Bond Case Briefs

Municipal Finance Law Since 1971

Issuers Structure Deals to Meet Retail Demand for Lower Coupons.

Municipal issuers have retail buyers in mind when they take a trip to the primary market to sell their tax-exempt bonds.

They say they have recently been delivering the 4%-or-less coupons that are in high demand by traditional buy-and-hold investors who have a growing appetite for cost-efficiency in the current low yield climate.

“We are giving investors the coupons they are looking for, hoping to increase the number of buyers interested and hoping to improve the pricing,” Tim Rosnick, deputy controller of the Los Angeles, Calif., Unified School District told The Bond Buyer in an interview on Wednesday.

He said the district incorporated the preferred 4% coupons into two bond issues totaling $1.2 billion it sold earlier this month as a means of being flexible and accommodating of buyers’ growing demand for sub-5% coupons.

The greater the demand, the lower the yields, which enhances cost savings, Rosnick said, as the district prepared to return to market with a competitive sale of $455 million refunding of GO dedicated unlimited ad valorem property tax bonds on Thursday.

While the deal is restricted from having zero coupon bonds or coupons higher than 6%, Rosnick said the structure will be at the discretion of the winning bidder.

“Other than the minimums and maximums, they have a great deal of flexibility in terms of coupons,” he said. However, he said he expects 4% coupons to surface on some of maturities given the recent trend for the lower coupon product.

Retail demand for sub-5% couponing is increasing, other issuers and financial advisors confirmed.

“We are aware of retail demand and routinely look at alternative couponing structures,” Jorge Rodriquez, managing director and head of public finance at Coastal Securities, said in an interview on Thursday.

As a co-financial advisor for the city of San Antonio earlier this month, Rodriguez said it made sense to structure some of the general improvement and refunding bonds and combination tax and revenue certificates of obligation from a $306.44 million sale with 4% coupons to benefit the hearty investor demand.

At the same time, that structure was advantageous for the city as some of the maturities with 4% coupons were oversubscribed – even though they were priced at a premium.

For instance, 4% coupons were structured in 2034, 2035, and 2036, to yield 2.43%, 2.48%, and 2.53% at the pricing.

Final decisions, according to Rodriguez, are often determined by a series of criteria, including investor demand, credit, size of the maturity, and yield to maturity calculations.

“All of those drive how you have to coupon it,” he said.

Rodriguez said his firm consults with the underwriters to get price indications by maturity on a variety of coupon levels, including 3%, 4%, and 5%, and then chooses the coupons that will grab the most investor attention.

“You have to be able to move the bonds and also want to price them at the lowest possible kick to the issuers,” he said.

Using lower coupons typically means a lower yield to maturity, which results in a lower cost to the issuer, Rodriguez said. For instance, structuring a maturity with a 4% coupon versus a 5% coupon may translate into 10 basis points of yield to maturity savings. That is very attractive for issuers selling a large transaction, Rodriguez said. On the city’s recent deal, 5% coupon bonds due in 2033 had a yield to maturity of 2.996%, versus the 4% coupons due in 2034, which had a yield to maturity of 2.981%, according to Municipal Market Data.

New York City is also among issuers around the country aiming to please retail buyers with preferred couponing to meet their investment needs.

As a large and frequent issuer of municipal debt, New York City wants to keep abreast of the changing patterns of investor demand and try to meet that demand, according to the New York City Comptroller’s office.

“Individual investors – who often live or work in our city – have always been important to the success of our bond sales,” New York City Comptroller Scott M. Stringer told The Bond Buyer in a prepared statement.

“We will continue to make a concerted effort to give individuals a fair chance to purchase bonds and invest in New York City’s success.”

The city recently drew substantial demand for 4% coupons that were included in its Aug. 2 GO sale of tax-exempt bonds totaling $800 million, according to data provided by the New York City comptroller’s office.

The 4% coupons generated 51% of the $215 million taken during the two-day retail order period, while 37% were for the 5% coupons, and 12% were for the sub-4% coupons.

The strong demand for 4% coupons comes in response to the absolute low level of interest rates, the comptroller’s office said. There is a particular effort by professional retail investors, such as money managers, financial advisors, and trust departments acting on behalf of individuals, to avoid the higher dollar prices associated with 5% coupons, which was the dominant coupon structure up until three to four months ago, the comptroller’s office said.

On the city’s GO sale, retail investors veered from recent buying patterns and participated in longer maturities in order to get higher yields – even if it meant accepting lower than the 5% coupons they previously favored, an underwriter involved in the deal said after the pricing.

The retail crowd chased the 3% and 4% “handles” available in 2029 with a 2.07% yield and 2036 with a 2.78% yield. They even participated in the 2039 maturity, which had a split 3% and 4% coupon yielding 2.90% and 2.71%, respectively, he said.

“The market acceptability of sub 5% is becoming more and more prevalent,” the underwriter added. “With absolute yields as low as they are people are sacrificing a little less coupon to pick up a little more yield to the call.”

Since 5% coupons once dominated the market, retail investors also have an increased need for coupon diversify away from the previous market standard, the comptroller’s office noted.

At the same time, the city benefits from having lower coupons, such as 4% coupons, which are priced as premiums to a call date with a slightly higher yield, and act as a natural hedge against rising interest rates versus the 5% coupons, the comptroller’s office said.

Other issuers around the country are also tailoring their coupon structures for retail, while also achieving some cost savings of their own.

“The Connecticut State Treasurer’s Office structures its bond sales to meet the preferences of a variety of investors and to strike a balance between current and future debt service costs for the general obligation program,” Deputy State Treasurer Lawrence A. Wilson said in an email on Wednesday.

“We also are mindful that many retail customers prefer to purchase bonds with coupons of 4% or lower in order to avoid the higher prices associated with 5% coupons,” he said. “Some institutional customers also prefer to purchase bonds with lower coupons,” he added. “We structure our bond sales with a variety of coupons accordingly.”

For instance, he said Connecticut’s recent new issues have been structured with lower coupons to both accommodate retail investors’ cost efficient strategy, as well as to manage the state’s future debt costs.

“The lower coupons also allow us to balance current and future debt service costs, particularly for our general obligation bond program, for which premium must be used to cover near-term interest costs,” Wilson explained. “Because of this, the budget impact of selling 5% coupon bonds at a premium is lower debt service in the short-term, but higher debt service in the future.”

Therefore, selling lower coupon bonds for the GO program helps the state manage future debt costs, Wilson added.

For example, of the $250 million in tax-exempt GO bonds the state sold earlier this month via competitive bid at record low rates, he said $100 million, or 40%, of the bonds were assigned coupons of 4% or less by the winning bidder.

Additionally, when the state sold GOs back in May, of the $57 million in orders from retail investors during the retail order period, $29.1 million, or 51%, of those orders were for 4% or lower coupon structures, according to Wilson.

Of the total $501.4 million of bonds sold, $114.6 million, or 23%, of the bonds were sold with 4% or lower coupons to both retail and institutional investors, he added.

Wilson noted that Connecticut two decades ago was one of the first states to pioneer the now widely-used retail order period as a marketing technique and still gives its in-state residents priority status on bond issues.

Like Connecticut, New York City makes frequent use of retail order periods and makes an effort to offer a variety of coupons to their loyal, mom and pop investors, while also giving their orders preference over institutional orders when it comes to new issues, the comptroller's office said.

The Bond Buyer

By Christine Albano

August 18, 2016

USDOT Constructs Build America Bureau.

The U.S. Department of Transportation (USDOT) announced the establishment of the Build America Bureau, "which will drive transportation infrastructure development projects in the United States by streamlining credit and grant opportunities while providing technical assistance and encouraging innovative best practices in project planning, financing, delivery and monitoring."

"The Build America Bureau will be a one-stop shop to help develop projects and provide financing in a single streamlined, effective and comprehensive manner," said U.S. Transportation Secretary Anthony Foxx. "It will allow USDOT to be responsive to America's changing transportation needs and opportunities, so we can deliver real, tangible infrastructure development for local, regional and national population centers."

The Build America Bureau combines the following USDOT programs: the Transportation Infrastructure Finance and Innovation Act (TIFIA), the Railroad Rehabilitation & Improvement Financing (RRIF), the private activity bond (PAB), the Build America Transportation Investment Center (BATIC) and the new $800 million Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grant program.

The bureau will utilize the full resources of all the modes within USDOT and continue to promote a culture of innovation and customer service. To the customer, there will be a single entity in charge of USDOT credit, large scale and intermodal project development and a single point of contact for working with USDOT on infrastructure finance and development.

The Bureau Outreach and Development team, continuing the work of the BATIC, will work with the project sponsors to support them on how they can best combine credit, funding and innovative project delivery approaches, such as public-private partnerships (P3s) and then offer project-level technical assistance to get them ready to pursue it.

