years to retroactively restore residents' full dividend payments pursuant to the dividend formula; this amount has been reduced in each of the last three fiscal years as part of the state's budget balancing measures. Passage would result in larger PFD payments from the PFER for eligible residents in fiscal years 2020 through 2022. The state estimates restoration payments would total a maximum of $2.3 billion based on proposed eligibility guidelines.

Under the PF Protection Act of 2018, the state established annual draws on the PFER as a means for addressing ongoing projected budget gaps. Fitch's analysis at that time determined that eventual depletion of the PFER was likely in the long term, and noted that prudently structured draws would be necessary to sustain the assets. Enactment of the proposed measures would be expected to escalate depletion of the PFER, barring other moves to reduce the anticipated use of PFER funds to support general operations.

Governor Dunleavy's fiscal 2020 budget proposal is expected to be presented to the legislature on February 13 for their consideration. The governor has publicly committed his administration to delivering a balanced budget without the use of budget reserve funds. In the context of crude oil prices that are forecast at $64/barrel, as compared to much higher historical averages, there is the potential for significant spending cuts. Fitch will evaluate the details of the budget once it is available with an eye toward the critical drivers that have sustained the state's 'AA' IDR: substantial independent management power over revenue raising and expenditure decisions and maintenance of sizable reserves to offset volatility in key revenue sources.

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Fitch Ratings: TX Tax Proposals Could Limit Local Government Revenue Flexibility.

Fitch Ratings-Austin-07 February 2019: Bills recently filed in both chambers of the Texas legislature (HB 2 and SB 2) propose to significantly lower the rollback property tax rate for local Texas taxing entities with a certain amount of annual tax revenue and require ratification elections if rollback rates are exceeded. According to Fitch Ratings, this legislation if enacted could negatively impact Fitch's assessment of certain local governments' ability to independently raise revenues for operations–a component of one of Fitch's four key rating drivers in its U.S. public finance tax supported rating criteria.

The rollback rate in Texas currently is a calculated rate that produces an increase in operating tax levy of 8% from the prior year's levy. If local taxing jurisdictions exceed the rollback rate they are subject to a petition and, if the petition garners enough signatures, an election to reduce the rate back to the rollback rate. HB 2 and SB 2, which are backed by the governor, lieutenant governor and speaker of the house, would both reduce the rollback rate from 8% to 2.5% for local taxing units with combined annual property and sales tax revenue of at least $15 million. Taxing units below the $15 million threshold would retain the current 8% rollback rate. School districts, which have separate operating tax rate constraints, are excluded from the proposed changes. The bills would also require a ratification election–replacing the current petition process–if any local taxing unit exceeds its rollback rate (either 2.5% or 8%). Local rollback petitions and elections historically have been relatively rare.

In analyzing a local government's revenue framework, Fitch considers the entity's ability to independently increase operating revenues (without voter or other jurisdiction approval). For Texas cities, counties, community college and special districts, Fitch views the current rollback tax structure as only a potential threat to revenue-raising ability, noting that a restriction on tax revenue increases would require both a successful petition effort and subsequent election. Fitch considers the limit on operating revenues to be the more restrictive of the constitutional and statutory tax limits (e.g. $2.50 for cities, $0.80 for counties, $1.00 for community college districts), or the voted or charter caps on local government tax rates and/or revenue growth. Nearly all of the Texas local governments rated by Fitch are well below their tax rate or revenue limits. As a result, the assessments for independent revenue-raising ability for Texas cities, counties, community college and special districts are with few exceptions at the 'aaa' level.

The magnitude of the reduction to independent revenue-raising ability for targeted Texas local governments will depend on the requirements of any legislation ultimately signed into law. Previous efforts to reduce the rollback rate have failed, due in no small part to concerted opposition from local governments around the state; lobbying efforts to defeat the current proposal are already underway. Legislators also may negotiate a reduction in the rate to a level between the current 8%

and 2.5%; other bills have been introduced that would reduce the rollback rate to 4%.

Both the current and proposed rollback rate calculations consider an entity's tax base growth, which can reduce the revenue impact. Most local governments also retain the ability to increase non-tax operating revenues (e.g. fines, service charges and fees), which could offset the impact of a lower rollback rate as it relates to revenue-raising ability. In addition, Fitch considers the amount that can be raised relative to expected revenue volatility in a typical downturn; as a result, application of a uniform rollback rate limitation would not have the same effect on all governments. Finally, the assessment of independent revenue-raising ability is only one component of Fitch's analytical framework. The strength or weakness of other considerations (revenue growth prospects, expenditure flexibility, long-term liability burden, and operating performance) will determine how much a shift in the revenue-raising ability assessment will affect an entity's overall rating.

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Fitch Ratings: TX K-12 Funding Proposals Would Boost Rev Expectations.

Fitch Ratings-Austin-05 February 2019: Public school funding proposals from both the Texas House of Representatives and Senate for the 2020-21 biennium include sizable increases, which if realized would boost near-term revenue growth expectations for Texas school districts, according to Fitch Ratings.

Fitch's U.S. public finance tax-supported rating criteria consider the prospects for future revenue growth in assessing one of its four key rating drivers. Of the nearly 100 Texas districts that Fitch rates, 80% currently have either an 'aaa' or 'aa' revenue growth prospect assessment. The primary considerations for school district revenue growth are enrolment and state funding trends, and to a lesser extent local economic/tax base growth. The limits on Texas school districts' ability to increase local operating tax revenue (unless voter approved) typically result in a weak assessment of independent revenue-raising ability. However, the state's responsibility for and control over education funding overall reduces the emphasis on the lack of local revenue control when assessing a district's revenue framework.

The House proposal would boost state funding for K-12 education by more than $7 billion and contribute to a nearly 17% jump from the last biennium to more than $70 billion in total funding

(state, local and federal). The proposal specifies part of the funding be used for property tax relief, salary increases and other specific programs. The proposed $6 billion Senate increase includes $3.7 billion for a $5,000 teacher pay raise and another $2.3 billion for property tax relief, if reforms to the current equalization (recapture) system are enacted.

Several factors likely contributed to the increased K-12 funding proposals introduced as the 2019 session gets underway. First, the state's continued strong economic growth produced an 8% increase in estimated general purpose revenues for the upcoming biennium (total revenue estimate of $119 billion). Also, legislators seem to be responding to ongoing criticism about local property tax burdens on homeowners and businesses and increasing recapture burdens on property wealthy districts. Finally, a 2016 Texas Supreme Court ruling found the current funding system constitutional but flawed and advocated for major reforms. The state's K-12 finance system has been the subject of periodic lawsuits over the past 50 years, mostly aimed at questions of equity and adequacy.

Fitch will monitor the fate of these funding proposals as the legislative session progresses through the spring. The session is scheduled to end May 27th.

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Investors Put a Price on Michigan State's Sex-Abuse Settlement.

About $323 million of taxable bonds are sold at a not-too-punitive rate.

Michigan State University on Thursday sold about $323 million of taxable bonds to fund a settlement with the more than 330 women and girls who were victims of serial sex abuser and campus doctor Larry Nassar. It was never truly a matter of whether the deal would get done, but at what cost to the school.

Now there's an answer: 4.5 percent over almost 30 years.

That was the top yield on the $304 million of debt that matures in 2048. It's about 150 basis points above the going rate on 30-year U.S. Treasuries. For context, the spread is 134 basis points on a Bloomberg Barclays index of taxable municipal bonds, which averages about 22 years to maturity and counts Illinois as its largest component. The state, of course, is rated just one step above junk by Moody's Investors Service and S&P Global Ratings, while Michigan State has the third-best investment grade rating. In another comparison, top-rated Texas A&M University issued 30-year taxable securities last month at a spread 25 basis points less than Michigan State.

I wrote in June that "it's an open question whether investors will show up for this offering as they would any other." It's a good thing that the proceeds will compensate Nassar's victims, but it's easy to see why investors might pass on lending to an institution where at least 14 representatives reportedly received reports of Nassar's crimes over the two decades before his arrest. Incidentally, that question was never put to the test until now, as Bloomberg News's Danielle Moran reported.

> Even though the school had always intended a public sale of municipal bonds, it was forced to seek private lenders because terms of the settlement required payment to the victims within 10 days of court approval.
>
> "It is not logistically possible to issue public debt and close in that time period," Mark Haas, vice president for finance and treasurer at Michigan State said in an emailed statement.
> …
>
> RBC Capital Markets was the original lender in December. It in turn sold the loan to its affiliate Royal Bank of Canada, according to a filing.

The results of the sale show that there's almost always a clearing price in the market, and often when things are operating smoothly, it's lower than expected. Suppose the school could have priced the 30-year debt at a yield 15 basis points lower if the proceeds weren't tied up in the Nassar scandal, which Moody's says raises "potentially material financial and reputational risks." Roughly, that comes out to $456,000 a year in higher interest costs. For a 50,000-student university with a $2.5 billion in operating revenue, that's easily manageable.

For bond investors, it usually takes a direct threat to getting paid back to really put the brakes on any sort of deal. In one high-profile example in 2015, Louisiana State University took the rare step of scrapping a $114.5 million offering. Buyers were spooked by talk that because of state budget cuts, it was exploring the option of financial exigency, declared when schools face insolvency.

Michigan State will try to come to terms with Nassar's crimes by paying what appears to be a slight premium to fund its $500 million settlement. More important, as I said more than seven months ago when the sale was first in the works, I hope this public offering is one of the last steps for the victims to get some closure and move forward.

Bloomberg Opinion

By Brian Chappatta

February 7, 2019, 11:51 AM PST

How Amazon's Booming NYC Neighborhood Got Tax Perks Meant for the Poor.

City officials aligned opportunity zones with potential sites. Retailer now says it won't take advantage of tax breaks.

The Amazon.com Inc. executives looked battered after more than an hour of questioning last week about their plans to build an office in New York. City Council members thrashed the retailer for its resistance to unions, working conditions at warehouses and its founder's wealth. The responses drew laughter from the balcony.

So when Jimmy Van Bramer, who represents the Queens neighborhood where Amazon decided to locate its new office, raised the issue of a suite of generous tax breaks the project was eligible for, it was an opportunity to offer a satisfying answer.

"We will not be using the opportunity zone on this project," Holly Sullivan, Amazon's head of economic development, said at the Jan. 30 hearing.

Continue reading.

Bloomberg

By Caleb Melby and Lauren Leatherby

February 8, 2019, 2:00 AM PST Updated on February 8, 2019, 9:32 AM PST

S&P Webcast Replay: 2019 U.S. State and Local Government Outlooks

Jan. 15, 2019 | New York, NY

S&P Global's state and local government sector leaders held a live, interactive webcast on Tuesday, January 15 at 2:00 p.m. Eastern Standard Time for a discussion of our 2019 outlook . States sector lead Gabe Petek discussed the implications of decelerating economic growth in 2019 to state finances and credit quality. The webcast also featured our Local Government sector leads: Jane Ridley who provided our views on how pressures looming in 2019 will not impact local governments uniformly; Geoff Buswick gave our perspective on how disruptors like cyber security and LIBOR transitions could affect credit quality; and Lisa Schroeer discussed how S&P Global Ratings incorporates ESG factors and issues to watch in the coming year.

View The Webcast Replay

S&P Webcast Replay: 2019 U.S. Public Power and Electric Cooperative Outlook

Jan. 30, 2019 | New York, NY

S&P Global Ratings U.S. Public Finance team held a live, interactive webcast on Wednesday, January 30, 2019 at 2:00 p.m. Eastern Standard Time for a discussion on the U.S. Public Power and Electric Cooperative sector outlooks.

View The Webcast Replay

S&P Webcast Replay: 2019 U.S. Municipal Housing Outlook

Feb. 6, 2019 | New York, NY

S&P Global Ratings' U.S. Public Finance Housing team held a live, interactive webcast on Wednesday, February 6, 2019 at 2:00 p.m. Eastern Standard Time for a discussion on the U.S. Municipal Housing sector outlook.

View The Webcast Replay

S&P Webcast Replay: Green Evaluations in the North American Water Utilities Sector

Nov. 12, 2018 | New York

S&P Global Ratings leading analysts' from the Sustainable Finance team held a live interactive webcast on Monday, November 14, 2018 at 2:00 p.m. Eastern Standard Time, where they provided an analytical overview and examples of S&P Global Rating's Green Evaluations completed for water utilities.

View The Webcast Replay

S&P Webcast Replay: Green Evaluations: Airports

Nov. 7, 2018 | New York

S&P Global Ratings analysts from the Sustainable Finance team held a live, interactive webcast on Wednesday, November 7, 2018 at 3:00 p.m. Eastern Standard Time, where they provided an analytical overview and shared examples of S&P Global Rating's Green Evaluations completed at airports.

View The Webcast Replay

Webcast Replay: Priority-Lien Tax Revenue Debt - Final Criteria

Oct. 25, 2018 | New York

S&P Global Ratings held a live, interactive webcast on Thursday, October 25 at 12:00 p.m. to discuss our recently released final criteria for Priority-Lien Tax Revenue Debt. We covered the final criteria in detail, the potential impact on outstanding ratings, and changes from the RFC.

View The Webcast Replay

Port KC Seeking Financial Advisor for Missouri River Terminal.

The Port Authority of Kansas City, Missouri (Port KC), requests submissions of proposals for financial and commercial advisor to redevelop a portion of Port KC property as an inland intermodal/multi-modal port as a public-private partnership.

Learn more here.

NCPPP

FEBRUARY 9, 2019

P3 and Your Tax Dollars: Federal Government Makes Next Foray into Public Private Partnerships.

In an interesting turn, the U.S. Army Corps of Engineers (the "Corps") published a Request for Information On Conceptual Public Private Partnership Delivery of Specific Corps Projects. 84 Fed. Reg. 1084-85, Feb. 1, 2019, here. Under this RFI Notice, the Corps has been directed to create a pilot program on P3s to try and determine the viability of different and new (at least new to the Government) delivery methods. It is the hope that these "new" methodologies will result in reduced cost and time impacts to project deliveries.

P3s, like the name suggests, are partnerships between, in this instance, a federal agency and private/commercial sector partners in which the agency retains ownership of the facility or system, but the private partner invests capital to design, develop and operate the facilities, typically with a revenue stream in mind. *See e.g.*, GAO GGD-99-23. These may relate to operate and maintain ("O&M"); operate, maintain, and manage ("OM&M"); or other types of lease/develop/operate vehicles, to name just a few. Typically, the private partner builds, maintains, and operates the facility for a fixed number of years through a contract vehicle in return for part of the revenue stream. At the end of that term, the asset is either returned to the agency, or the contract vehicle is renewed or replaced.

While the Government has dabbled with P3s in the past, particularly with base housing in which private entities build, operate, maintain and oversee military family housing on federal land, the Government has largely taken a very hands-off approach to P3s. In the past the Office of Management & Budget frowned upon P3s as they, in effect, give away (albeit temporarily but for a long term) federally-owned property. With the turn of the century, however, Congress provided statutory authority for certain agencies to enter into P3s (including the National Park Service, Veterans Affairs, and others).

In summary, this initial foray by the Corps is seeking submission of proposals to develop the

program in which the Corps identifies up to ten P3 pilot projects. The initial screening criteria consist of:

(1) The P3 proposal:

(a) Has a construction cost in excess of $50 million;

(b) Has non-Federal sponsor support;

(c) Includes design, build, finance, operation and maintenance (DBFOM) or some combination thereof for Federally authorized projects;

(d) Accelerates project delivery; and

(e) Has the ability to generate revenue or leverage non-Federal funding sources.

(2) Existing authorities are sufficient to allow the P3 project to be completed.

(3) A qualitative assessment demonstrating that the P3 will deliver the project faster and/or more cost effectively than traditional delivery.

The Selection Criteria consist of the following:

(1) Return on Federal Investment.

(a) P3 project proposals will be evaluated and ranked on the basis of Return on Federal Investment (ROFI). ROFI will be calculated by annualizing the total project benefits and Federal costs utilizing the current discount rate, and applying the formula: (Benefits & Federal Costs)/(Federal Costs).

(b) For any P3 project where it has been determined that a reduction in the non-Federal share is warranted with authority provided in 33 U.S.C. 2213, the ROFI calculation will be adjusted to account for those modifications and address concerns pertaining to equity.

(2) Replicability: Project proposals that are replicable, meaning the proposed P3 structure or underlying concepts may be applied to other prospective projects.

(3) Reliable Funding Sources: Reliable non-Federal funding sources for the design, construction, operation and maintenance of Federally authorized water resource projects are identified.

(4) Risk Allocation: Project effectively allocates delivery and performance risk to non-Federal entities and minimizes Federal direct and contingent liabilities associated with the project.

Interestingly, based on prior research, the Corps recognizes certain “key known challenges”, which are typical to most government programs. These include: “(1) [i]nability to collect, retain and reinvest fees; (2) inability to make commitments on future appropriations; and (3) enabling framework and authorities to implement P3 projects.”

The Corps’ Notice keeps the type and size of the projects sought open, but notes some examples,

including hydropower, navigation systems, ecosystem restoration, flood management, and the like.

While this is both an interesting and strong next step for the Corps (and presumably, by extension, the government as a whole), it is not without significant potential problems and questions that remain. Some fundamental questions and concerns exist from a plain reading of the Notice.

For example, seeking proposals on contracts in excess of $50 million but only providing about 1½ pages of notice and related data is highly problematic. The Notice itself is quite vague and lacks the sort of details that one might expect associated with the sort of spend these projects anticipate. There is also little in the way of investment information, how evaluation will occur (there is reference to an evaluation matrix but it is not included) and what the end deliverable or outcome will be. As a pilot program, there appears to be much asked, but little told. Some pressing questions:

- What is the likelihood of the Corps pursing the projects submitted (recognizing that the offerors/responders are not reimbursed for their proposal responses)?
- How is proprietary information disclosed to be truly protected (recognizing that there are methods under the FAR and FOIA exemption (b)(4) for trade secret and competition sensitive information)?
- Perhaps most vital, is how will the government develop P3 programs given its relatively small experience in both commercial work and in P3s in particular? Where will it develop that expertise?

Hopefully this pilot program creates the first step in learning about the "ins and outs" of P3s; and while this appears to be a good effort, the Corps needs to tread carefully. We will continue to watch and report as further developments occur.

For further insight go to the Corps P3 homepage here.

by Lawrence Prosen

February 11, 2019

Kilpatrick Townsend & Stockton LLP

State and Local Lawmakers Pitch How to Pay for a Big Infrastructure Package.

Congress has little time to reach consensus on ideas like increasing the gas tax and phasing in vehicle miles traveled before the 2020 election cycle shuts their window to fix and modernize everything from roads to water pipes.

WASHINGTON — State and local officials continued to lobby federal lawmakers Thursday on hiking the gas tax in order to help close the nation's $2 trillion infrastructure investment gap over the next decade.

That number comes from the American Society of Civil Engineers, with surface infrastructure accounting for more than $1 trillion of the shortfall. The group estimates $249 billion is necessary to shore up water and port-related infrastructure, while airports need about $100 billion in investment.

The bipartisan National Governors Association has not taken an official position on increasing the gas tax from 18.4 cents per gallon, or 24.4 cents per gallon for diesel, for the first time in 26 years. But Minnesota Gov. Tim Walz joined Los Angeles Mayor Eric Garcetti, both Democrats, in

appearances Thursday before Congress supported a phased approach to fixing the federal Highway Trust Fund.

The Highway Trust Fund is sustained by the gas tax, which hasn't been increased since 1993. Without an injection of billions in additional dollars annually on top of expected user fee revenue, the fund will be broke by 2022, according to the Congressional Budget Office.

Like many others who have looked at the country's infrastructure needs, Garcetti emphasized that a gas tax increase would just be a first step. Eventually, he said the country would need to transition to what is being called "vehicles miles traveled," or a way of taxing how much a car actually drives on the road.

"I would put in a gas tax, find a formula to get a pilot in for vehicle miles traveled and then wean from the first to the second over time as we electrify every vehicle in this country, which is going to happen," Garcetti told the House Committee on Transportation & Infrastructure.

State and local officials in recent weeks have repeatedly underscored that getting Congress to pass an infrastructure package is their main priority. Despite some support from President Trump—who referred to the country's "crumbling infrastructure" briefly in his State of the Union address this week—it is not yet clear what the path forward for a major plan would be. Trump did not outline a particular agenda during his speech, while deep philosophical differences remain in Congress about how to pay for any package. Republican lawmakers in particular have been resistant over the past two years to calls to increase the gas tax.

Both the U.S. Conference of Mayors and National League of Cities support increasing the gas tax, which Garcetti estimated would be needed another five to 10 years.

Vehicle miles traveled, or VMT, measures a vehicle's distance traveled on public roads during a set period, in order to charge drivers a user fee for wear and tear on driving infrastructure. The measure would also capture electric vehicles, whose drivers currently avoid paying the gas tax that feeds the Highway Trust Fund.

ROUTE FIFTY

By Dave Nyczepir,
News Editor

FEBRUARY 7, 2019

Feds Launch New Source for Information About Major Transportation Projects.

Have you ever wished there was a comprehensive, easily accessible project cost database for major US transportation projects? It would be populated following an in depth review of information available from State DOT's and would capture not just the capital cost of the project, but it's operation and maintenance cost and delivery and financing approach. The information could be valuable in many ways, including assessing the project performance outcomes for P3's and non P3's.

As I found out a couple of weeks ago at the Transportation Research Board annual meeting, now there is an internet based, open- source database for this information courtesy of the FHWA's office

of Innovative Program delivery housed in the USDOT Build America Bureau. With assistance from researchers at the University of Maryland, FHWA conducted a rigorous data collection effort for over 130 US transportation projects covering development, procurement, design, construction and operation and maintenance costs. Projects are categorized by type, such as tunnel, bridge, managed lanes and location by region and delivery and financing approach (DB, DBF, DBFOM, CM/GC).

As you can imagine this was a labor intensive effort on the part of the researchers, not just to gather and catalogue the information, but to develop a searchable, user friendly database. Here is the link to the database which you should immediately add to your "favorites" list.

By Barney Allison on February 5, 2019

Nossaman LLP

Some Love for the Infrastructure We Already Have.

Deferred maintenance is beginning to get the attention it needs.

Leaders in Washington, in both the executive and legislative branches, cite infrastructure as a top priority for the new Congress. All agree that the case for serious investment has been made. But while federal policymakers prepare to debate how they might provide more funding for new or improved infrastructure, state and local governments are beginning to tackle the long-neglected issue of deferred maintenance with money, muscle and spreadsheets.

This is an important development after decades of postponing scheduled upkeep and routine repairs on roads, schools, bridges and water lines as pleas for additional funding to maintain these critical workhorse assets were drowned out by the allure of new shiny-pony assets. More and more, public finance officials are taking stock of their existing assets, their condition and the costs to address the consequences of deferred maintenance. These efforts mark a profound change in focus.

One of the forces driving this change is the realization that current accounting practices do not require governments to recognize deferred maintenance obligations as liabilities on their balance sheets. This is similar to the dawning that took place about unfunded public pension obligations, which governments did not begin to book as liabilities until after Government Accounting Standards Board guidance to that effect was issued in 2012.

Like pension debt before, the cost of deferred maintenance has largely gone unmeasured and unreported, with staggering multi-trillion-dollar estimates repeated again and again. No one really knows, though, because there is no standard practice for defining, measuring and reporting deferred maintenance. This led credit ratings agencies to announce last summer that they would begin to focus on deferred maintenance in reviews of municipal debt levels.

Instead of waiting for regulatory directives, some state and local governments are already taking action. At the state level, Alaska, California, Hawaii, Tennessee and Utah, along with the District of Columbia, are among governments that are disclosing deferred maintenance obligations on their balance sheets and in annual financial reports.

To do so, they developed asset inventories and condition-assessment practices — the building blocks for tracking deferred maintenance needs — to make regular calculation of the costs they face in repairing and replacing the assets they own. While more work is needed to standardize how

deferred maintenance is assessed, jurisdictions like these are leading the way toward clearer depictions of maintenance liabilities and more accurate municipal financial reporting.

Even better, credit agencies are rewarding governments for taking charge of deferred maintenance. Case in point: the District of Columbia. All three of the major credit rating agencies raised the District's credit rating on the strength of its plan to fund deferred maintenance, which was developed using D.C.'s centralized system for managing asset inventories, condition assessments and needs prioritization across all departments.

Infrastructure maintenance may never get its due beyond the credit rating agencies' lens — unless John Oliver does a sequel to "Infrastructure: The Movie" — but it is one of government's most critical obligations. Awards and fanfare are rare; maintenance projects are not often given names or tracked by industry market data providers. And our public finance officials are more used to fielding complaints about inconveniences caused by maintenance work than receiving thanks or credit for tackling it.

But there are plenty of deferred maintenance projects that deserve recognition. Here are just a few:

• Libraries: Against an accumulation of $100 million in deferred maintenance needs, the Denver library system is using a $31 million voter-approved bond issue to modernize the central library and the 10 of its 25 regional branches that have gone the longest without renovation. Soon, the some 2,600 patrons who use those branches every day will enjoy updated HVAC systems, elevators, computer access and other basics.

• Roads: The Louisville, Ky., Metro Council developed a "fix it first" strategy expressly to address deferred road maintenance needs. It resulted in 130 roads being repaved, besting all previous efforts. An additional $190 million in street and sidewalk repairs is on deck.

• Levees: In addition to a $100 million repair program dedicated to through-levee conduits that had been compromised by deferred maintenance, the California Department of Water Resources funded an experimental flood control project for the Dos Rios floodplain to test a methodology that reconnects rivers with natural floodplains. It changed hearts and minds not only in California but also in Mississippi and Missouri, where similar projects are now underway.