The department's credit team will be able to underwrite loans from multiple sources together, so that the customer is no longer getting a TIFIA loan or a RRIF loan, but instead a single credit package from USDOT to help them build the infrastructure they need. Also, the bureau will manage the application and evaluation process for the FASTLANE grant program, which funds high-impact projects that address key challenges affecting the movement of people and freight.

BATIC, which was announced in 2014, has expanded the department's ability to meet the needs of the nation's transportation system. BATIC serves as a single point of contact and coordination for states, municipalities and project sponsors looking to utilize federal transportation expertise, apply for federal transportation credit programs and explore ways to access private capital in P3s. Since BATIC's formation, USDOT has closed more than $10 billion in financing to support $26 billion in projects.

Railway Age

Thursday, July 21, 2016

To Subsidize Development or Not?

Often-uninformed city leaders struggle with the decision, and taxpayers pay the price for their lack of financial knowledge.

These days it's not hard to convince people to live downtown, or, for that matter, to get developers to build places for them to live. Increasingly, both millennials and baby boomers want urban amenities. They want to live close to work, parks and restaurants, and they want to be able to walk or bike to them. As a result, downtown populations have soared: 65,000 people now live in downtown Seattle, downtown Los Angeles — traditionally not a residential area — is home to 52,000 people, downtown Philadelphia has 57,000, and Boston has 17,000 (a 50 percent increase since 2000).

Needless to say, these cities aren't subsidizing downtown development. In some cases, they've actually started to extract fees and concessions from developers to build downtown. But that's not the case everywhere.

In Houston, where I live, 150,000 people work downtown, but fewer than 5,000 people live there. Clearly, it has room to grow — and there are takers. Several thousand luxury units are currently under construction. Rentals can go for close to $5,000 per month, while condominiums can go for as little as $300,000 or as much as $1 million or more. But the market for downtown living isn't as robust as in other cities. So Houston is paying developers $15,000 a unit to build there.

Which raises some pretty basic questions: How much should cities spend to buy downtown residents? And when should they stop?

Yes, I said "buy" residents. When city leaders provide a financial subsidy for a development, that's what they are doing — paying money to acquire residents or stores or offices that wouldn't otherwise be built in a certain place.

The obvious answer to when a city should stop buying residents is when developers stop asking for subsidies. But we know all too well that this never happens. Urban real estate developers always ask for subsidies whether they need them or not, and cities often provide them even when they're not needed. Why else would cities subsidize billion-dollar sports stadiums to house teams that are worth billions and that are owned by sports tycoons worth billions?

That's why cities need to know a lot about the economics of private real estate development deals, specifically when and why projects pencil out or don't. It's something that, amazingly, cities know little about. If you're going to subsidize a developer, for example, you should only do it when you know you can't get the project you want done any other way. Alternatively, if you're going to soak a developer for impact fees or other community benefits, you should do so only when you know it won't kill a project you otherwise want. That's why cities should have a lot of financial analysis capacity — not just to balance their own budgets, but to understand whether developers are balancing their own budgets on the backs of the taxpayers.

So perhaps the real question is: How do cities ensure they have the financial IQ to decide when and when not to subsidize development?

GOVERNING.COM

BY WILLIAM FULTON | AUGUST 2016

Puerto Rico's Rescue Plan Represents a Troublesome Trend, Economists Say.

It’s the latest government to rewrite the rules for getting out of fiscal distress.

While many in Puerto Rico are no doubt relieved that Congress struck a deal to save the U.S. territory from total financial breakdown, economists are worried that recent rescue plans are creating a potentially troublesome precedent.

PROMESA, the Puerto Rico Oversight, Management and Economic Stability Act that President Obama signed last month, is the latest debt restructuring that takes unprecedented measures to get out of fiscal distress. For one, it calls for the creation of a control board to oversee the restructuring — something that’s never occured beyond the municipal level. It also offers a layer of protection that technically shouldn’t be available to a state or territory, many economists say, because neither is legally allowed to file for bankruptcy.

“One of my concerns as a credit analyst is I rely on the structure of a contract,” said Steve Winterstein, chief municipal strategist at Wilmington Trust, an investment management firm. With PROMESA, he said, “all of a sudden the rules of the game can get changed.”

But Puerto Rico isn’t the only government to recently take unconventional steps to get out of financial trouble.

Detroit, the largest U.S. municipality ever to file for bankruptcy, created a restructuring plan that prioritized pension holders over general obligation bondholders. Those bondholders received about 80 cents on their dollar, but pensioners averaged around a 90 percent recovery rate.

San Bernardino and Stockton, Calif., which both filed for Chapter 9 in recent years, followed a similar trend. The cities opted to improve their finances by cutting retiree health benefits instead of pensions — an untraditional move in bankruptcy filings.

These unconventional restructurings worry creditors because they may set a new precedent in future cases: If other states and territories are given bankruptcy protection, that would negatively impact bondholders. Bondholders had hoped to sue the island for the $2 billion in bond payments they were owed, but PROMESA protects Puerto Rico — at least for now.

Economists say it’s become unpredictable what states are able to do to avoid and recover from financial insolvency. Illinois, for example, has more than $7 billion in unpaid bills. It recently saw its credit rating downgraded to the lowest level of any state since 1992, and it has one of the least-funded pension plans in the country.

In the months and years to come, Puerto Rico hopes to model itself after Detroit’s recovery, according to Gov. Alejandro García Padilla. Just a few years after filing for bankruptcy, the Motor City has started to see a revitalization. Up to 1,400 apartments are set to open in the heart of the city this year and more businesses — including dozens of start-ups — have opened downtown.

Puerto Rico's recovery may be tougher, Padilla admits. The fiscal downturn has caused many residents to leave the island — the population of children under five is half of what it was in 2000. And the Zika virus, which has been declared a public health emergency in Puerto Rico, offers a new challenge.

"It's going to take some time to reverse the drain that's been ongoing," said Padilla.

GOVERNING.COM

BY MATTIE QUINN | AUGUST 17, 2016

Why Companies Are Moving Back Downtown.

Tax incentives aren't always the best way to lure businesses. Many are simply going where the talent is.

Ryan Woodings owns a 15-person tech startup in Boise, Idaho.

His company, MetaGeek, specializes in helping businesses fix and maintain their Wi-Fi systems. Or, as the website puts it, "making Wi-Fi more awesome for more people." A decade ago, MetaGeek was a side project out of Woodings' house. His mom was his first hire. Eventually, the company grew and moved into an actual office in a suburban neighborhood on the outskirts of Boise.

The location posed some problems. Foremost among them was what might be termed the "intern dilemma." Each semester, MetaGeek seeks the help of a handful of student interns from Boise State University. "Being 20 minutes away from campus," Woodings says, "we could only get students who had a car and had certain class schedules."

So MetaGeek did what a lot of companies are doing these days. It moved downtown. The student interns are now able to bike over to the office between classes. In the afternoons, MetaGeek employees can take walks on the nearby greenbelt that runs through town along the Boise River. If they want to bike home, the city runs a bicycle rental program and has an expanding network of dedicated bike lanes. "Downtown Boise is where everything is," Woodings says. "When you have a lunch meeting, or get coffee with a client, it's always downtown."

MetaGeek is one of several tech companies that have put down roots recently in the center of Boise. Last summer, Boise State moved its computer science department downtown so that it could be closer to students' potential employers. And Boise isn't unusual. In cities across the country, businesses are trying to capitalize on the increasing density of tech talent clustered in the heart of cities. In Massachusetts, General Electric is setting up its new headquarters along the central Boston waterfront. In Rhode Island, Hasbro has moved 350 jobs to downtown Providence. In Illinois, nearly 50 companies, from Kraft Heinz to Motorola Solutions, have reestablished their headquarters in or near Chicago's loop. According to the U.S. Census Bureau, the number of metro area jobs located within three miles of downtowns increased seven percentage points between 1996 and 2013. The suburbs still have about three-quarters of metro area jobs, but downtowns are luring quite a few employers back.

Much of that has to do with the tastes of the millennial generation, adults 34 and younger, many of whom continue to express a preference for walkable neighborhoods with bike lanes, public transit and a mix of recreational amenities. Last year, millennials became the largest component of the

American workforce. For many companies, attracting and retaining millennial workers seems to require having a downtown office. “Probably for the first time in history, instead of people moving where jobs are,” says Tom Murphy, a senior fellow at the Urban Land Institute, “jobs are moving where the talent is.”

The most talked about move of this kind in recent years is GE’s decision to move from Fairfield, Conn., in the suburbs of New York City, to its new location in the center of Boston. A mix of $145 million in tax breaks from the city and the state of Massachusetts made the relocation cost-neutral, but that wasn’t the main reason for the switch. If it had been, GE would have moved to New York, where Gov. Andrew Cuomo had brokered a deal offering more in tax incentives.

At the time of the announcement, Jeffrey Immelt, the CEO of GE, explained the move in terms of the company’s changing identity. He pointed out that the global industrial conglomerate is getting into software, and its location in the Seaport District of downtown Boston puts GE employees in the same neighborhood as dozens of venture capital firms and tech startups. Immelt noted that GE should have no problem finding and hiring local talent, as the Boston metro area is home to 55 colleges and universities and Massachusetts spends more on research and development than any other region in the world.

But the company’s decision to move was also based on a desire to be in an environment with sidewalks, ample transit and other amenities that would appeal to younger employees. GE executives boasted about the industrial feel of the site, which includes two historic brick warehouses overlooking the Fort Point Channel.

The reasons why GE moved are the reasons a lot of companies are moving back downtown. “Municipalities used to offer the lowest tax rates and the biggest subsidies to attract companies. That’s no longer the case,” says Murphy, who was mayor of Pittsburgh for 12 years before joining the Urban Land Institute. “People want a sense of place with good public transit and a good mix of activities. Cities that are making those kinds of investments are probably going to be the winners.”

Last year, the urbanist advocacy group Smart Growth America studied nearly 500 companies that added jobs downtown between 2010 and 2015. About half moved in from the suburbs; others were moving from another downtown location, or expanding their existing downtown presence. What they had in common was a relocation of jobs to areas that were more bikeable, walkable and transit-accessible.

That’s what happened with Red Hat, a software company in North Carolina. In 2011, Red Hat had outgrown its headquarters in a research park in southwest Raleigh. When management surveyed workers about what they were looking for in a new location, “the pretty much unanimous feedback was that [they] wanted to be in a more urban environment,” says Simon George, a senior director at Red Hat. “That factored heavily into our decision-making.” Ultimately, the company took over a former Duke Energy building in downtown Raleigh, adding more than 250 jobs to the downtown core. “The expectations of employees have changed,” George says. “They want to be able to walk from home to work. They want to be able to walk to restaurants. They don’t want to be driving everywhere.”

All across the country, suburban office parks are less economically competitive than they once were, says Stephen Friedman, a development adviser and urban planner in the Chicago area. “The times have changed and the attitudes have changed,” he says. It isn’t just that millennials want to work downtown. It’s that so many of them want to live there.

In 2013, the Urban Land Institute found that 62 percent of millennials preferred a home close to shops, restaurants and offices. In another survey by the institute, millennials in the Boston metro area were more concerned with the ease of their commute and the proximity of public transit than the quality of schools or public safety. Nearly 80 percent said it was very important to be near public transit while only 30 percent said it was very important to have free or discounted parking.

As recently as a decade ago, “the sheer amount of space available in the suburbs might have been a positive attribute,” says Bethany Schneider, an analyst with the commercial real estate firm Newmark Grubb Knight Frank (NGKF). “Now, more companies aren’t looking for room to grow. If anything they’re looking to be more efficient.”

Schneider was part of a team at NGKF that last year studied suburban office parks near five major cities: Chicago, Denver, New York, San Francisco and Washington, D.C. They found that between 14 percent and 22 percent of the suburban office inventory was “obsolete.” It didn’t meet at least two of six common features that prospective tenants said they wanted, especially proximity to transit. Tenants in obsolete suburban office parks “are facing a losing battle to retain their best workers,” the study’s authors concluded, and “owners of such spaces are facing an even greater challenge — how to keep their investments attractive to tenants.”

In June, Friedman gave a presentation about the growth of downtown jobs to a group of Chicago area real estate professionals. He noted that the retail and office vacancy rates were lower in the city than the suburbs, and he named some of the big companies everyone knew were setting up shop in downtown Chicago. (That very week, McDonald’s was the latest to announce a new central Chicago headquarters.) Midway through his presentation, however, Friedman got to an important slide. At the top it said, “The Suburbs Are Hardly Dead!”

“The companies that need the young millennial labor force have moved some functions downtown,” Friedman says. “But it’s not like everything is lost in the suburbs.”

Indeed, the flight from suburban office sites can be overstated. When companies move downtown, they get press. When they change locations within the suburbs, they don’t draw the same attention. Right now in the Chicago area, about two-thirds of total regional employment is in the suburbs, where rent is about half of what it is in the city. Downtown vacancy rates are trending downward, but that’s true in the suburbs as well. The rate of employment growth is expected to be faster in the city, but the total number of added jobs will be higher in the suburbs.

Still, suburban communities worried about long-term trends are looking for ways to adapt and become more competitive with urban downtowns. The optimal solution, according to Friedman and his colleague Ranadip Bose, is to “sub-urbanize” — to provide enough urban-style amenities to be able to compete for city-minded millennials.

One place attempting such a reinvention is Research Triangle Park (RTP) in the Raleigh-Durham area. The campus is half the size of Manhattan, and boasts several global science and tech companies, notably IBM and Cisco Systems, but it’s also an artifact of 1950s community planning. The fact that tech companies like Red Hat are choosing downtown Raleigh over nearby research parks illustrates the problem RTP currently faces: It has no housing, no light rail, and no main street with cafes, restaurants and shops. The RTP’s layout inhibits the kind of informal socialization and networking between tech workers that is increasingly common in urban innovation districts.

That will soon change. With $50 million in public and private investment, the Research Triangle Foundation has plans to redevelop a 50-acre site, adding apartment buildings, a central marketplace and public gathering spaces, including an amphitheater, dog park and sculpture garden. Like many downtowns, the redrawn Research Triangle Park will have a bike rental program and a circulator bus to get around campus. The foundation’s CEO, Bob Geolas, is also hoping for a regional dedicated rail system, with the park as the central hub, so that RTP’s 40,000 workers don’t have to commute by car.

Geolas says that about eight years ago, the park’s tenants started to express anxiety that the campus was a liability in recruiting talent. “The suburban park model really isolates and separates out what the companies are doing from the general public,” Geolas says. “When you visit a traditional urban center, there’s an energy there. Downtowns have a sort of personality that does not exist in a suburban research park like ours. A big part of what we’re doing is building a personality that people can relate to and be inspired by.”

The foundation calls the redevelopment a “park center,” but it does envision many of the trappings of a traditional downtown: pedestrian walkways, transit, housing, coffee shops and lunch spots. The difference would be the natural ambience, with plots of grass and rows of trees woven throughout the campus. “What we really want,” Geolas says, “is the most urban park experience that you can imagine.”

Such an extensive overhaul might be out of reach for the typical suburban community, but villages outside Chicago are already contemplating small ways that they can become more urban. The village of Schaumburg, which lost the Motorola Solutions headquarters last year, is looking to update that site by breaking up so-called “superblocks” into smaller 600-foot-long blocks with more foot paths. The village is getting its first new apartment complex in more than 15 years, a 180-unit building catering to young professionals working in town. And the village is adding bike trails that connect Schaumburg to a nearby community college and forest preserve.

Of course, some places don’t see a need to change, and won’t. Last year, when Kraft Heinz opened a new headquarters in Chicago, it closed its offices in the village of Northfield. “We were disappointed to see them leave. We weren’t worried economically,” says Stacy Sigman, the village manager. “We have a great campus. Immediately we were inundated with calls to take over the space.” Technically, the office Kraft left behind was vacant for 15 days, but a medical supplies company, Medline Industries, had already secured the lease, adding 1,800 jobs — more than the number that had left.

Northfield has an array of advantages. It’s an inner-ring suburb with about 6,000 residents, less than 30 minutes’ driving time from downtown Chicago on a light traffic day. It has some of the best public schools in Illinois. Sigman says Northfield doesn’t have plans to adopt urban-like features. “It’s contrary to who we are,” she says. “We like the small quaintness. I think that’s what makes us special.”

Some places don’t have a choice. They have to change. Geolas, the Research Triangle CEO, would like to see suburban research parks evolve into something more attractive to millennial workers, and he finds a source for optimism in the history of downtowns. “I’m old enough to remember when [magazines] ran stories about how downtowns were dead,” he says. Eventually developers and city planners found a formula to reinvigorate urban business districts with density and a diversity of uses. Now the same process needs to happen in the suburbs, he says. “We have to reimagine what those places can be.”

GOVERNING.COM

BY J.B. WOGAN | AUGUST 2016

Measuring Success in Pay for Success: Randomized Controlled Trials as the Starting Point.

Abstract

Evaluations are a key feature of pay for success (PFS) projects, and rigorous evaluation designs are important for building the evidence base of effective programs by determining whether a project's outcomes can be attributed to the program. Randomized controlled trials (RCTs) are considered the most rigorous evaluation design and give us the best approximation for what would have happened without the program. However, PFS stakeholders often don't know about RCTs or consider them too expensive, difficult, or controversial. This brief outlines RCTs, their advantages, and solutions to overcoming perceived and real challenges to their use in the context of PFS.

Download the full report.

The Urban Institute

by Justin Milner and Kelly Walsh

August 10, 2016

Managing Investors' Risk in Pay for Success Projects.