Notable projects across more infrastructure sectors can be found here. These projects show that in an era of diminished budgets, public finance officials are making the case to taxpayers to take care of the assets we already have. They are increasingly advocating for using tax dollars to fix potholes, dredge port channels, replace pipes, modernize HVAC systems, paint schools, rehabilitate bridges, service parks, green wastewater systems, strengthen levees and fortify dams. Experience has shown that a hundred routine-maintenance projects will yield a much higher return on taxpayer money than any single big, new project ever will.

By taking responsibility for the assets that are delivering services taxpayers need and those that are no longer performing, public officials will be able to make smart decisions about which assets should be repaired, replaced or recycled based on long-term asset management strategies. More importantly, they will be better able to help taxpayers differentiate between fiscal responsibility and political folly in the dialogue on infrastructure.

GOVERNING.COM

By Jill Eicher | Contributor
Director of the Infrastructure Lab at the Bipartisan Policy Center

FEBRUARY 4, 2019 AT 6:15 AM

Rust Belt Cities Should Try Embracing the Suburbs.

Merging aging urban centers with surrounding municipalities shows promise as a path to revival.

Some U.S. cities have seen their fortunes rise in the new economy. Technology hubs such as San Francisco and Seattle, as well as coastal metropolises like New York and Los Angeles, are thriving. But some less-glamorous cities — especially in the Midwest — have been struggling. St. Louis isn't the worst off, but it's definitely in the latter category.

The numbers aren't all bad. Unemployment in St. Louis is low — only about 3 percent. Poverty in the city has fallen slightly, though at 25 percent it's still very high. But people are still streaming out of the city (which may be one reason for the low unemployment rate:

Continue reading.

Bloomberg Opinion

By Noah Smith

February 5, 2019, 7:37 AM PST

Plans to 'Fix the Damn Roads' May Help U.S. Hold Off Recession.

- **States and cities gave expansion biggest tailwind in two years**
- **Tax revenues for states soared 8.8% in the first half of 2018**

Minnesota leaders are starting work on a $2 billion light rail project, the state's largest infrastructure project — and the kind of spending that may help keep recession risk at bay.

Spending by cities and states is a bright spot that could help to extend the expansion, now in its 10th year and within months of becoming the longest ever. Economists see it helping to offset other drag from the trade war, slowing global growth and a fading boost from federal fiscal stimulus and the effects of the longest government shutdown in U.S. history.

States and municipalities contributed 0.22 percentage point to annualized growth in the third quarter, the most in two and a half years, Commerce Department data show. State and local spending will add as much as 0.3 percentage point to growth in 2019 and the first half of 2020, estimates Neil Dutta, head of U.S. economics at Renaissance Macro Research LLC.

Continue reading

Bloomberg Economics

By Steve Matthews and Margaret Newkirk

February 3, 2019

State, Local Leaders Urge Congress to Act on Infrastructure Plan.

SPEED READ:

- **Minnesota Gov. Tim Walz and Los Angeles Mayor Eric Garcetti testified on Capitol Hill Thursday, pleading with lawmakers in Congress to pass legislation that would provide new revenue for infrastructure improvements.**
- **Both the governor and the mayor have pushed for tax increases to fund transportation needs in their own jurisdictions — and have emerged unscathed.**

As the new Congress looks to reignite a national conversation on investments in infrastructure, two politicians — a governor and a mayor — pressed lawmakers Thursday on the importance of raising revenues to fund necessary transportation improvements across the country. Both officials, Minnesota Gov. Tim Walz and Los Angeles Mayor Eric Garcetti, have at points staked their political careers on raising taxes for infrastructure improvements and emerged victorious.

“It’s usually pretty good advice: Don’t run on raising people’s taxes,” Walz told members of the House Transportation and Infrastructure Committee, “except in the case of infrastructure.”

Walz, a Democrat who served in the U.S. House before becoming governor last month, called for raising the gas tax in Minnesota by 10 cents a gallon as part of his campaign. When his opponent ran TV ads attacking him for the proposal, Walz said his own polling numbers actually went up. “People aren’t begging you to raise their taxes, but the way I framed it was, what is your alternative?” Walz said. Voters, he said, “know they’re spending [the money] anyway” in lost time on congested roads and on car repairs.

Congress has struggled for more than a decade to find money to pay for highways, bridges and other surface transportation infrastructure. Both Republicans and Democrats have shied away from raising the gas tax, the traditional way of funding those improvements. Other areas, including locks and dams on rivers, port dredging, and investments in new air traffic control technology, have languished as well.

But industry experts and their allies in Congress hope infrastructure is one area where Democrats, who now control the House, and Republicans, who control the Senate, can find common ground in the new Congress.

President Donald Trump made a similar point during his State of the Union address on Tuesday.

“Both parties should be able to unite for a great rebuilding of America’s crumbling infrastructure,” Trump said. “I know that the Congress is eager to pass an infrastructure bill, and I am eager to work with you on legislation to deliver new and important infrastructure investment, including investments in the cutting-edge industries of the future. This is not an option. This is a necessity.”

But Trump’s brief mention of infrastructure did not give lawmakers any guidance as to what the president wanted to see in an infrastructure package, or what, if anything, he would accept as a way to fund the new spending. The White House released an infrastructure plan last year that would have relied on states and local governments to pay for the vast majority of its spending, but that idea went nowhere in Congress. Meanwhile, Senate Majority Leader Mitch McConnell has been skeptical

of calls from Democrats to pass a major new infrastructure spending legislation.

That leaves the task of fashioning a new infrastructure plan to the House Transportation and Infrastructure Committee. But the most politically dicey question of any new infrastructure plan – how to pay for it – would be up to the House Ways and Means Committee.

How to Rally Voters Around Tax Hikes? 'Keep It Visceral.'

Walz and Garcetti, along with former U.S. transportation secretary Ray LaHood, talked with lawmakers about the nuts-and-bolts of infrastructure concerns, including everything from airport landing fees to state revolving funds to finance local water infrastructure.

But the key to selling the idea to the public, Garcetti said, is to translate all of those policies into real-world changes in people's lives.

"Keep it visceral. Keep it human," he urged. "Don't talk about policies and statistics."

Garcetti noted that he was re-elected even after pushing a half-cent sales tax hike in 2016 to expand rail lines, fix streets and make other transportation improvements in Los Angeles County. The $120 billion ballot measure was the largest local transportation funding measure in U.S. history. But it very nearly failed.

California law required the measure to pass by a two-thirds vote to take effect, because it called for raising taxes. Polling showed that only about 63 percent of potential voters supported it before the campaign launched TV ads. "It was going to be a tough lift," Garcetti told U.S. Rep. Greg Stanton, a former Phoenix mayor. (Stanton successfully ran for re-election as mayor on the same day he pushed a tax increase for light rail expansion and road improvements.)

Garcetti said the Los Angeles ad campaign included the "typical" images and arguments in favor of big infrastructure initiatives: new trains, new roads, workers paving streets and people moving around the city. They explained how many jobs would be created and how much time people would save on their commutes. After two weeks and $5 million worth of ads, support for the measure had dipped to 61 percent, Garcetti said.

"I said, 'Oh no, this thing is going down,'" Garcetti told the committee. "I'd put all my political capital on the line."

Then his campaign consultant suggested a different tack. He told the mayor to get in the car and drive, while the consultant filmed him on his phone. There would be no script.

Not surprisingly, the mayor ran into traffic on the interstate. "Here we are stuck in rush hour traffic," Garcetti says in the video. "The only problem is, it's Saturday afternoon."

The message intrinsically resonated with voters, he told the committee. "Everybody in Los Angeles got that.… They got being stuck in traffic." The measure was approved by 72 percent of voters.

Urging Lawmakers to Act

When it comes to shaping a new federal infrastructure plan, Garcetti encouraged Congress to fund projects that bring in money from a variety of sources, including states, local governments and private investors. He said that programs should reward agencies that innovate, whether by using new technology or creative financing. And the mayor said federal lawmakers should consider paying part of the cost of maintenance for existing infrastructure, to prevent it from decaying further.

LaHood, a former Republican congressman from Illinois who served in the Obama administration, said lawmakers should not settle for little plans.

“It’s got to be big and it’s got to be bold. It can’t be chintzy,” he said. “Everybody knows what the problem is: America is one big pothole.”

To get a new plan signed into law, LaHood urged the House members to get a signal from the White House about what Trump would agree to in the plan. “If President Trump is not with you on this, it will be very difficult to pass through the Senate. [If president is with you] I think he will sell it in the Senate,” LaHood said.

Earlier this week, transportation committee chair Rep. Peter DeFazio told reporters he had not received a commitment from the White House about what it would support. Further complicating matters, many members on the committee from the greater New York area want the plan to include replacements to the century-old rail tunnels between New Jersey and New York’s Penn Station. But Trump has fought the so-called Gateway Program at every turn.

LaHood urged the lawmakers to move quickly with their plans. “We have a very short window,” he said. “If it doesn’t happen this year, folks, it doesn’t happen until after another presidential campaign.”

GOVERNING.COM

BY DANIEL C. VOCK | FEBRUARY 7, 2019

Association Press Congress for Bipartisan Infrastructure Revamp.

A day after President Trump called for improvements to the nation’s infrastructure in his State of the Union address this week, a coalition of more than 150 associations appealed to Congress for a bipartisan infrastructure bill, noting wide support for such a measure.

Even in an era of divided government, common ground can be reached on some of the nation’s priorities—in particular, a wide range of needed infrastructure improvements, a coalition of associations told congressional leaders in a letter this week.

More than 150 organizations signed on to the letter, calling for a “bipartisan, comprehensive package that transforms U.S. infrastructure systems beyond the status quo and maintains U.S. competitiveness in a 21st-century economy.” The Infrastructure Working Group, led by the National Association of Manufacturers and the Associated General Contractors of America, warned that a failure to invest risks increasing an already present “infrastructure deficit.”

“As this challenge persists and worsens, we encourage you to develop and advance a bipartisan infrastructure investment package that will improve the safety, reliability and efficiency of our nation’s infrastructure,” the coalition said in the letter [PDF].

Other groups signing the letter included the American Beverage Association, the American Society of Civil Engineers, the International Association of Fire Chiefs, the National League of Cities, and the U.S. Travel Association.

The group called for legislation to address six specific needs: an increase in direct federal

infrastructure investment; a remedy for shortages in existing funds; stronger financial tools used for infrastructure investment, such as municipal bonds; more opportunities for private investment in infrastructure projects; an easier federal permitting process; and greater collaboration among all levels of government and between the public and private sector.

In a post on NAM's Shopfloor website, Robyn Boerstling, the association's vice president of infrastructure, innovation, and human resources policy, noted that all sides understand the need for action.

"Manufacturers, Congress, and the president all agree the failure to upgrade U.S. infrastructure threatens U.S. economic competitiveness," she wrote. "Now is the time for the business community, labor organizations, Republicans, and Democrats to work together to pass an infrastructure bill."

It's widely perceived that 2019 offers the best opportunity to pass infrastructure legislation during the current administration—though it faces many hurdles—and it was a key point in President Trump's State of the Union address this week, though his speech was light on details.

ASSOCIATIONS NOW

BY ERNIE SMITH / FEB 8, 2019

Highway Backers Seek Proposals, Revenue for Trump Infrastructure Plan.

President wants Congress to unite to fix 'crumbling infrastructure,' but advocates say questions over revenue sources persist

Transportation advocates said they are happy to see President Trump raise the need for infrastructure investment in his State of the Union speech, but they also are anxious to see concrete plans and funding for improvements to U.S. roads, bridges and ports.

"It's time to stop talking about investing in infrastructure and get to work fixing it," said Dave Bauer, chief executive of the American Road & Transportation Builders Association, one of several trade groups that have been frustrated by the inaction in Washington despite broad bipartisan support for infrastructure spending.

The president in his address Tuesday night told lawmakers both parties should "unite for a great rebuilding of America's crumbling infrastructure."

"I know that Congress is eager to pass an infrastructure bill," Mr. Trump said. "And I am eager to work with you on legislation to deliver new and important infrastructure investment, including investments in the cutting edge industries of the future. This is not an option, this is a necessity."

Mr. Trump, who has said he supports spending $1 trillion on infrastructure, offered no details, however, and didn't mention the spending plan for transportation programs his administration submitted in 2018.

An early draft of the address contained a line in which the president would urge Congress to "pass my proposal" for rebuilding the nation's infrastructure, an administration official familiar with the drafting process said before the speech. When other officials saw the draft, they urged that the line be deleted because the president doesn't actually want Congress to pass the only infrastructure

proposal his administration has produced.

Mr. Trump has continued to tell aides and officials that he "hates" central elements of the 2018 infrastructure plan, especially public-private partnerships, according to two people familiar with the speech drafts. The plan would have required cities and states to put up at least 80% of the cost of the plan, likely pushing local government into the arms of private financiers.