Abstract

Pay for success (PFS) projects offer governments opportunities to invest in outcomes and employ new capital to meet the needs of their communities. But PFS projects also carry risks. For investors, the risks relate to the project failing to meet its outcomes or the government reneging on its commitment to pay. Investors' perceptions of risk matter. Projects with high or unclear risk may discourage investors and prevent the project from launching. This brief helps project partners understand the risks investors perceive when entering PFS contracts and familiarize themselves with measures that have been used or proposed to manage this risk.

Download the full report.

The Urban Institute

by Rebecca TeKolste, Matthew Eldridge, and Rayanne Hawkins

August 18, 2016

Impact of Pay-to-Play Rules in the 2016 Election Cycle: K&L Gates

The federal Pay-to-Play Rules may impact campaign contributions in the 2016 election and, in particular, campaign contributions to a major party's presidential campaign. Financial institutions that do business with, or seek to do business with, state or local pension plans should be aware of the business consequences that a political contribution in the 2016 election cycle may trigger.

In particular, vice presidential candidate Mike Pence's authority over the Indiana Public Retirement System ("INPRS") and the Indiana Education Savings Authority ("IESA") as Governor of Indiana may limit political contributions from a wide spectrum of financial institutions and their associates to the Donald Trump presidential campaign. Investment advisers, brokers, dealers, municipal securities dealers, municipal advisors, swap dealers and security-based-swap ("SBS") dealers (collectively, the "Covered Institutions"), and their associates are all potentially impacted.

Governor Pence is an "official" of INPRS and IESA under the Pay-to-Play Rules because he appoints members of their boards of trustees. As a result, direct or indirect contributions to the Trump campaign could trigger a two-year "time-out" that would prevent Covered Institutions from collecting fees from, or engaging in certain activities with, INPRS and the Indiana CollegeChoice 529 Savings Plans or the Indiana CollegeChoice CD 529 Savings Plan, of which IESA serves as the governing board.

This article summarizes the four principal federal Pay-to-Play Rules currently in effect: Securities and Exchange Commission Rule 206(4)-5 (the "SEC Rule"); Municipal Securities Rule Making Board Rule G-37 (the "MSRB Rule"); Commodity Futures Trading Commission Regulation 23.451 (the "CFTC Rule"); and SEC Rule 15Fh-6 applicable to SBS dealers and major securities-based swap participants.

In addition, the Pay-to-Play Rules broadly prohibit a person from doing indirectly what the person would have been prohibited from doing directly. Accordingly, a payment to a political action committee ("PAC") or political party that is soliciting funds for the purpose of supporting an official of an issuer could be treated as a contribution made directly to such official.

SEC Pay-to-Play Rule
The SEC Rule was adopted in 2010 and modeled on the MSRB Rule. [1] It prohibits "Covered Advisers" [2] from receiving compensation for providing advisory services to a government entity client (such as INPRS) for two years after the adviser or a Covered Associate (as defined below) has made a contribution to an "official" of the government entity, or has solicited from others or coordinated contributions to an "official" of the government entity. The SEC Rule defines "Covered Associate" as: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any PAC controlled by the investment adviser or by any person described in parts (i) or (ii).

In addition, a contribution to a political party, PAC, or other committee or organization may trigger the two-year "time-out" if the contribution is, for example, earmarked for or known to be provided for the benefit of a particular political "official." [3] An "official" means any individual (including any election committee of the individual) who was, at the time of a contribution, a candidate (whether or not successful) for elective office or holds the office of a government entity, if the office (i) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or (ii) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.

Accordingly, a candidate for federal office may be an "official" as a result of holding a state or local office. For example, the SEC Rule covers contributions to Trump's presidential campaign because his running mate, Governor Pence, is an "official" under the SEC Rule given his current office of Governor of Indiana.

Under the SEC Rule, Covered Associates (but not Covered Advisers) may make a contribution up to the de minimis amount per election without triggering the two-year "time-out" on advisory fees. This de minimis amount is $150 in an election where a Covered Associate may not vote for the candidate and $350 in an election where a Covered Associate may vote for the candidate.

MSRB Pay-to-Play Rule
The MSRB Rule prohibits brokers, dealers and municipal securities dealers (each, a "Covered Municipal Dealer") from engaging in municipal securities business and municipal advisors from engaging in municipal advisory business with municipal entities if certain political contributions have been made to officials of such municipal entities.

Under the MSRB Rule, a Covered Municipal Dealer is prohibited from engaging in municipal securities business with a municipal entity for two years after the Covered Municipal Dealer, a municipal finance professional of the Covered Municipal Dealer or any of their controlled PACs makes a contribution to any official of the municipal entity who can influence the selection of the Covered Municipal Dealer.

In addition, effective August 17, 2016, municipal advisors are prohibited from engaging in municipal advisory business with a municipal entity for two years after the municipal advisor, a professional of the municipal advisor or any of their controlled PACs makes a contribution to an official of the municipal entity who can influence the selection of the municipal advisor.

The MSRB Rule also prohibits Covered Municipal Dealers and municipal advisors, and their professionals, from soliciting or coordinating contributions from any person (including an affiliated entity) or PAC to an official of a municipal entity with the ability to select a Covered Municipal Dealer or municipal advisor with whom the Covered Municipal Dealer or municipal advisor does or is seeking to do business.

The MSRB Rule permits a municipal finance professional or a municipal advisor professional (but not Covered Municipal Dealers or municipal advisors) to make a contribution up to $250 in an election where the individual may vote for the candidate without triggering the "time-out." There is no de minimis exception if the municipal finance professional or municipal advisor professional is not eligible to vote for the candidate.

Other Pay-to-Play Rules
The CFTC Rule restricts swap dealers from offering to enter into or from entering into a swap or a trading strategy involving a swap with a governmental special entity, if the swap dealer (or a covered associate of the swap dealer) made or solicited contributions to an official of that governmental special entity during the preceding two years, with limited exceptions. When proposing the rule, the Commodity Futures Trading Commission stated an objective of harmonizing the CFTC Rule with the MSRB Rule and the SEC Rule that already covered many swap dealers. Accordingly, the application and terms of the CFTC Rule to swap dealers are very similar to the MSRB Rule and the SEC Rule described above.

SEC Rule 15Fh-6 restricts SBS dealers from engaging in certain activities with a municipal entity, if the SBS dealer (or a covered associate of the SBS dealer) made or solicited contributions to an official of that municipal entity during the preceding two years, with limited exceptions. [4] The SEC stated that Rule 15Fh-6 was designed to subject the SBS dealers to the same types of restrictions as the CFTC Rule.

FINRA has proposed a similar rule that would apply to executives of broker-dealers.

In addition, many states and localities have also adopted pay-to-play rules that are applicable to persons who contract with their governmental agencies.

Contributions to the Trump/Pence Campaign
The Governor of Indiana appoints members of the boards of INPRS and IESA. This power to appoint board members, who make the decisions whether to hire or terminate service providers, makes Governor Pence an "official" of INPRS and IESA for purposes of the Pay-to-Play Rules.

Because the presidential and vice presidential candidates of a political party run on a single ticket, a contribution to the Trump presidential campaign would be subject to the Pay-to-Play Rules. In addition, contributions to the Republican Party or to a PAC supporting the Trump presidential campaign may trigger a "time-out" as well because the Pay-to-Play Rules apply to contributions that the donor knows will benefit a particular official.

Other Campaigns
In addition to the Trump/Pence campaign, Covered Institutions should be mindful of the ramifications of the Pay-to-Play Rules with respect to other donations this election cycle. As both Hillary Clinton and Tim Kaine are not "officials" for purposes of the Pay-to-Play Rules, a contribution to the Clinton/Kaine campaign would not be subject to the Pay-to-Play Rules. There are, however, other candidates for whom a campaign contribution may trigger the Pay-to-Play Rules.

Financial institutions should assess whether the Pay-to-Play Rules present a business risk in the 2016 election campaign, not just with respect to firm contributions but also those of their associates and related PACs, given their current or potential investors or clients. If so, they should review their compliance policies and procedures accordingly.

Notes:
[1] "Political Contributions by Certain Investment Advisers," SEC Release No. IA-3043, www.sec.gov/rules/final/2010/ia-3043.pdf.

[2] The SEC Rule applies to investment advisers registered or required to be registered with the SEC, "foreign private advisers" not registered in reliance on Section 203(b)(3) of the Investment Advisers Act, and "exempt reporting advisers."

[3] "Staff Responses to Questions About the Pay to Play Rule," www.sec.gov/divisions/investment/pay-to-play-faq.htm.

[4] SEC Rule 15Fh-6 was adopted in April 2016 and became effective on July 12, 2016.

K&L Gates

by Clifford J. Alexander, Ruth E. Delaney, Sonia R. Gioseffi

18 August 2016

[Why Pensions Beat Bonds in Bankruptcy Court.]

Detroit left a bitter aftertaste for bondholders.

Under the city's plan to shed $7 billion in debt, Detroit reached settlements with its pensioners that left intact public safety monthly checks and cut 4.5% for general employees. Their cost-of-living increases were reduced or eliminated. They did see a big cut in the form of retiree health-care benefits, which were trimmed by nearly 90%, allowing the city to shed a $4 billion obligation.

Unlimited-tax general obligation bondholders, meanwhile, agreed to a 26% cut – with the money going to pensioners – and limited-tax GO holders took a 66% cut. Holders of $1.5 billion of certificates of participation saw a 14% cash recovery as well as a groundbreaking package of vacant land, asset leases, and development deals.

Former U.S. Bankruptcy Judge Steven Rhodes who oversaw Detroit's historic Chapter 9 called the city's plan of adjustment reasonable, fair and equitable, key benchmarks under federal bankruptcy law. The decision to treat its pensioners more favorably than other creditors was fair and justified in part because of state constitutional protections of the retirement obligation, Rhodes said.

The treatment Detroit's bondholders relative to pensioners was typical, as pension funds have flexed political muscle in bankruptcy cases across the nation. As bankruptcy specialist David Dubrow of Arent Fox LLP put it in a published piece:

"While bondholders, pensioners and workers can all be impaired in a bankruptcy as a general matter, public policy and politics determine outcome more than any other factor given the limited legal precedents in Chapter 9."

In California, the Vallejo, Stockton and San Bernardino bankruptcies all pitted the bond investors – whether they held pension bonds or other bonds – against the nation's largest pension fund, the mammoth California Public Employees' Retirement System.

While California's pension funds received a 100% recovery in the trio of bankruptcies, bondholders did not fare as well. In California, bondholders received anywhere from a 40% to 60% recovery, though San Bernardino's bankruptcy plan has yet to be approved.

In Detroit, the pension funds received an 82% recovery, according to a 2015 Moody's Investors Service report, while bondholders received only 25% on a "weighted-average basis" that factored in the impact on LTGO, ULTGO, and COP holders.

Behind the protections built into Detroit's exit plan for pensioners was the city's so-called "grand bargain." A philanthropic consortium collectively pledged $366 million to offset the city's massive pension burden and avert any move to sell off the assets of the city-owned Detroit Art Institute museum.

The funds leveraged support from corporations and the state to bring the package to more than $800 million and in turn brought the city's public unions to the table to agree to concessions. The funds are to be set aside over a 20-year period and handled by special entity that will direct them to pay benefits.

Under the plan, the state also agreed to provide $195 million to Detroit pensioners in exchange for pensioners dropping the right to sue the state to recover the unfunded pension debt that the city cannot pay. That debt could have been as high as $3 billion. The pension restructuring is central to the city's recovery plan, as it was freed of the need to make pension payments for 10 years as well as the liability for other post-employment benefits, or OPEB.

"The most emphatic message of the Detroit and Stockton plans of adjustment is their intent to protect work force sustainability at the expense of bondholder repayment," Fitch wrote in a special report on those bankruptcy outcomes.

"In each case, the bankruptcy judge agreed that this goal was more important than repaying investors. The issue then becomes one of public policy rather than legal constraint, and it appears likely that many governments would similarly favor retaining pensions over the good faith of bondholders."

Detroit's bankruptcy contributed to the burgeoning debate over the potential cracks in general obligation pledges and the use of statutory liens for GO bonds to strengthen bondholders' positions in a municipal workout.

But the politics behind cutting a public employee's benefits remain a strong deterrent for elected officials and courts. At the same time, there's also been a growing discussion of the use of a bankruptcy threat to get labor unions to the table as a distressed municipality looks to cut.

"The standing of bondholders versus pensioners in a municipal bankruptcy can be ambiguous because pensioners may have additional legal and political protections that are superior to bondholders. A municipal government wrestling with politically difficult pension funding or reform may therefore have an incentive to accelerate bankruptcy primarily to reduce its debt," Moody's Investors Service said in the municipal bankruptcy report last year.

Steps taken by California in the wake of its trio of Chapter 9 bankruptcies over the past several years have given bondholders some reassurance when it comes to general obligation bonds issued by cities, but left investors wary about pension obligation bonds.

Pension liabilities – and pension obligation bonds issued to deal with that liability — were issues in the trio of California bankruptcies and in Detroit as well.

In Stockton, Franklin Templeton continued to fight the city for a better recovery even after the bankruptcy judge approved the city's exit from bankruptcy. The company said in its court filings that the bankruptcy court that confirmed Stockton's plan erred in approving a plan that was "discriminatory and punitive" to Franklin, paying it roughly 1% on $35 million of bonds while leaving pensions untouched and paying other creditors who had settled with the city earlier between 52% and 100%.

Stockton's attorneys said in their own filing that Franklin's total recovery rate on secured and unsecured claims is roughly 17.5%. The city countered that any further relief awarded to Franklin would fall squarely on the city's residents in the form of "reduced services, infrastructure investment, and essential reserves."

Franklin finally announced in December 2015 that it would not pursue further appeals in Stockton's bankruptcy.

In San Bernardino, City Attorney Gary Saenz said in April of the agreement with pension obligation bondholders that the city was able to give the bondholders 40% of what is owed, rather than the more severe 1% originally proposed, because the agreement allowed them to stretch out payments 20 years.

The city has drafted a 20-year business plan that found it would be able to feasibly make those payments without the city ending up in bankruptcy again down the road, he said.

"One thing Judge Meredith Jury will look at is the feasibility of the confirmation plan," he said. "We believe we found a model that is dependable."

The pension obligation bond agreement continues a trend of bonds faring worse than pensions in Chapter 9 cases.

Under the settlement, COMMERZBANK Finance & Covered Bond S.A., formerly Erste Europäische Pfandbrief-Und Kommunalkreditbank AG, and municipal bond insurer Ambac Assurance Corporation, agreed to drop their opposition to the city's bankruptcy plan.

The holders of $50 million in pension obligation bonds will receive payments equal to 40% of their debt on a present value basis, discounted using the existing coupon rate, according to city officials.

Though San Bernardino reached an agreement with bondholders earlier this year in its bankruptcy, its bankruptcy exit plan is slated to be voted on in September by creditors. The current hope is that the city could exit bankruptcy by October – if creditors approve the plan and the bankruptcy judge deems the plan good enough to prevent the city from returning to bankruptcy court down the road.

The Bond Buyer

By Yvette Shields and Keeley Webster

August 17, 2016

U.S. Municipal Bond Issuances Drop by 30% in July.

CUSIP Global Services reported that the 30% drop in July marks the end of five consecutive months of growth. The number of municipal bond CUSIP orders that were handled was 1,218. This was the second-lowest order count of the year.

According to CUSIP Global Services, this was likely due to states beginning a new fiscal year last month, rather than a softening in demand.

However, thanks to strong activity in the bond market in the first half of the year, overall municipal bond CUSIP requests are still up 1% on a year-by-year basis.

Most municipal requests were reported in Texas with 1,211 so far in 2016, followed by New York with 960, and California with 734.

Gerard Faulkner, director of operations for CUSIP Global Services said that recent issuance data suggested that capital markets activity was still solid, "despite a lot of uncertainty".

"Based on July's data, the second half of the year is off to a good start," he said.

Also, the report showed that requests for international debt and equity dipped in July. Requests for international equity fell from 188 in June to 168 in July. Meanwhile, international debt requests dropped from 241 to 213. Year-on-year, equity requests were down 60% and debt requests were down 27%.

Richard Peterson, senior director, S&P Global Market Intelligence, said: "With ongoing economic and political instability, particularly in Europe, it makes sense this pre-capital markets activity would continue to show softness, in comparison to the US."

"Given that governments have a ways to go before settling on solutions, we expect issuance to remain weak for the foreseeable future," he added.

Public Finance International

By: James Richards

17 Aug 16

Coming Soon: New MSRB Continuing Education Courses.

Later this month, the MSRB will launch MuniEdPro, a suite of high-quality e-learning courses designed specifically for municipal finance professionals. The courses provide relevant and up-t--date educational content for professionals actively engaged in municipal market activities. Each MuniEdPro course allows the learner to apply MSRB rules to real-world scenarios. The interactive courses help municipal finance professionals reinforce their understanding of municipal market activities and the associated regulations.

Read more about MuniEdPro.

See the course catalogue.

SIFMA Municipal Bank Loans and Direct Placements Seminar.

October 25, 2016 | 12:30 PM – 6:00 PM
SIFMA Conference Center, NYC

Recently, there has been an increase in state and local governments turning to banks as a source of debt finance – instead of using a traditional public markets debt offering. However, with limited legal and regulatory guidance, this trend has raised important questions about transparency, regulation and whether bond investors have access to all the information they need to assess risks.