That will leave Congress to wrestle with the gap between anticipated revenue and plans for a new spending once the existing $305 billion highway bill passed in 2015 expires next year. Many building programs are supported by the Highway Trust Fund, which gets its revenue from federal fuels taxes, but the flow of money into that fund has lagged behind needs, highway groups say, because the fuel taxes haven't been raised in nearly 25 years while improved vehicle efficiency has cut into gasoline and diesel consumption.

Congress has periodically pushed general government revenues into the trust fund to make up for shortfalls, and spending advocates believe the fund will need another infusion as soon as next year.

Chris Spear, chief executive of the American Trucking Associations, said lawmakers must address the revenue gap to meet the country's needs. "A win on this issue will require real investment, not budgetary gimmicks as tried in years past," Mr. Spear said in a statement.

The Wall Street Journal

By Paul Page

Feb. 6, 2019 11:14 a.m. ET

—Ted Mann contributed to this article.

- Securities and Exchange Commission Amends and Updates Rule 15c2-12: K&L Gates
- What Do the SEC's New Continuing Disclosure Requirements Mean for Governmental Borrowers? – Miller Canfield
- Issuers Not Clear On Upcoming 15c2-12 Amendments
- Fitch Ratings Publishes Updated Criteria for US Variable-Rate Demand Obligations & Commercial Paper.
- GFOA Report: Infrastructure Funding in the New Budget Environment.
- Senators, House Members Request Clarity from Treasury on OZ Issues.
- Novogradac 2019 Opportunity Zones Spring Conference.
- And finally, Liar, Liar, Oh Crap, He's Not Lying! is brought to us this week by *Sikorjak v. City of New York*, in which dude's pants literally caught fire as he was using a cutting torch. One co-worker instructed him to "stop, drop, and roll" in lieu of the fire extinguisher for which they were frantically searching. Thanks, dude, super helpful. The plaintiff testified that he eventually put out the fire by covering his leg with clay. The record is silent at to whether he took advantage of the makeshift kiln to craft one of those lumpen ashtrays we used to fashion in Arts & Crafts at school back in the day to take home to the folks. Before, you know, it became clear that perhaps the local school district shouldn't be sanctioning smoking.

ZONING & PLANNING - FLORIDA

City of Miami v. AIRBNB, Inc.

District Court of Appeal of Florida, Third District - December 5, 2018 - So.3d - 2018 WL 6332240 - 43 Fla. L. Weekly D2700

Online hosting platform that matches guests with short-term rentals filed action against city, seeking temporary injunction in response to city's adoption of resolution affirming enforcement of zoning regulations as to short-term and vacation rentals.

The Circuit Court entered order granting emergency motion for temporary injunction, enjoining city from prohibiting any vacation or short-term rental in suburban residential zone, and from requiring public to provide names and addresses as condition of right to make public comment at City Commission meetings. City appealed.

The District Court of Appeal held that:

- City ordinance prohibiting certain short-term and vacation rentals in suburban residential zone was not preempted by statute precluding prohibition of vacation rentals;
- City's official interpretation of city ordinance was preempted by statute to extent such interpretation went beyond restrictions in city ordinance;
- Temporary injunction, enjoining city from prohibiting any vacation or short-term rental in suburban residential zone, was overbroad; and
- Temporary injunction, enjoining city from requiring public to provide names and addresses as condition of right to make public comment at City Commission meetings, was overbroad.

City ordinance prohibiting short-term and vacation rentals in suburban residential zone that convert a property's use to anything other than "predominantly permanent housing," was not preempted by statute precluding prohibition of vacation rentals, and regulation of frequency or duration of vacation rentals, where ordinance was identical in its material provisions to zoning code in effect prior to effective date of statute.

City's official interpretation of city ordinance, prohibiting short-term and vacation rentals in suburban residential zone that convert a property's use to anything other than "predominantly permanent housing," was preempted by statute precluding prohibition of vacation rentals, and regulation of frequency or duration of vacation rentals, to extent such interpretation went beyond restrictions in city ordinance; official interpretation declared that using a single family residence or two family-housing within a single family neighborhood to provide rental accommodations for anything less than one month violated city ordinance.

Temporary injunction, enjoining city from prohibiting any vacation or short-term rental in suburban residential zone, was overbroad; state law did not preempt city ordinance prohibiting short-term and vacation rentals in suburban residential zone that convert a property's use to anything other than "predominantly permanent housing," and city's official interpretation of ordinance was only preempted to extent it went beyond restrictions in city ordinance.

Temporary injunction, enjoining city from requiring public to provide names and addresses as condition of right to make public comment at City Commission meetings, was overbroad, where injunction was intended to address concern that city, which had adopted resolution affirming enforcement of zoning regulations as to short-term and vacation rentals, would take heightened enforcement measures against property owners who spoke in favor of vacation rentals.

PENSIONS - MASSACHUSETTS

Essex Regional Retirement Board v. Swallow

Supreme Judicial Court of Massachusetts, Essex County - January 18, 2019 - 481 Mass. 241 - 114 N.E.3d 581 - 2019 Employee Benefits Cas. 17, 262

Police officers appealed decisions of regional retirement board determining that officers forfeited their pensions through misconduct.

The District Court reversed. The Superior Court Department certified officers' petitions and affirmed District Courts' decisions. Board appealed. The Appeals Court found board's determinations were supported by substantial evidence. Officers sought certiorari review.

The Supreme Judicial Court held that forfeiture of officers' pension allowances was not legally tenable.

Forfeiture of officers' pension allowances was not legally tenable, even though their conduct in connection with their criminal activities was reprehensible, when there were neither factual links, nor legal links between the officers' positions and their convictions; police sergeant was charged with several crimes related to the discharge of his personal weapon, and state trooper pleaded guilty to a charge of using the internet to attempt to coerce and entice a child under the age of 18 years to engage in unlawful sexual activity.

TORT CLAIMS - NEW JERSEY

O'Donnell v. New Jersey Turnpike Authority

Supreme Court of New Jersey - January 14, 2019 - A.3d - 2019 WL 179054

Surviving spouse and mother of automobile accident victims brought action against New Jersey Turnpike Authority (NJTA) to recover for wrongful death in head-on collision with ambulance after crossing into opposite lane of traffic.

The Superior Court denied NJTA's motion to dismiss and granted cross-motion to file late notice of claim. NJTA appealed, The Superior Court, Appellate Division, reversed. Spouse's petition for certification was granted.

The Supreme Court of New Jersey held that spouse demonstrated extraordinary circumstances for filing late notice of claim.

Any doubts as to whether extraordinary circumstances exist should be resolved in favor of application of extraordinary circumstances exception allowing late notice of claim under Tort Claims Act; generally, Supreme Court examines more carefully cases in which permission to file a late claim has been denied than those in which it has been granted, to the end that wherever possible cases may be heard on their merits.

Surviving spouse and mother of automobile accident victims involved in collision with ambulance after crossing over to opposite side of Turnpike demonstrated extraordinary circumstances for filing late notice of claim against New Jersey Turnpike Authority (NJTA), where spouse quickly pursued claims against NJTA in good faith and identified it as responsible party in properly completed notice of claim, but her attorney improperly served state, ambulance driver served timely notice of claim on

NJTA listing exact circumstances and same theory of liability about missing safety barriers, and spouse pursued statutory procedure for permission to file a late notice of claim within one year of accident.

LIABILITY - NEW YORK

Sikorjak v. City of New York

Supreme Court, Appellate Division, Second Department, New York - January 9, 2019 - N.Y.S.3d - 2019 WL 138357 - 2019 N.Y. Slip Op. 00157

Worker brought action for negligence and violations of Labor Law against city, city department of transportation, and general contractor seeking to recover damages for personal injuries sustained while demolishing a concrete wall at ferry terminal for his employer.

Following jury trial, the Supreme Court, Richmond County, entered judgment in favor of defendants. Worker appealed.

The Supreme Court, Appellate Division, held that:

- Defendants were not liable for negligence or violation of workplace safety statute;
- Issue of whether lack of nearby fire extinguisher was a substantial factor in causing injuries was for jury; and
- Jury's determination that defendants were negligent but that their negligence was not proximate cause of injuries was not contrary to weight of evidence.

BALLOT INITIATIVES - WASHINGTON

State v. Evergreen Freedom Foundation

Supreme Court of Washington - January 10, 2019 - 432 P.3d 805

State brought regulatory enforcement action against foundation that provided pro bono legal services in support of local initiatives, alleging failure to report independent expenditures as required by Fair Campaign Practices Act (FCPA) and seeking imposition of a civil penalty and injunctive relief.

Foundation moved to dismiss for failure to state a claim. The Superior Court granted the motion. State appealed. The Court of Appeals reversed. Foundation petitioned for review, which was granted.

The Supreme Court of Washington held that:

- A local proposition is a "ballot proposition," for which certain expenditures are required to be reported under FCPA, but only if the measure is actually filed with an election official;
- Portions of FCPA delineating what constituted a ballot proposition were not unconstitutionally vague; and
- Under exacting scrutiny standard, campaign finance disclosure requirements of FCPA did not violate foundation's First Amendment right to free speech.

Portions of Fair Campaign Practices Act (FCPA) delineating what constituted a ballot proposition, and thus what expenditures in support of a ballot proposition were required to be reported, were not

unconstitutionally vague, despite argument that it was unclear whether definition of "ballot proposition" applied to local initiatives; statutes established clear course of conduct, requiring persons to report any nonexempt independent expenditures in support of a ballot proposition, and statutory language was clear as to when a local initiative became a ballot proposition.

Under exacting scrutiny standard, campaign finance disclosure requirements of Fair Campaign Practices Act (FCPA), requiring the reporting of all independent expenditures totaling $100 or more during same election campaign and defining independent expenditures to include those made in support or opposition to a ballot proposition, did not violate local initiative supporter's First Amendment right to free speech; providing information to electorate was vital to advancing democratic objectives, and challenged requirements had substantial relationship with advancing those objectives.

INSURANCE - WISCONSIN

Steadfast Insurance Company v. Greenwich Insurance Company

Supreme Court of Wisconsin - January 25, 2019 - N.W.2d - 2019 WL 323702 - 2019 WI 6

Liability insurer for municipal sewer system operator brought equitable subrogation action against prior operator's insurer to recover cost to defend sewerage district in lawsuits arising out of rain event during subsequent operator's contract with district.

The Circuit Court entered summary judgment in favor of plaintiff. Defendant appealed. The Court of Appeals affirmed. Review was granted.

The Supreme Court of Wisconsin held that:

- Each insurer's coverage for district, as additional insured, was primary;
- Prior operator's insurer breached duty to defend district;
- Defending insurer's claim was for breach of express contractual subrogation right and was governed by six-year statute of limitations;
- As a matter of first impression, pro-rata allocation of defense costs based on policy limits of $30 million and $20 million was required; and
- As a matter of first impression, defending insurer was entitled to recover attorney fees.

Contractor's pollution liability policies that covered different operators of metropolitan sewer system and sewerage district, as additional insured, during successive periods were primary with regard to each operator's respective insurance and provided successive primary coverage for district, and, thus, "other insurance" clauses did not apply to claims for sewer backups as result of heavy rains.

Contractor's pollution liability insurer for sewer system operator breached duty to defend metropolitan sewerage district, as additional insured, by relying on erroneous unilateral determination that its coverage was excess to coverage under another operator's policy in effect at time of sewer backups, and insurer was thus responsible for all damages that naturally flowed from the breach; insurer did not seek judicial determination of coverage obligations or pay any amount toward district's defense costs.

Liability insurer's claim to recover defense costs from another insurer for breaching duty defend sewerage district, as additional insured, against claims for sewer backup was claim for breach of express contractual subrogation right, rather than contribution, and, therefore, was governed by six-year statute of limitations for breach of contract; policy subrogated insurer to insured's rights of

recovery against any person or organization.

Liability insurer's breach of duty to defend metropolitan sewerage district, as additional insured, against claims of sewer backup did not abrogate defending insurer's duty to defend district, and, thus, pro-rata allocation of defense costs based on policy limits of $30 million and $20 million was required making insurers liable for 60 percent and 40 percent; both insurers owed duty to defend, and financial sanction of insurer for breaching duty to defend did not include judicial forgiveness of another insurer's financial obligation for defense costs.

Insured's right of recovery to which liability insurer was contractually subrogated for defending sewerage district, as additional insured, included attorney fees incurred in successfully establishing another insurer's duty to defend district, and, thus, defending insurer was entitled to recover attorney fees incurred in suit against other insurer under principles of contractual subrogation.

What Do the SEC's New Continuing Disclosure Requirements Mean for Governmental Borrowers? - Miller Canfield

As reported in our October 10, 2018 alert, the Securities and Exchange Commission has amended Rule 15c2-12 (the "Rule"), which governs continuing disclosure by state and local governmental borrowers to add two new material events requiring disclosure within 10 business days after they occur. Unlike the other 14 material event notice requirements, application of these two new requirements may be less obvious and requires more careful analysis.