The lack of guidance compels each financial firm to establish its own standards for legal and accounting purposes. Regulators have begun to focus on the issue of municipal bank loans, but key questions remain unanswered. The scarcity of legal and regulatory guidance on this topic has led to fundamental changes in our industry.

During this event, our speakers will discuss the legal, regulatory, accounting and compliance questions that have arisen from this uncertainty including:

- What is the effect of the convergence on the public and private debt markets?
- Should accounting treatment of a debt instrument determine how it is treated for regulatory purposes?
- What are the regulatory implications of treating a debt instrument as a loan or security?

- What can we expect from regulators on these questions in the future?

Click here to register.

MSRB to Shorten Time Frame for Resolving Open Inter-Dealer Transactions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to shorten the time frame during which municipal securities dealers must resolve open inter-dealer failed transactions thereby reducing the cost and market risk associated with open transactions.

The SEC's approval of changes to MSRB Rule G-12 mandates that beginning November 16, 2016, inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10 calendar day extension at the buyer's discretion. Read details of the rule change in the regulatory notice.

"Market support for this rule change reflects the extent to which dealers are committed to improving efficiencies in the municipal market," said MSRB Executive Director Lynnette Kelly. "Dealers share the MSRB's desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers."

Acceleration of the MSRB's close-out procedures stems from its effort to promote regulatory efficiency by revising, reorganizing or retiring certain outdated MSRB rules and interpretive guidance following an assessment of current market practices and input from market participants. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Date: August 19, 2016

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

Kansas Board of Regents May Increase Oversight of University P3s.

The Kansas Board of Regents may expand its oversight and control over building projects state universities pursue through P3s in response to legislators' objections to the University of Kansas's unorthodox way of obtaining financing for a mixed-use project.

The project in question is the Central District development — consisting of a science building, student housing, a student union, a dining hall, a utility plant and parking — which will be built on its sprawling main campus in Lawrence. A team headed by Edgemoor Infrastructure & Real Estate reached an agreement with the university to develop, finance, build, operate and maintain the project, which is scheduled for completion by summer 2018.

The university agreed to lease the property to the corporation for up to 40 years. Once construction is complete, the corporation will sublease the facilities back to the university, which will make an annual sublease payment of about $21.5 million plus operating costs, reported the Lawrence Journal-World last year.

However, the university decided not to go through the state's bonding agency to obtain its portion of the financing, which would have required legislative approval. Instead, the school formed a private, nonprofit corporation, which issued $320 million in bonds through a Wisconsin public financing agency, the Journal-World reported Aug. 14.

Legislators criticized this move, expressing concern over the lack of legislative oversight and arguing that, because the project is being built on state property, taxpayers would be on the hook if it fails financially. Some lawmakers also expressed concern that the university might raise student tuition fees to pay for the debt the university has incurred, reported The Wichita Eagle.

These concerns led Rep. Mark Hutton to introduce a bill (HB 2703) that would have prohibited state universities and agencies from borrowing or entering into a range of agreements without legislative approval or a hearing. Although the bill died in committee, the legislature attached a proviso to the university's 2016 budget limiting the amount it can spend from previously unrestricted fee funds.

The university dismissed the legislators' concerns, pointing out that the corporation had assumed responsibility for paying the bond debt over a 30-year period using lease payments it will receive from the university. The school also noted that it has been told by the governor and other policymakers over the past few years to act more like a business than it has in the past, in view of the tight budgets the state is confronting.

"We were creative. We operated like a business and we did what institutions across the nation have done: partnered with a private entity and bundled projects together to get a great deal for the families and students of the University of Kansas and for the state of Kansas," said Tim Caboni, the university's vice chancellor for public affairs.

The Board of Regents responded to the controversy by stating it would consider classifying P3 projects as capital improvement projects and as part of each institution's capital projects plan, both of which require board approval, and by requiring universities to obtain board approval when they lease property from an outside entity.

NCPPP

August 19, 2016

Nuveen, OppenheimerFunds Lose Gamble on Sonoma County Casino.

Nuveen Asset Management and OppenheimerFunds Inc., among the municipal-bond market's biggest high-yield fund managers, gambled on a casino 80 miles from San Francisco, and lost.

In 2013, two years after the money managers acquired more than $50 million in bonds following a debt restructuring by the River Rock Casino's owners, the Dry Creek Rancheria Band of Pomo Indians, another tribe opened a gambling resort 30 miles (48 kilometers) closer to the city. River Rock suffered a 50 percent decline in revenue and defaulted in 2014.

Native American tribes, sovereign nations under federal law, have issued about $4.5 billion of municipal bonds, more than half of it in the 2000s, according to data compiled by Bloomberg. About $1.5 billion defaulted, including more than $1 billion issued by the Mashantucket Western Pequot Tribe in Connecticut to finance the construction of the Foxwoods Casino.

Earlier this month, the tribe offered the firms 30 cents on the dollar for their debt plus an unspecified amount of cash. If bondholders agree to the terms, River Rock plans to borrow $50 million from Benefit Street Partners, the credit arm of Providence Equity Partners, to pay off bondholders.

“If you rely on San Francisco traffic to feed your business and you have a bigger, newer casino that opens up halfway between you and where the population is, that will certainly hurt you,” said Alex Bumazhny, a Fitch Ratings analyst.

As a sovereign, Native American governments can’t file for bankruptcy. Chapter 9 of the U.S. Bankruptcy code is reserved for municipalities.

With bankruptcy unavailable, tribes typically restructure their obligations by issuing new debt to existing creditors in a debt exchange. In this case, River Rock found a new creditor, Benefit Street, and the tribe will use loans proceeds to pay off existing creditors, which isn’t typical, said Bumazhny.

“It’s unique to see a cash payment,” said Bumazhny. “In these situations where there’s stress, it’s typically difficult to find a lender to lend quite a bit of money in a distressed situation.”

Recovery Rates

A 2015 Fitch analysis of defaults by seven tribes involving corporate and municipal bonds found a par weighted recovery rate of 54 percent. Given the small sample size, the variance in recoveries is high.
John Miller, co-head of fixed income for Nuveen in Chicago, declined to comment. Meredith Richard, a spokeswoman for OppenheimerFunds, declined to comment.

OppenheimerFunds’s $5.6 billion Rochester High Yield Municipal Fund is the best-performing high-yield open-end municipal fund this year, returning 9.35 percent, according to data compiled by Bloomberg. Nuveen’s $14.6 billion high-yield municipal bond fund is third-best, returning 8.2 percent.

David Fendrick, chief executive officer of the Geyserville, California-based River Rock Entertainment Authority, which issued the bonds, didn’t respond to a request for comment. Chris Wright, chairman of the board of the Dry Creek Rancheria Band of Pomo Indians, didn’t respond to a request for comment.

Terms of New York-based Benefit Street’s loan to the tribe couldn’t be determined. Benefit Street declined to comment, according to Kelsey Markovich, an outside spokeswoman.

Prior Exchange

The Dry Creek Rancheria Band of Pomo Indians, federally recognized in 1915, live on a 75-acre reservation in Sonoma County, California. The casino, which opened in 2002 and is located in the Alexander Valley, has 1,100 slot machines and 114 tables, according to its website.

In 2003, the River Rock Entertainment Authority issued $200 million of 9.75 percent corporate notes maturing in 2011 to fund the construction of three parking garages, reservation and casino infrastructure improvements and to fund a settlement with a former developer.

The tribe was unable to refinance the notes before they matured and restructured them in a debt exchange.
In November 2011, River Rock offered existing noteholders the option to exchange old notes for either new 9 percent corporate notes due 2018, new 8 percent tax-exempt bonds due 2018 or a combination, according to Fitch.

Bondholders holding $196.4 million tendered their securities and received $190 million in new notes — $97 million in 9 percent senior notes, $93 million of 8 percent tax-exempt bonds and $18.6 million in cash, according to Fitch.

The tribe filed a notice Aug. 12 saying that they plan on making a $479,000 distribution to bondholders on Aug. 26. Since defaulting May 2014, bondholders have received $17.3 million in distributions, according to the notice.

Listed Holdings

Nuveen reported holding $41.5 million of the tax-exempt bonds in the first quarter of 2012, according to data compiled by Bloomberg. OppenheimerFunds reported holding $29.6 million.

At the end the second quarter 2016, Nuveen reported holding $32 million and OppenheimerFunds $21.7 million.
While a 30 percent recovery rate is on the "low end," it seems reasonable given River Rock's new competition, Bumazhny said.

"It's not a bad thing for existing creditors, because obviously cash is a lot safer than new securities," he said.

Bloomberg Business

by Martin Z Braun

August 16, 2016 — 2:00 AM PDT Updated on August 16, 2016 — 5:35 AM PDT

Anthony Bourdain Culinary Alma Mater Serves Up Municipal Bonds.

The Culinary Institute of America is betting that the country's food obsession is here to stay, and that investors want seats at the table.