The two new events are:

(15) Incurrence of a financial obligation of the issuer or obligated person[1], if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

With the February 27, 2019 compliance date approaching, and with many underwriters and municipal advisors focusing more closely on the new requirements, this alert offers more detailed analysis of steps governmental borrowers can take to facilitate compliance when they are required to do so.

When Will Issuers Need to Comply?

The amendments apply to continuing disclosure undertakings (CDU's) for publicly offered bonds or notes which are delivered on or after February 27, 2019. Until an issuer sells debt obligations with a CDU containing the new material events, the amendments have no effect on that issuer's continuing disclosure obligations.

What Are The New Material Events?

While the existing 14 events (including payment defaults, draws on reserves, unscheduled draws on credit enhancement, or changes in credit enhancement, adverse tax actions or opinions, material

changes to bondholder rights, refundings, bond calls, rating changes, changes in trustee, mergers or bankruptcy) which continue to apply are fairly straightforward, the new requirements require disclosure within 10 business days of:

- "material" new financial obligations (or agreements concerning covenants, events of default, remedies, property rights or similar terms) incurred by the borrower for which there is no CDU and which could materially affect bondholders' interests [event (15)]
- events occurring in connection with a financial obligation which reflect financial difficulties for the borrower [event (16)]

What Is A "Financial Obligation?"

A financial obligation does not include any debt obligation for which the borrower posted an official statement and provided a CDU, or ordinary operating liabilities.

A financial obligation does include:

- a debt obligation
- a derivative instrument, such as a swap, entered into in connection with a debt obligation
- a guarantee of either a debt obligation or a derivative.

"Debt Obligations" include:

- privately placed bank or state authority purchases of bonds or notes or lines of credit
- installment contracts or lease purchase agreements
- energy conservation improvement financing contracts
- emergency loans from the State
- judgments
- any other obligation that is "debt-like"

What Information Must Be Filed?

The answer to this question is a bit open-ended, involves the exercise of judgment and depends on the facts and circumstances in the broader context.

Under event (15), only "material" financial obligations must be disclosed. The SEC release does not define "material." In addition, borrowers must provide certain information about the financial obligation, where material. While guidance on this question is likely to evolve, a rule of thumb may be that if a holder of a security for which the borrower has provided a CDU would find financial obligation terms relevant to a decision to buy or sell the security, and the price at which to do so, the name of the financial obligation and relevant terms should be included in the event filing.

Examples of terms to be disclosed include:

- amount financed and term and interest rate
- security and source of payment, including priority of payment
- defaults and events of defaults
- remedies, including acceleration, penalties and default rates
- modifications of terms and triggers for modifications
- key covenants, such as maintenance of ratings, most favored nations provisions, coverage and additional debt tests

Under event (16), the occurrence of an event under a financial obligation creates an obligation to

disclose if that event reflects financial difficulties. In this circumstance, default (even if not yet an event of default triggering remedies), acceleration, termination events which obligate the borrower to pay a penalty, modification of terms and the imposition of remedies may each trigger a disclosure obligation. In this case, the relevant financial obligation may be one the borrower incurred before or after it executed a CDU which included new events (15) and (16), if the triggering event occurs after delivery of the new CDU.

Whether a disclosure obligation arises will depend on the context – the size of the borrower, the magnitude of the financial obligation relative to the size of the borrower and the impact or potential impact of the covenant or covenant breach on the borrower generally and on the bondholders to be benefitted by the CDU. An event which by itself may be immaterial may become material or reflect financial difficulty if it occurs in the context of multiple other events.

Managing Compliance with the New CDU Requirements

While borrowers have no obligation with respect to the new material events until they issue publicly offered securities on or after February 27, 2019 pursuant to an official statement, it wouldn't hurt to take an inventory of any outstanding financial obligations to identify those which may be material and to catalog material terms of those obligations. Underwriters have a responsibility under the amended rule not only to obtain a CDU satisfying the Rule from the borrower, but also to determine the ability and willingness of the issuers whose bonds they buy to comply with the Rule and as part of their due diligence may request the details of those obligations.

Borrowers will need to develop a system (which may or may not rise to the level of a formal policy or procedure) for identifying, cataloging and tracking these obligations so they can have confidence they will be able to post, within 10 business days, both (i) notice that a material financial obligation has been incurred together with material terms of such obligations or agreements and (ii) the occurrence of events arising in connection with any financial obligation or agreement which reflect financial difficulties.

Many borrowers will have very few obligations to track while others may have several, with many material terms.

How Do You Post?

The Municipal Securities Rulemaking Board has updated EMMA to include the new material events. Once a borrower has identified a material financial obligation, the borrower or its agent may post the details of the financial obligation or identify the financial obligation with and attach the entire document. If a borrower chooses to post the full document, certain types of sensitive information, such as account numbers and signatures, should be carefully redacted, while material terms should remain viewable.

For events which reflect financial difficulties, a description of the event and/or notice from the holder of the related obligation, should be disclosed.

[1] An "obligated person" is an entity, other than the nominal issuer or credit enhancer, which is legally committed to support all or a material portion of the payment of the obligation. Materiality here also depends on the context, but generally is regarded as translating to a commitment to support payment of at least 20% of the financial obligation

January 29, 2019

Miller Canfield

Securities and Exchange Commission Amends and Updates Rule 15c2-12: K&L Gates

Since 1995, states and local governments have been subject to Rule 15c2-12 (the "Rule"), promulgated by the U.S. Securities and Exchange Commission (the "SEC"). Under the Rule, governmental entities that issued securities (and persons obligated under those securities ("obligated persons")) were required to enter into continuing disclosure agreements (generally referred to as "undertakings"). These undertakings obligated the governmental entity to make regular annual filings of financial information and also to file notices whenever certain "listed events" occurred. The undertakings remained in effect for the entire life of the bond issue or defeasance of the bonds.

In August 2018, the SEC announced an amendment to the Rule. **This amendment will take effect on February 27, 2019.** These amendments have been the topic of substantial public discussion in seminars and written releases in the press and numerous law firm blogs. Regardless of what you have read or heard, however, **this amendment may or may not increase your future financial reporting obligations** or otherwise affect your community. Before you spend a lot of time in seminars or meetings learning about the Rule, consider whether it will have an impact on your public entity/community.

In general, a public entity will not be affected by the changes in the Rule, if:

1. The public entity has no outstanding debt;
2. The public entity's only outstanding debt is in the form of bank loans; or
3. The public entity does have outstanding bond issues (issued prior to February 27, 2019) and the public entity has no expectation of going to the public market with new bond issues in the foreseeable future.

If, however, your community does expect to issue publicly offered bonds in the foreseeable future, then you should understand more about the Rule.

The discussion below provides information to help you understand more about the Rule and the changes incorporated under the Rule's recent amendment and includes information about Government Accounting Standards Board ("GASB") Statement No. 88:

The SEC has indirectly regulated the obligations of states and local governments in the financial markets through its ability to regulate the activities of brokers/dealers in the municipal industry. [1] The Rule was originally promulgated in 1989 by the SEC under authority of the Securities Exchange Act of 1934. The original Rule required that dealers acting as Participating Underwriters in Offerings (an offering of municipal securities by a municipal issuer with an aggregate principal amount of $1,000,000) obtain, review, and distribute to potential customers copies of the issuer's official statement. The Rule was amended in 1994, and this amendment accomplished, albeit indirectly, what the SEC could not do directly. When the SEC adopted paragraph (b)(5) of the Rule, Participating Underwriters could no longer purchase or sell municipal securities unless the issuer had adopted an undertaking for the issue. With that change, the Rule now imposed regulations on states and their local governments. [2]

Paragraph (b)(5) of the Rule prohibits a Participating Underwriter from purchasing or selling municipal securities covered by the Rule in an Offering unless the Participating Underwriter has reasonably determined that an issuer or obligated person of those municipal securities has

undertaken in a continuing disclosure agreement (an "undertaking") to provide specified information to the Municipal Securities Rulemaking Board (MSRB) in an electronic form as prescribed by the MSRB. [3] The information to be provided consists of: (i) certain annual financial and operating information and audited financial statements, if available ("annual filings") [4]; (ii) timely notices of the occurrence of certain events ("event notices") [5]; and (iii) timely notices of the failure of an issuer obligated person to provide required annual financial information on or before the date specified in the continuing disclosure agreement ("failure to file notices"). Event notices are required to be filed within 10 business days of the occurrence of the listed event. [6]

The SEC has been considering expanding the list of the disclosure events for some time. In particular, there has been a focus on the increased number of private placements of bonds and bank loans, as they have not been not subject to the Rule. On August 20, 2018, the SEC released adopted amendments to the Rule. [7] These amendments apply to all undertakings entered into on and after February 27, 2019. From this February date and after, all new undertakings are required to comply with the amended Rule. The amendments added two additional events, expanding the list from 14 to 16 events, in a continuing disclosure undertaking. Future undertakings are required to include the following event notices:

> (15) Incurrence of a material financial obligation of the issuer or obligated person or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
>
> (16) Default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

The amendments define the term "financial obligation" as a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term "financial obligation" does not include any obligation for which a final official statement has been provided to the MSRB. In other words, the issuer does not need to file an event notice for the incurrence of any security that is already disclosed to the market through a final official statement.

Key considerations for the amended Rule include:

1. The amendments are not retroactive.
The amendments do not add any new requirements to issuers' current undertakings. Accordingly, issuers may continue to comply with their existing undertakings in the same manner as they have been filing and posting with EMMA.

2. If a governmental entity enters into an undertaking in the future, that undertaking will include the two additional event notice requirements.
With respect to those new event requirements:

1. The additional disclosure requirement identified in (15) above applies to debt or "debt-like" obligations. The issuer is not required to disclose ordinary operating liabilities.
2. The disclosure requirement identified in (15) only applies to those debt obligations that are "material." The amendments do not define the term "material," and issuers are permitted to make their own determination of what debt obligations are material. On a going-forward basis, issuers

may consider developing procedures or protocols for identifying which debt or "debt-like" obligations are material.
3. If an issuer determines that the incurrence of a debt or "debt-like" obligation is material, the notice of the event should include the material terms of the financial obligation. The SEC provided examples of "material terms" as: (i) date of the incurrence, (ii) principal amount, maturity, and amortization; (iii) interest rate (if fixed) or method of computation (if variable) plus any default rates and other depending on the circumstances. Accordingly, the disclosure may be satisfied by filing a term sheet or by filing the entire document.
4. If the issuer enters into a derivative instrument (e.g., swaps and hedges) relating to a municipal security, that transaction must always be disclosed.
5. The additional disclosure requirement identified in (16) above is limited to those occurrences that reflect financial difficulties. For example, if the issuer enters into a loan modification agreement with respect to a loan (regardless of whether the original obligation has previously been disclosed on EMMA), that event would be required to be disclosed in an event notice.

3. GASB Statement No. 88.
The GASB recently issued its Statement No. 88 — Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placement (March 2018), requiring that additional information related to debt be included in audited financial statements. [8]

This requirement is in effect for reporting periods beginning after June 15, 2018. Accordingly, many issuers are likely developing protocols for identifying the types of information that are now required be disclosed under the amendments to the Rule.

Inclusion of this information in an issuer's financial statement will not, however, satisfy the requirements of the Rule, because the Rule will now require that a separate event notice be filed on a timely basis upon the incurrence of each new the debt or "debt-like" obligation (within 10 business days).

Notes

[1] The SEC directly regulates the issuers of corporate securities, primarily to prevent disclosure-related abuses in the corporate securities market, under the authority of the Securities Act of 1933 and the Securities and Exchange Act of 1934 (together, the "Securities Act"). Municipal securities are exempt from registration under Section 3(a)(2) of the Securities Act, but are subject to the Securities Act's anti-fraud provisions. Municipal securities brokers and dealers are also regulated by the SEC and by the MSRB. When drafting the Securities Act, Congress did not have concerns about abuse in the municipal securities market. Since then, perception of abuses in the municipal securities market have increased with the complexity and volume of the market. The Securities Act's provisions are broadly written, and so federal securities anti-fraud law has evolved primarily through the courts. Court decisions have found the anti-fraud provisions applicable in a number of municipal securities transactions, leading to the development of a framework for municipal disclosure responsibilities, driven as well by the MSRB and the Dodd-Frank Act provisions. The SEC's Office of Municipal Securities has initiated enforcement actions against municipal issuers, municipal employees, and other market participants.

[2] See Exchange Act Release No. 34-26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) ("1989 Adopting Release). For additional information relating to the history of the Rule, see Exchange Act Release No. 34-34961 (Nov. 10, 1994), 59 FR 59590 (Nov. 17, 1994) ("1994 Amendments Adopting Release"), Exchange Act Release No. 34-59062 (Dec. 5, 2008), 73 FR 76104 (Dec. 15, 2008) ("2008 Amendments Adopting Release"), and Exchange Act Release No. 34-62184A (May 27, 2010), 75 FR 33100 (June 10, 2010) ("2010 Amendments Adopting Release").