The school that trained famed chefs such as Anthony Bourdain and Cat Cora is selling $15 million of tax-exempt municipal bonds Tuesday to raise cash for renovations at its California facilities, one of which it bought late last year. In September, the non-profit educator will sell $42 million for improvements to its Hyde Park, New York, headquarters and, in a bit of fiscal housecleaning, retire more expensive debt and finance payments to end derivative contracts.

As more traditional universities struggle to attract students amid rising costs, the Culinary Institute, which calls itself the "world's premier culinary college," has seen steady enrollment. The school says it wants to expand its programs to all facets of the food business as its almost 50,000 alumni have helped create a landscape where even chain restaurants cite the provenance of their ingredients.

"The CIA's reputation and market-driven program offerings will continue to support stable enrollment," Moody's Investors Service analysts Susan Shaffer and Dennis Gephardt wrote in a report. Still, it is in a niche market and is highly reliant on student charges' for revenue, said the credit arbiter, which ranks the bonds Baa2, two steps above speculative grade.

The institute's sale through the California Statewide Communities Development Authority will finance construction at a downtown Napa center that will open next month. The school is also expanding its St. Helena, California, campus called Greystone.

"We're looking to provide more than just great chefs," said Maria Krupin, the college's vice president for finance. "We're looking to encompass and advance the industry in health and wellness, sustainability, food ethics and food policy– this is all coming to the forefront now. "

Next month's sale through New York's Dutchess County Local Development Corporation will fund renovations in Hyde Park, where the college moved in 1972 after it outgrew the Connecticut site that in 1946 was the first institute of its kind. School officials will also refund existing bonds and terminate one of four swap agreements at a cost of around $4 million. That helps reduce the risks to the non-profit, which is on the losing end of the transactions and has to post collateral to the banks as a result.

Budding chefs this year pay $40,690 a year in tuition and housing fees. During the previous academic year, 2,940 students enrolled compared with 2,785 five years ago, when fees totaled $35,965, documents circulated among investors show. The institute also has campuses in Texas and Singapore.

The school's reputation and programs help it compete among both traditional four-year universities and hospitality centers, Moody's said in the report.

Krupin said the school is selective with applicants to maintain its prestige and doesn't try to boost admissions for revenue. "We're growing at a pace in which we can maintain quality education that we're known for," she said.

Bloomberg Business

by Romy Varghese

August 15, 2016 — 2:00 AM PDT

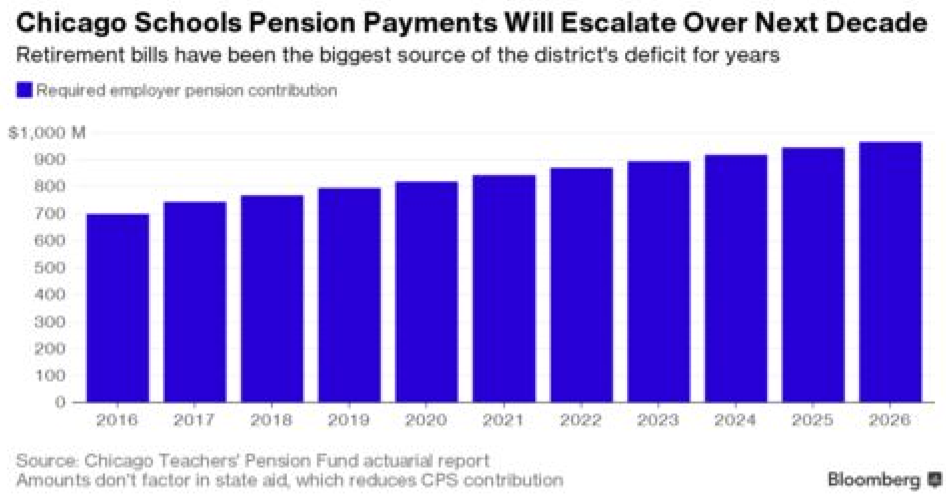
Chicago Schools Step Back From Brink Ahead of Bond-Market Return.

A year after being cut to junk by all three major bond-rating companies, Chicago's school system has won an influx of state aid, secured extra tax money for its pensions and quieted speculation that the crisis is so severe that bankruptcy is inevitable. Its bonds have rallied.

But as the Chicago Board of Education seeks permission to borrow as much $945 million, the nation's third-largest district is far from in the clear. This year's budget will only balance if teachers agree to pay more into their retirement plan and the gridlocked Illinois legislature passes an overhaul of the state pension system. School officials are still trying to secure needed credit lines to help pay bills and borrowing costs have ballooned after repeated downgrades, adding to the financial squeeze.

“They’ve put together a credible budget, although there’s some significant risk factors,” said Paul Mansour, head of municipal research at Conning, which oversees $11 billion of state and local debt, including some Chicago Board of Education securities. “They enter fiscal year 2017 with few, if any, reserves. They don’t have a line of credit in place, and they have uncertain market access.”

The system with almost 400,000 students is struggling to address one of the biggest crises in the $3.7 trillion municipal market, one that’s been decades in the making. For years, officials borrowed to pay bills, skipped pension payments and drew down savings, leaving the schools with nearly $10 billion of unfunded retirement liabilities and $7.6 billion of debt. The interest and principal alone will consume more than 10 percent of the budget.



“The financial position of the district is precarious,” said Mark Lazarus, who follows the Chicago schools for Moody’s Investors Service, which rates the board B2, five steps below investment grade. “There are a lot of uncertainties that are built into the budget that we’re going to be watching to see how they play out.”

The proposed spending plan counts on savings from phasing out the district’s practice of paying the bulk of the annual retirement-fund contributions that teachers are supposed to make. That cost $130 million last year, but the union has called rolling it back a pay cut and threatened to strike to stop that from happening.

Moody’s has a negative outlook on the board, signaling more downgrades are possible. That could raise interest costs in the future.

On Aug. 16, the board posted a notice for a public hearing to discuss the sale of as much as $945 million of general-obligation bonds for school-improvement projects. The board plans to vote on the budget and bond authorization at its Aug. 24 meeting.

“CPS is making great strides in improving the district’s financial stability, and we have a path forward to fiscal soundness in the years to come,” Emily Bittner, a district spokeswoman, said in an e-mailed statement.

That school district may benefit from rising demand for high-yield municipal bonds, which has buoyed the returns on debt issued by financially struggling governments including Puerto Rico.

When the Chicago school district last publicly sold bonds in February, it paid yields of as much a 8.5 percent, or three times the rate of a top-rated issuer, after Governor Bruce Rauner repeatedly called for allowing it to file for bankruptcy, which currently isn't permitted under state law.

The bonds have since rallied. A portion of the federally tax-exempt bonds maturing in 2044 traded at an average of 106 cents on Aug. 17 to yield 6.1 percent, according to data compiled by Bloomberg. That's up from 84 cents in February.

While the proposed budget doesn't completely solve the district's structural budget gap, it's a "big step forward," said Molly Shellhorn, vice president and senior research analyst at Nuveen Asset Management, which owns about $410 million of the bonds issued in February. The firm will look at future offerings, said John Miller, Nuveen's co-head of fixed-income.
"It's an essential service," Miller said. "It has to stay open. The security, the essential service, and the credit spread within the context of a — we think — improving single B credit does make us feel fairly optimistic."

As part of a six-month, stopgap budget reached in June, Rauner and lawmakers authorized a $250 million property-tax levy for the Chicago teachers' pension and provided $131 million of additional state aid. The district gets another $215 million if Illinois passes a pension fix. That may prod both sides to work toward an agreement, said Eric Friedland, director of municipal research in Jersey City, New Jersey, for Lord Abbett & Co.

"Where in the past, there's been a deadlock, now at least we're reaching sort of a breaking point," said Friedland whose firm holds $20 billion of municipal debt, including some of the board of education's. "That's certainly a better spot to be in than last year, when there was no momentum at all."

Bloomberg Business

by Elizabeth Campbell

August 19, 2016 — 2:00 AM PDT Updated on August 19, 2016 — 6:52 AM PDT

Bloomberg Brief Weekly Video - 08/18

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

Watch the video.

Bloomberg Business

August 18, 2016

Fitch Updates Rating Criteria for Solid Waste Revenue Bonds.

Fitch Ratings-New York-12 August 2016: Fitch Ratings has updated its rating criteria for solid waste revenue bonds. The updated report replaces the existing criteria published on Aug. 4, 2015.

No changes to the ratings of existing transactions are anticipated as a result of the application of the updated rating criteria.

Contact:

Kevin Dolan
Director
+1-212-908-0538
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Amy Laskey
Managing Director
+1-212-908-0568

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available at 'www.fitchratings.com'.

BDA Submits Comment Letter to the SEC on FINRA's U.S. Treasury Transaction Reporting Proposed Rule.

BDA submitted a comment letter to the SEC on FINRA's proposed rule to require reporting of U.S. Treasury security transactions to TRACE.