[3] On December 5, 2008, the SEC adopted amendments to the Rule to provide for the Electronic Municipal Market Access ("EMMA") system. EMMA is established and maintained by the MSRB and provides free public access to disclosure documents. The 2008 Amendments designated the EMMA system as the single centralized repository for the electronic collection and availability of continuing disclosure information about municipal securities. The 2008 Amendments require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide continuing disclosure documents: (i) solely to the MSRB; and (ii) in an electronic format and accompanied by identifying information, as prescribed by the MSRB. See 2008 Amendments Adopting Release; see also Exchange Act Release No. 34-58255 (July 30, 2008), 73 FR 46138 (Aug. 7, 2008) ("2008 Proposing Release"). The 2008 Amendments became effective on July 1, 2009.

[4] See 17 CFR 240.15c2-12(b)(5)(i)(A) and (B).

[5] See 17 CFR 240.15c2-12(b)(5)(i)(C). Under the Rule prior to these amendments, the following events require notice in a timely manner not in excess of ten business days after the occurrence of the event: (1) principal and interest payment delinquencies; (2) nonpayment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security; (7) modifications to the rights of security holders, if material; (8) bond calls, if material and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the obligated person; (13) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into an agreement relating to any such actions, other than pursuant to its terms, if material; and (14) appointment of a successor or additional trustee or the change of name of a trustee, if material. In addition, Rule 15c2-12(d) provides full and limited exemptions from the requirements of Rule 15c2-12. See 17 CFR 240.15c2-12(d).

[6] See 17 CFR 240.15c2-12(b)(5)(i)(D). Annual filings, event notices and failure to file notices are referred to collectively as "continuing disclosure documents."

[7] See the SEC Report on the Municipal Securities Market, (July 31, 2012) ("2012 Municipal Report"), available at: https://www.sec.gov/news/studies/2012/munireport073112.pdf.

[8] GASB Statement No. 88 is available at: http://www.gasb.org/jsp/GASB/Document_C/Documentage?cid=1176170308047&acceptedDisclaimer=true.

by Scott McJannet & Cynthia Weed

January 29, 2019

K&L Gates LLP

Issuers Not Clear On Upcoming 15c2-12 Amendments.

WASHINGTON — With Rule 15c2-12 amendments set to take effect at the end of February, issuers at the Government Finance Officers Association meeting aired out their confusion over how the changes will affect their continuing disclosure responsibilities.

Issuer officials discussed their concerns during a meeting of the GFOA's Committee on Governmental Debt Management at the group's winter meeting here Monday. The angst is fueled by the Securities and Exchange Commission's August 2018 decision to add two new material events to the list of occurrences that issuers will have to agree to disclose within ten business days of their happening.

Event 15 says issuers have to disclose when they incur financial obligations, if material, as well as agreements to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer that could affect security holders.

Event 16 says that in connection with those financial obligations, issuers have to disclose events which "reflect financial difficulties," such as a default or modification of terms.

Members of the debt committee said they're having trouble pinning down the requirements. It can be hard to determine when financial difficulties start, and the rule doesn't specify it, they said.

Without knowing, issuers will have to turn to their lawyers to figure it out, said Kenton Tsoodle, Oklahoma City's finance director.

"It's thinking through and making that list of what are all the things that have to be included in these two new filings, but also then when," said Tsoodle, who will speak at The Bond Buyer's upcoming Texas Public Finance conference.

The SEC lacks the authority to directly regulate issuers except through the antifraud provisions in the securities laws, so the rule requires underwriters of new issues of $1 million or more to "reasonably determine" that the issuer has entered into a written agreement to provide such disclosures to bondholders.

State revolving fund loans, wherein states make loans to cities for water utilities, may have to be disclosed starting Feb. 27 because they likely fall under Event 15.

Guarantees of lower-rated credits could also be disclosed, committee members said. Tsoodle said he would disclose guarantees.

"It's somewhat broad and it's going to be a lot more work and a lot more things for issuers to monitor, Tsoodle said. "It will remain to be seen if it's a good thing for investors."

A partial government shutdown caused some hiccups for issuers looking for the SEC to answer questions, and Tsoodle said for areas where they don't get clarification, issuers will turn to their bond counsel for answers.

Cindy Harris, chief financial officer at the Iowa Finance Authority said she plans to spend more time with her bond counsel to get more guidance if she doesn't receive more from the SEC.

At the meeting, issuers debated whether or not they would disclose a bank loan document in its entirety, terms and all, on EMMA.

“I think the issue is that you could disclose the entire agreement, so if you have a bank loan, the agreement would have all of the terms of the loan,” Harris said. “Sometimes the person you have the agreement with, may not want all of that information for the public to see like the terms, or the rate at which you’re borrowing.”

Harris worries that at the end of the day, the SEC could take enforcement action against an issuer who comes up short in its disclosure obligations, so wants to cover all bases.

“I think muni issuers are probably struggling with these new amendments,” she added.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 01/28/19 02:38 PM EST

Fitch Ratings Publishes Updated Criteria for US Variable-Rate Demand Obligations & Commercial Paper.

Fitch Ratings-New York-31 January 2019: Fitch Ratings has published the following updated report: “U.S. Public Finance Variable-Rate Demand Obligations and Commercial Paper Issued with External Liquidity Support Rating Criteria“. This report updates the report published on Jan. 22, 2018 titled “U.S. Public Finance Variable-Rate Demand Obligations and Commercial Paper Issued with External Liquidity Support Rating Criteria”. The key elements of Fitch’s external liquidity rating criteria remain consistent with those of its prior criteria report.

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Additional information is available on www.fitchratings.com

Read About New SEC Rule 15c2-12 Disclosure Obligations and Upcoming Issuer Enhancements to EMMA in the Latest MSRB Newsletter.

Read the Newsletter.

GFOA Releases Primer on Infrastructure Financing.

Understanding Financing Options Used for Public Infrastructure

Report CoverUnderstanding Financing Options Used For Public Infrastructure ("the Primer") provides an overview of tax-exempt bond and other financings used by state and local governments and entities.

The Primer covers numerous issue areas related to tax-exempt financings. These sections include:

- The fundamentals of tax-exempt bonds and other financing tools that are available to state and local governments and related entities;
- The role tax-exempt bonds play in infrastructure financings and as an investment product; and
- Congressional actions over the past fifty years related to this market.

This Primer was prepared in coordination with several members of the Public Finance Network (PFN). The PFN is a coalition of organizations interested in preserving the tax-exempt status of state and local government bonds.

Download the report.

About the Public Finance Network

Formed in 1988, the Public Finance Network is a coalition of organizations united to preserve state and local government use of tax-exempt bonds. The Network represents the wide array of local and state government financing and infrastructure activities. The Public Finance Network is administered by the GFOA and its Director of the Federal Liaison Center, Emily Brock. For information about the Network and financing issues, contact any of its members, call (202) 393-8467 or write to 660 North Capitol St., NW, Suite 410 Washington, D.C. 20001.

GFOA Report: Infrastructure Funding in the New Budget Environment.

Infrastructure Funding in the New Budget Environment

Federal grants have helped maintain a quality standard of living for communities across the country for over a century. There are over a thousand federal grant programs that transfer funds to state and local governments in support of a multitude of policy issues. State and local governments rely on the funds from federal grants to assist in providing what the citizens of their localities need. Over the years, the federal grant system has grown and changed to accommodate the constantly shifting priorities of American communities. Transportation, healthcare and education initiatives are all supported in some way by federal grants. Today, federal and local lawmakers meet the challenges of updating and enhancing our nation's infrastructure through collaborative efforts; underlining the importance of federal transfers to state and local governments.

This report provides information on trends, key issues, and case studies related to infrastructure funding.

Download the report.

The Pros and Cons of 'Target Maturity' Bond Funds.

These new products combine the benefits of a traditional bond fund with a fixed maturity date. They have their critics.

There's a new type of bond fund that aims to solve a shortcoming of traditional bond funds. But the jury is out as to whether they are worth buying.

Bond funds offer investors broad diversification, professional management and regular income—benefits tricky to achieve with a collection of individual bonds. But they also have a downside: no fixed maturity date. Investors can't simply wait out a downturn, knowing the price will move toward face value as maturity approaches, as they can with an individual bond.

To address that perceived shortcoming, some fund providers in recent years have introduced a hybrid product offering the benefits of a traditional fund plus a fixed maturity date. Though some experts disdain these "target-maturity bond funds," others say they can be a good choice for some investors in today's volatile market, especially those looking for steady income and a return of principal for an expected need—such as paying for college, buying a home or starting retirement.

"In today's market, these target-maturity funds are especially appealing," says Jay Srivatsa, chief executive officer at Future Wealth, a wealth-management firm in Los Gatos, Calif. "It takes the volatility and randomness out of the equation and, most importantly, takes out the investor's emotional reactions to the stock-market gyrations. Knowing that X amount will be available on year X gives peace of mind."

Target-maturity funds are easier to research and purchase than individual bonds, he says, and they appeal to investors who don't want to face long-term interest-rate risk.

Older investors may find this option worth a look in today's environment, says Ankur Patel, vice president at Lenox Wealth Advisors' New York office.

"As we continue to see baby boomers enter retirement, an entire generation of investors will be looking to reduce risk, generate income and invest more in bonds," he says.

How they work

Investors who buy individual bonds know that, barring a default, they will receive a predictable income and a return of principal on the maturity date. Earnings in bond funds are less predictable because the fund must constantly buy and sell individual bonds to maintain an average maturity promised investors.

That means the fund can suffer a loss if it must sell bonds when prices are down. That's because rising rates drive down prices of older bonds that pay less than new ones. While falling rates can lift bond prices, they can be harmful if the fund must replace older bonds with new ones that pay less, reducing the fund's yield.

Target-maturity funds—not to be confused with target-date funds, which gradually shift assets from stocks to bonds to increase safety as the target date approaches—tackle these problems by purchasing bonds maturing at about the same time. When the fund's maturity date arrives, the fund closes and investors receive their principal just as they do with individual bonds, though the amount isn't guaranteed up front and can be subject to market conditions. Income is relatively dependable—but, again, not guaranteed—because the fund doesn't need to replace holdings along the way.

The two big players are Invesco, which offers a series of BulletShares corporate and emerging-markets "defined maturity" exchange-traded funds maturing every year from 2018 to 2028, and BlackRock Inc.'s BLK 0.42% iShares, which has corporate and municipal bond ETFs maturing from 2020 to 2028.

Fees are modest, typically below 0.5%, though that can add up over time. Of course, an investor owning individual bonds would have no annual fees. Investors also face commissions on ETF trades, though that can be minor for the buy-and-hold investor these funds are designed to serve.

Critics weigh in

Despite their appeal to some, these funds do have critics. "I do not typically recommend target-maturity bond funds because their annual costs are significantly higher [than index bond funds] for a buy-and-hold investment, and there is a lack of flexibility," says Debra Taylor, founder of Taylor Financial Group, a wealth-management firm in Franklin Lakes, N.J.

"The benefit is that the funds are packaged up in one place, and they do provide diversification for the smaller investor," she says. "However, the more-sophisticated investor may be better off purchasing the individual bonds and creating their own ladders." (A ladder is an assortment of bonds with various maturities.)

Most experts seem to agree that these funds are best for investors with an expected cash need at the maturity date, rather than those who will reinvest. The principal may be returned at an inconvenient time for reinvestment—when yields are low, for instance. Because the fund won't replace its holdings, you can't expect the fund yield to rise as rates go up, as it would with an ordinary fund that gradually adds new bonds that pay more.

In today's market, many experts recommend funds with short maturities of under three to five years, since longer-term bonds don't currently pay enough extra to justify their greater risk.

Young people with long investing horizons are especially unsuited to these funds, Ms. Taylor says, because they can ride out bond-price dips. With maturities out to only 2028, target-maturity funds serve investors who expect to need their money in 10 years or less.

Dennis Shirshikov, a financial analyst at FitSmallBusiness.com in New York, warns that many bonds in these funds will mature months before the fund closes, leaving cash to sit idle. And Mr. Patel of Lenox Wealth Advisors says investors should expect fund yields to drop in the final year to the level of bank savings. Also, many of these funds own bonds that can be called early, worsening the problem of cash buildup even before the year of maturity.

Getting out early

Investors also should know that they can lose money if they unload one of these funds before maturity. That could happen if rising rates drive down bond prices. Also, since these ETFs are traded like stocks, there's no guarantee an investor will find a buyer if he or she wants to get out early,

though experts say lack of liquidity hasn't been a serious problem.

"These are generally not a great short-term trading option," Mr. Shirshikov says. "In fact, you will likely be better served with other bond products if you are interested in trading on bond volatility or interest-rate movements.

"However, if you are considering locking your money away in a CD or purchasing government bonds with set maturity with the hope of taking the money out at a later date and earning some interest in the process, this is a great product to invest in," he says.

The Wall Street Journal

By Jeff Brown

Feb. 1, 2019 4:26 p.m. ET

How Does PG&E Impact California's Municipal Bond Outlook?

Nisha Patel, muni portfolio manager at Eaton Vance, examines California's municipal bond market. She speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

January 30th, 2019, 9:31 AM MST

PG&E Bankruptcy May Have Wider Ramifications for California.

The municipal bond market has a small amount of direct exposure to the bankruptcy of PG&E (PCG), California's largest utility, though the Chapter 11 filing creates uncertainty for the state and localities where the utility operates.

The company, which provides natural gas and electric service to 16 million people in northern and central California, emphasized in a customer alert that it will not be "going out of business" as it embarked on plans to restructure an estimated $51.7 billion in debts balanced by assets of $71.4 billion.

PG&E Corp. (PCG) and its primary operating subsidiary, Pacific Gas and Electric Co. filed for Chapter 11 Tuesday in the U.S. Bankruptcy Court for the Northern District of California.

All three ratings agencies dropped the utility's ratings to junk after it reported a few weeks ago that it was facing up to $30 billion in liabilities from California wildfires.

The California Public Utilities Commission, the utility's regulator, reported in December it was exploring such options as splitting PG&E's (PCG) gas and electric operations or even requiring that regional companies be created.

San Francisco Mayor London Breed, in a letter to the director of San Francisco's Public Utilities Commission, reportedly requested an analysis of the city's options in the face of PG&E's (PCG) likely bankruptcy, "including the possibility of acquiring and building electrical infrastructure assets."

A California PUC spokeswoman said she did not know if the commission would have the power to move ahead on those plans now that the utility is in bankruptcy, but said the commission would work with the court.

The company signaled earlier this month that it planned to file for bankruptcy in compliance with a recently enacted state law that requires it to provide a 15-day notice before taking that step.

Municipal bonds comprise less than $1 billion of PG&E's outstanding debt. "And $762 million of the $920 million in municipal debt was backed by bank letters of credit, so actual exposure to PG&E (PCG) in the municipal market is quite small," Nuveen analysts wrote in a Jan. 22 report.

The municipal bonds are unsecured general obligations of PG&E (PCG), according to Nuveen.

"The corporate bonds generally have a covenant by which if a lien is granted to other creditors it must be granted to the corporate bonds," Nuveen analysts wrote. "The municipal bonds are exempt from this provision and could be subordinated to the other debt."

The municipal debt was issued through two state conduit issuers, the California Pollution Control Financing Authority and the California Infrastructure & Economic Development Bank.

The conduit issuers provide access to the tax-exempt bond market for private companies and nonprofits and have no responsibility to pay the debt back.

Put simply, the conduit issues the bonds, places the proceeds with the trustee, who then re-lends the money to the borrower, said Tim Schaefer, California's deputy treasurer for public finance. The CPCFA is staffed out of the treasurer's office.

The borrower, in this case PG&E (PCG), has the responsibility to provide disclosure prior to the bond sale and after on the risks for bondholders, Schaefer said.

The risk to bondholders is minimal, because the banks will buy the variable rate demand obligations back from the current bondholders, said Matt Fabian, a partner with Municipal Market Analytics.

A search on the Municipal Securities Rulemaking Board's EMMA site of the CUSIPs indicated the banks had not executed a mandatory tender of the debt as of Tuesday afternoon.

In an earlier interview with The Bond Buyer, Joan Hempel of Moody's Investors Service said that the banks have the right to terminate the letter of credit early and call for a mandatory tender. The banks can make the payment and pay the bondholders off early and then PG&E (PCG) would be obligated to pay the bank back directly.

The bank letters of credit means the bank has an irrevocable and unconditional obligation to make the payments directly to the bondholders, Hempel said. The bank then has a reimbursement agreement under which PG&E (PCG) agrees to pay the bank. So the bondholders look to the bank as the first source of payment of the bonds, she said.

There are five banks with exposure instead of just one with a concentrated position, which helps to spread out the risk, Fabian said. As of last Friday, he said, the liquidity banks were MUFG Union Bank with $149 million, Sumitomo Mitsui Banking Corp. with $165 million, TD Bank with $100

million, Mizuho Bank with $200 million and Canadian Imperial Bank with $149 million.

In conjunction with the bankruptcy filings, PG&E (PCG) also filed a motion seeking interim and final approval of the bankruptcy court to enter into an agreement for $5.5 billion in debtor-in-possession financing with J.P. Morgan, Bank of America (BAC), Barclays (BCS), Citi, BNP Paribas (BNPQF), Credit Suisse (CS), Goldman Sachs (GS), MUFG Union Bank and Wells Fargo (WFC) acting as joint lead arrangers.

The DIP financing, when approved, will provide PG&E (PCG) with capital needed to operate throughout the bankruptcy, according to the company.

The PUC board granted exemptions for the utility to obtain the DIP financing at a heated meeting Monday at which protestors shouted “no bailout for Wall Street” while commissioners discussed the matter. The extensions do not extend to the transfer of ownership of any utility asset that is pledged as part of the DIP finance, however.

PUC President Michael Picker urged his fellow commissioners to approve the exemptions, saying that if PG&E (PCG) were not able to secure the financing and continue to operate it could represent a substantial public safety and health risk because it could compromise hospitals and public facilities.

California Gov. Gavin Newsom said his focus through the bankruptcy remains “protecting the best interests of the people of California.”

“My administration will continue working to ensure that Californians have access to safe, reliable and affordable service, that victims and employees are treated fairly, and that California continues to make forward progress on our climate change goals,” Newsom said.

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 01/30/19 12:08 PM EST

Puerto Rico Wins Approval of $18 Billion Bond Restructuring.

Puerto Rico won court approval Monday for a restructuring deal that wipes out one-third of its $18 billion in sales-tax bond debt, a milestone in its quest to fix its broken finances.

U.S. District Judge Laura Taylor Swain confirmed a debt adjustment plan covering the revenue bonds known as Cofinas, marking the largest renegotiation yet of the U.S. territory’s bond and pension obligations.

The write-downs imposed on the Cofina bonds, first issued as rescue financing in 2007, will save the island government $17 billion in interest and principal payments over the coming decades as it tries to reverse a decade of economic decline and out-migration.

Creditors holding more than $14.5 billion in Cofina debt supported the accord, which resolves one of the thorniest conflicts in Puerto Rico’s unprecedented, court-supervised bankruptcy.

The settlement is tied to a negotiated split of the sales taxes pledged to Cofina that releases 46% of the money back to the island’s government — providing $456 million a year on average that

otherwise was earmarked for bondholders.

Judge Swain acknowledged that the settlement "commits substantial portions of Puerto Rico's scarce revenues to bond payments over a period of decades," while also slashing claims from bondholders, including individual investors who bought Cofina securities for their retirement.

But she concluded the adjustment plan "is essential to ensure that Puerto Rico is on a path that will restore its access to financial markets as it builds a stronger economy."

The settlement marks the first adjustment plan approved under the quasi-bankruptcy process created by Congress under a 2016 rescue law that also installed an oversight board to manage Puerto Rico's spending and pilot the debt- restructuring process.

The oversight board was able to wring savings from Cofina's bondholders in part because of lingering doubts about the strength of their claims on sales-tax revenue. Critics of the Cofina structure have long insisted that sales taxes never should have been transferred out of the government's control, and other creditors holding Puerto Rico general obligations said they, not Cofina bondholders, had an ironclad claim on the revenue.

First issued in 2007, the Cofina bonds were backed by sales taxes that provided investors a secure source of repayment and lowered Puerto Rico's financing costs after the municipal bond market lost confidence in the U.S. territory as a borrower.

The Cofina bonds quickly became a go-to financing source that made up roughly 40% of Puerto Rico's core government obligations when it entered bankruptcy protection in 2017.

Doubts about who owned the sales taxes — the government or Cofina's bondholders — have clouded Puerto Rico's bankruptcy since it entered court protection in 2017. Forcing Judge Swain to decide the issue could have wiped out Cofina's bondholders completely — or guaranteed them a 100% recovery if the pledge was upheld.

The Cofina plan instead relinquishes more than 46% of the pledged sales taxes, supplying cash to correct the government's budget imbalance and ameliorate politically unpopular austerity measures.

BY DOW JONES & COMPANY, INC. | MUNICIPAL | 02/04/19 05:47 PM EST

By By Andrew Scurria

Write to Andrew Scurria at Andrew.Scurria@wsj.com

Puerto Rico Rebound Lures Mutual Funds Back to Island's Bonds.

- **Pimco, AllianceBernstein have boosted holdings since hurricane**
- **Once big buyers, mutual funds sold when fiscal crisis worsened**

Traditional bond buyers are going back to Puerto Rico.

After shunning the U.S. territory for much of the past six years, municipal-bond mutual funds are again buying the government's debt as it recovers from the 2017 hurricane and inches closer to winning a potential court approval to restructure more than $17 billion of sales-tax-backed debt, a major step in its record-setting bankruptcy.

Pacific Investment Management Co. held about $506 million of commonwealth securities as of Sept. 30, nearly 10 times the $52 million held the month before Hurricane Maria, according to data compiled by Bloomberg. AllianceBernstein LP increased its exposure to $347 million, as of Nov. 30, up from $53 million in August 2017. Capital Group and Massachusetts Financial Services Co. increased their exposure by nearly 50 percent.

Continue reading.

Bloomberg Markets

By Michelle Kaske

January 31, 2019, 7:19 AM MST

PG&E Bankruptcy's Ripple Effects Will be Felt Beyond California.

- **Investors, utilities across the U.S. could share the pain**
- **Settlements for wildfire victims may be later and smaller**

PG&E Corp., owner of the largest electric utility in America's most populous state, plans to file for bankruptcy Tuesday, and the ripple effects are likely to stretch far beyond California and the company's stakeholders.

Power-plant operators that sell electricity to its utility are already being downgraded to junk. Federal taxpayers may get stuck with the bill for government loans to renewable-power projects in California if they can't be repaid. And the shape of the Golden State's electricity industry could fundamentally change, with delays to a clean-energy mandate and a bigger role than ever before for public power.

More directly affected, of course, are stockholders, bondholders and thousands of PG&E retirees and their families who are casting nervous eyes on the pension fund. Wildfire victims suing the company — PG&E's stated main reason for bankruptcy -- also risk later, smaller settlements.

Continue reading.

Bloomberg Markets

By David R Baker

January 28, 2019

Shutdown Dashes Wall Street's Hope Trump Would Boost Bond Sales.

- **'You would have to be crazy to think they could help at all'**
- **At conference, little chance seen for infrastructure bill**

If Wall Street's municipal-bond departments are looking for Washington to help them drum up business, the prospects appear bleak.

Big underwriters would have liked for President Donald Trump to make good on his campaign promise to enact a major infrastructure plan, since states and cities would likely issue debt to cover their share of the projects.

But sales of new state and local government bonds tumbled 22 percent last year, and the record-long shutdown that tarnished Trump's relationship with the new Democratic majority in the House of Representatives left those at a Bond Buyer conference in New York pessimistic.

"Can you rely on the federal government for help at all?" asked Howard Cure, director of municipal-bond research at Evercore Wealth Management. "Based on what happened with the shutdown you would have to be crazy to think they could help."

There's certainly a need for help: The American Society of Civil Engineers estimates the country needs to increase its spending by $2 trillion through 2025 to get its roads, schools and other infrastructure in adequate shape. Trump spoke disparagingly of the state of affairs before taking office.

Dan Tomson, co-head of public finance at Citigroup Inc., the second-largest municipal bond underwriter, said it was "unlikely" that a federal infrastructure bill would be passed this year.

So the industry seems to have settled around a much more modest agenda in Congress, like expanding the use of so-called private activity bonds, issued on behalf of businesses, or resurrecting advance refundings, a refinancing tactic that was essentially killed off by Trump's tax bill. That was a big driver of the bond-sales slowdown last year.

"Our agenda as an industry — first and foremost, we have to keep what we have," said Bob Spangler, co-head of public finance at RBC Capital Markets. He said the preservation of the tax break for municipal bonds is crucial. "It is painfully aware to all of us that Washington's actions do matter in terms of our marketplace."

Bloomberg Markets

By Danielle Moran

January 29, 2019, 2:35 PM MST

A Few Lessons About Public-Private Partnerships in Higher Ed.

As many institutions look to public-private partnerships as a financing solution for their biggest and most important projects, Charles G. Renner describes some of the ins and outs.

It has been more than a decade since a report by the Institute for Higher Ed Policy first noted a worldwide shift away from public funding sources and toward private capital to finance higher education projects. The report appeared just months before the eruption of the global financial crisis that left an indelible scar on state and local public finances still seen today. The long-term effects of that crisis have only reinforced the logic that made private capital an attractive financing option in the first place.

The cold, hard fact is that available public funds for higher education have been shrinking. The

Center on Budget and Policy Priorities, a Washington-based research and policy institute, reported that 46 of 50 states "are spending less per student in the 2015-16 school year than they did before the recession." Nine of those states have seen inflation-adjusted spending declines of greater than 30 percent. On average, states are spending 18 percent less per student than before the crisis. This trend has provided little evidence of reversing.

To compensate for the funding shortfall, colleges and universities have a limited range of options. Many have decided to raise tuition, but tuition costs had been outpacing inflation for a generation prior to the crisis, and the market can bear only so much. Indeed, many institutions, particularly private ones, are already offering significant discounts off of their sticker prices to entice students to enroll. Others have opted to curb their academic programs and offerings; over the past year, many have announced downsizing and consolidation initiatives, including the elimination of majors and degree programs, intercollegiate athletic teams, and faculty and administrative positions. But such measures, too, have limited use. An institution can cut only so much without jeopardizing its ability to fulfill its mission and attract students.

Finally, some colleges and universities have increased drawdowns on their endowments, but this is more a short-term act of desperation, not the application of a long-term, sustainable financing solution. Besides, despite the cachet of the larger endowments — Harvard University sports an endowment over $37 billion — most institutions have fairly modest endowments that are little more than rainy-day funds. Last year, in a study by the National Association of College and University Business Officers, the median endowment value of an American higher education institution was $127.8 million, and 44 percent of all endowments were valued at $100 million or less.

One should also consider that the financial and risk profiles of the average American college or university have changed significantly in the past generation. Notably, many institutions have seen their debt-to-endowment ratios increase because of poor investment performance, increased drawdowns on the endowment itself or larger amounts of debt. And even those with the largest endowments are confronting new threats and challenges. For instance, in the spring of 2016, members of the Connecticut Legislature sought to tax Yale University's endowment. The idea was quickly scotched a few weeks later, but the proposal gives context to the discussion over higher education funding — colleges and universities are being squeezed because the states themselves are under financial stress.

These are the factors that have created the difficult circumstances in which higher education finds itself. It is also the reason so many institutions are looking to public-private partnerships as a financing solution for their biggest and most important projects.

The P3 Delivery Model

A public-private partnership, or P3, is long-term agreement between a public entity and a private industry team that is tasked with designing, building, financing, operating and maintaining a public facility. The past decade has seen a steady increase in the use of P3 structures, both inside and outside higher education. In 2016, something of a watershed year for P3, multiple high-profile projects came online in response to a variety of public needs, including a $1-billion-plus water infrastructure project servicing San Antonio, and a $300-million-plus renovation of the Denver International Airport's Great Hall.

The emergence of the P3 option is happening where it matters most: projects that would be otherwise unattainable under the traditional public-improvement delivery models. For instance, 10 years ago, only a handful of higher education P3 projects were up and running; today, we are approaching three dozen such projects.

The biggest challenge is, of course, the financing component, but P3 teams bring much more to the table than money — they give public entities access to expertise and innovation that can add significant value to projects at each phase of development.

Several recent higher education P3 projects demonstrate how the P3 delivery model and team approach can enable colleges and universities to take on projects they might not have otherwise been able to pursue.

Wayne State University student residential facility.

Wayne State sought out private partners for a project to demolish an existing 407-bed apartment building and replace it with new and renovated residential space. It went from issuing a request for proposals to obtaining financing in relatively record time and began leasing new beds in August 2018. To expedite construction, the private partner secured bridge financing as part of the overall capital stack, enabling the project to tap into generally favorable financing for the larger private placement of debt.

The university not only locked in favorable financing terms and paid off existing debt, but it also moved much of the worry and risk from operations onto the private partner by engaging in a full P3 approach. That includes design, construction, financing, operations and maintenance of the project over a 40-year life cycle, freeing up university resources to focus on academic and other needs.

University of California, Merced, 2020 campus expansion.

While residential projects have long been the focal point of higher education P3s, we are beginning to see more ambitious uses of the model. UC Merced 2020 is one example: a campuswide expansion covering some 219 acres and almost two million square feet of new facilities. The $1.2 billion project is likely the largest and most comprehensive P3 in American higher education. The mix of uses features academic learning, administration, research, residential and utilities, among others.

The project includes all project phases and employs an “availability” method of payment whereby the university will compensate a concessionaire directly according to a predetermined formula and schedule for the postconstruction operations and maintenance of the facilities over a 39-year life cycle.

Needless to say, a partnership of this size and scale requires solid relationships, as well as an agreement capable of accommodating changing conditions. The agreement contained flexible provisions to account for a variety of outcomes, including a 50/50 split among partners for any future refinancing gains, as well as a 50/50 split regarding potential cost-saving measures introduced by the developer.

Even when a college or university decides not to use a full P3 model, contemplating such a project often leads to a better result than only considering more traditional options. In 2014, the University of Kansas solicited private partners for a planned $350-million P3 that sought to add some 55 acres of academic, recreational, residential and utilities space to the campus. Ultimately, the university opted to create a nonprofit corporation and borrow the full project outlay from an out-of-state public finance entity rather than tapping private finance. But because the procurement process followed best practices for P3 selections, university stakeholders received the benefit of risk analyses and financial projections from multiple potential private partners, and an innovative debt-only financial approach was selected for the project.

Lessons for Other Institutions

The success of these projects suggests a few lessons for other higher education institutions. First, tapping into the full potential of the P3 model depends greatly on assembling the right partners. A well-rounded P3 team includes people with high-level expertise in private-development equity, architecture, engineering, contracting and law. Aside from the access to innovation and best-in-class skills, the team concept is important because P3 projects are long-term in nature. The relationships on which P3 projects depend will necessarily span many years; therefore, higher education participants need to carefully develop criteria for evaluating potential partners.

Also, few large-scale projects are finished without some kind of unanticipated challenge arising, so it is important to select partners who have demonstrated the stability and commitment required to see projects through to completion. Higher education administrators should study carefully their potential partners' portfolio of projects and evaluate how each dealt with the inevitable circumstances that challenge a team's ability to finish a project or to operate and maintain it afterward.

In addition, each of the foregoing projects had institutional champions who advocated for the P3 solution and oversaw the process through to completion. The role of champions in the P3 delivery model cannot be understated. They play a crucial role in securing buy-in for the project at the earliest possible stage and developing strategies to overcome obstacles. Establishing consensus on the campus also provides potential private partners the needed assurance to commit fully to a P3 project and helps to secure the best possible pool of P3 talent.

It is unlikely that the fiscal circumstances facing America's colleges and universities will improve greatly over the next decade, and the competition for students is fierce. When applied competently and in the right manner, a public-private partnership allows administrators to create solutions that differentiate their campuses and brand them as places capable of getting things done. More institutions should seriously consider this option.

Inside Higher Ed

By Charles G. Renner

January 28, 2019

Bio
Charles G. Renner is a partner in the Kansas City, Mo., office of law firm Husch Blackwell LLP and is the leader of the firm's public-private partnerships practice group.

S&P Global Ratings Clarifies Its Rating Action And Display Of Ratings Following Various Credit Enhancement Rating Withdrawals.

Recently, S&P Global Ratings withdrew various credit enhancement program ratings. In this report, we address frequently asked questions we have received from market participants to provide greater clarity on how we proceeded with the withdrawals.

Continue Reading

Jan. 29, 2018

Report: 63 Out of America's Largest 75 Cities Can't Pay their Bills, Acquired $330 Billion in Unfunded Debt.

According to a recent analysis of the 75 most populous cities in the U.S., 63 of them can't pay their bills and the total amount of unfunded debt among them is nearly $330 billion. Most of the debt is due to unfunded retiree benefits such as pension and health care costs.

"This year, pension debt accounts for $189.1 billion, and other post-employment benefits (OPEB) – mainly retiree health care liabilities – totaled $139.2 billion," the third annual "Financial State of the Cities" report produced by the Chicago-based research organization, Truth in Accounting (TIA), states.

"Many state and local governments are not in good shape, despite the economic and financial market recovery since 2009," Bill Bergman, director of research at TIA, told Watchdog.org.

The top five cities in the worst financial shape are New York City, Chicago, Philadelphia, Honolulu, and San Francisco. These cities, in addition to Dallas, Oakland, and Portland, all received "F" grades.

In New York City, for example, only $4.7 billion has been set aside to fund $100.6 billion of promised retiree health care benefits. In Philadelphia, every taxpayer would have to pay $27,900 to cover the city's debt; in San Francisco, $22,600 per taxpayer.

TIA analyzes state and city data to make it more accessible and easy to understand for taxpayers and citizens, who TIA argues, "deserve easy-to-understand, truthful, and transparent financial information from their governments."

By the end of Fiscal Year 2017, 63 cities did not have enough money to pay all of their bills, the report states, meaning debts outweigh revenue. In order to appear to balance budgets, TIA notes, elected officials "have not included the true costs of the government in their budget calculations and have pushed costs onto future taxpayers."

In order to determine the "taxpayer burden," TIA divides the amount of money needed to pay bills by the number of city taxpayers. The Taxpayer Burden equals the amount of money each taxpayer would need to pay to pay off their city's entire debt. Cities that can't pay their bills are identified as "sinkhole cities."

The Taxpayer Surplus is the amount of money left over after all bills are paid, divided by the estimated number of taxpayers in each city. Cities that have a surplus and or can pay their bills are called "sunshine cities."

This year, there were 63 sinkhole and 12 sunshine cities. The top five cities in the best financial shape are Irvine, Charlotte, Washington, D.C., Lincoln, and Fresno.

Despite the majority of cities' low rankings, financial conditions improved for most of the cities analyzed, TIA states.

"A favorable investment environment helped improve results, particularly in government pension funds [leading to a lower net pension liability]," Bergman said. "This helps illuminate a need for improving the timeliness of government financial reporting, and we've had a reminder in recent months that stocks can go down as well as up."

One major problem area TIA identifies is that city leaders have acquired massive debts despite the balanced budget requirements imposed on them.

“Unfortunately, some elected officials have used portions of the money that is owed to pension funds to keep taxes low and pay for politically popular programs,” TIA states. “This is like charging earned benefits to a credit card without having the money to pay off the debt. Instead of funding promised benefits now, they have been charged to future taxpayers. Shifting the payment of employee benefits to future taxpayers allows the budget to appear balanced, while municipal debt is increasing.”

As part of the ranking, TIA graded each municipal government with scores of “A” through “F.” Governments that received a C grade came close to meeting their balanced budget requirement. “A” or “B” grades were given to governments that met their balanced budget requirements and have a Taxpayer Surplus. “D” and “F” grades apply to governments that did not balance their budgets and have significant Taxpayer Burdens.

No cities received an “A” grade. Twelve cities received a “B;” 24 a “C;” 31 a “D;” and eight failed.

TIA is a nonprofit, politically unaffiliated organization composed of business, community and academic leaders interested in improving government financial reporting.

By Bethany Blankley | Watchdog.org Jan 30, 2019

America's Largest Cities Are Practically Broke.

Sixty-three, out of America’s most populous seventy-five, cities do not have enough money to pay all of their bills. Chicago-based municipal finance watchdog, Truth in Accounting (TIA) revealed these stark news in its third annual, Financial State of the Cities. According to TIA, “This means that to balance the budget, elected officials have not included the true costs of the government in their budget calculations and have pushed costs onto future taxpayers.” TIA divides the amount of money needed to pay bills by the number of city taxpayers to come up with what it calls Taxpayer Burden™.

Based on TIA’s grading methodology, for the second year in a row, not a single one of the 75 cities received an ‘A’. TIA, however, was unable to rank and grade two of the most populous cities, Newark and Jersey City in New Jersey, because unfortunately, they do not issue annual financial reports that follow generally accepted accounting principles, GAAP.

A grade: Taxpayer Surplus greater than $10,000 (0 cities).

B grade: Taxpayer Surplus between $100 and $10,000 (12 cities).

C grade: Taxpayer Burden between $0 and $4,900 (24 cities).

D grade: Taxpayer Burden between $5,000 and $20,000 (31 cities).

F grade: Taxpayer Burden greater than $20,000 (8 cities)

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Forbes

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TIA 2019 Financial State of the Cities.

On January 29, Truth in Accounting released its third *Financial State of the Cities* report, a comprehensive analysis of the fiscal health of the nation's 75 most populous cities based on fiscal year 2017 comprehensive annual financial reports.

This year, the study found that 63 cities do not have enough money to pay all of their bills, and in total, the cities have racked up nearly $330 billion in unfunded municipal debt. The study ranks the cities according to their Taxpayer Burden or Taxpayer Surplus™, which is each taxpayer's share of city bills after available assets have been tapped. Check out the data for your city at the State Data Lab.

Download the new report here.

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