BDA's comment letter expresses general support for the proposal. However, BDA urges regulators to not implement fees or pursue public dissemination of Treasury transaction information in the future. In addition, BDA urges FINRA and federal banking regulators to work to adopt a rule that would require non-FINRA member financial institutions to also report Treasury transactions to a central repository.

Proposal Summary:

FINRA has filed [proposed rule] with the SEC to require the reporting of certain transactions in U.S. Treasury securities to TRACE. The proposal has been published in the Federal Register and it has a 21-day comment period. Comment letters are due by Monday, August

Scope of Transactions to be Reported: Bills, Notes, Bonds, STRIPS

Timing of Reporting: FINRA has proposed end-of-day reporting within current TRACE hours.

Modifiers: FINRA has proposed two different modifiers for reporting purposes.

> **Modifier S:** FINRA has proposed a modifier for reporting spread trades between on-the-run and off-the-run Treasuries where transaction prices entered into the reporting fields for the spread trade could be different from the current market price for the given Treasury.
>
> **Modifier B:** FINRA has proposed a second modifier for a Treasury trade executed in connection with a Treasury futures contract.

Fees: FINRA does not propose charging trade-reporting fees for Treasury trades to FINRA members.

Timing of the Rule's Effective Date: Once the rule is approved by the Commission, FINRA will issue an effective date notice within 90 days. The rule will go into effect no later than 365 days from Commission approval.

08-15-16

An Under-the-Radar Tax Benefit in Muni-Bond Funds.

Funds treated differently from individual munis, allowing investors to claim a tax loss

It's common knowledge among many investors that interest from municipal-bond funds are generally free of income taxes. What is not such common knowledge is that, if used right, muni-bond funds may have a negative tax rate.

That is to say, in addition to tax-free income, investors may be able to take a tax loss without actually incurring an economic loss. Because muni investors are typically in a high tax bracket, this strategy may have broad appeal.

The idea revolves around the fact that interest rates have declined and muni-bond coupon payments are higher than the so-called SEC yield. The SEC yield, created by the Securities and Exchange Commission to help comparisons among bond funds, represents the fund's true income and carves out any return of capital that is included in the distribution yield. This creates a potential opportunity, according to Joel Dickson, global head of investment research and development at Vanguard Group.

How the Strategy Works

Muni bonds are typically issued at a premium in excess of the face amount of the bond. Because rates have declined, the premiums are now even greater. For example, if you bought a muni bond (not a fund) at $110 that would mature at $100 in five years, roughly $2 a year is just return of your own principal, though the regulator, the Municipal Securities Rulemaking Board, allows it to be called income. After a year, your $110 cost basis would be adjusted to about $108, and you would see that adjusted cost basis on your brokerage statement. Because the cost basis is adjusted down—something known as amortization of premium—you can't sell it a year later at a loss because you were paid back that principal and have no economic loss.

Bond funds, however, are treated differently than owning the bond directly. The amortization of premium doesn't impact the cost basis and thus losses can be claimed even though none were incurred.

Here's how it can work for you or your client, using the example of a muni fund from Mr. Dickson's firm:

Say the Vanguard Intermediate-Term Tax-Exempt Admiral fund has an SEC yield of 1.35%. Though this is the true income, the total distribution yield is 2.79%, meaning 1.44 percentage points is return of principal from an economic perspective. If this continued for a year, an estimated loss of the net asset value of 1.44 percentage points could occur.

The Tax Benefits

For a $100,000 investment over a year under this scenario, the investor would have been paid $2,790 in cash, with $1,350 of that in income and $1,440 in return of principal. You could then sell the fund to recognize the $1,440 tax loss and buy a different low-cost muni-bond fund. This capital loss can be used up to the Internal Revenue Service limit of $3,000 a year or an unlimited amount to the extent you have capital gains this loss could offset.

If you have short-term capital gains , you save at an ordinary income-tax rate. Yet even if a long-term capital gain, you may save 25% or more after taking into account the alternative minimum tax and the Medicare tax that affect so many of the higher-taxed investors who typically own munis.

So the tax loss of 1.44 percentage points on a $100,000 investment at a 25% marginal tax rate translates to a 0.36% tax benefit, or a $360 savings. This may not seem like much, but frame the extra 0.36% with the 1.35% SEC yield to give you a 1.71% tax-free benefit.

Pitfalls to Ponder

Tax laws are complex and Mike Piper, author of "Taxes Made Simple," points out that the fund must be held for six months or the losses could be disallowed according to IRS rules. 852(b)(4)(B).

Also, the actual loss is going to vary based on other factors, such as the direction of interest rates, what investor perceptions are of muni-bond risks, and the muni-bond fund used to execute the strategy.

While these factors will result in the loss being either more or less than estimated, the same factors are also likely to be present if an investor owned the muni bonds directly rather than through a fund. And, of course, muni bonds also have risks of real losses whether owned directly or through a fund. But if you decide munis are right for part of a portfolio, the low-cost muni-bond fund can be superior to bonds from a tax perspective.

And beyond a tax perspective, there are 5 other reasons bond funds are superior to owning the bonds directly. When it comes to muni bonds, there are now 6 reasons funds are superior.

THE WALL STREET JOURNAL

By ALLAN S. ROTH

Aug. 19, 2016 10:54 a.m. ET

—Allan S. Roth is the founder of Wealth Logic, an hourly-based financial-planning firm in Colorado Springs, Colo. His contributions aren't meant to convey specific investment advice.

S&P Releases MCDC Settlement Commentary.

On August 15, 2016, S&P released commentary discussing the potential affects a continuing-disclosure settlement would have on muni credit from. The commentary explains that the credit rating agency does "not expect the settlements themselves to translate into rating downgrades if settling issuers respond with proactive approaches to addressing any identified deficiencies in their disclosure practices." The second-round issuer settlements will be focused on management practices and the capabilities of the management team, as opposed to the underwriter settlements issued in the first round which required external oversight and civil penalties. As management practices are a part of the broader rating criteria, S&P acknowledged that the issuer settlement will be taken as a part of the credit analysis and thus do not expect significant volatility if there are disclosure deficiencies identified. See the commentary below.

Download:

MCDC Settlement Commentary

Wednesday, August 17, 2016

MSRB to Shorten Time Frame for Resolving Open Inter-Dealer Transactions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to shorten the time frame during which municipal securities dealers must resolve open inter-dealer failed transactions thereby reducing the cost and market risk associated with open transactions.

The SEC's approval of changes to MSRB Rule G-12 mandates that beginning November 16, 2016, inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10 calendar day extension at the buyer's discretion. Read details of the rule change in the regulatory notice.

"Market support for this rule change reflects the extent to which dealers are committed to improving efficiencies in the municipal market," said MSRB Executive Director Lynnette Kelly. "Dealers share the MSRB's desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers."

Acceleration of the MSRB's close-out procedures stems from its effort to promote regulatory efficiency by revising, reorganizing or retiring certain outdated MSRB rules and interpretive guidance following an assessment of current market practices and input from market participants. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Date: August 19, 2016

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

- BDA and Others Submit Comments to the SEC on CDAs.
- Why Market Groups Want SEC Disclosure Guidance.
- MSRB Provides Guidance on Trade Reporting Rule.
- NFMA Issues Comment Letter on Primary and Secondary Market Disclosure in the Municipal Market.
- Issuers: Watch a Step-By-Step Video on Customizing EMMA Issuer Homepages.
- Taming Premium Bonds.
- SIFMA Issues U.S. Municipal Credit Report, Second Quarter 2016
- Ignore the Rules (If They Don't Apply): Squire Patton Boggs
- CDFA Intro Energy & Water Finance Course.
- GFOA 21st Annual Governmental GAAP Update.
- *Columbus, Georgia Board of Tax Assessors v. Medical Center Hospital Authority* – Court of Appeals holds that hospital authority's leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation, as revenue bond validation proceedings had conclusively established that the retirement facility furthered a legitimate function of the hospital authority.
- And finally, this week's BCB Travel Alert (aka Tiptoeing Through the Minefield) is brought to you by *Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia*, in which the Court of Appeals upheld the constitutionality of a Sandy Springs municipal ordinance prohibiting the sale, rental, or lease of obscene material, including "any device designed or marketed as useful primarily for the stimulation of human genital organs." (I think we can all agree on the prohibition of rentals and leases.) The court held that consenting adults had no fundamental right to engage in private sexual intimacy. Never mind the *right*, certain of us would settle for the fundamental *opportunity*. We must leave you now before we say something that results in the cancellation of our sole remaining subscription.

IMMUNITY - CALIFORNIA

Findleton v. Coyote Valley Band of Pomo Indians

Court of Appeal, First District, Division 2, California - July 29, 2016 - Cal.Rptr.3d - 2016 WL 4120780 - 16 Cal. Daily Op. Serv. 8123

Contractor filed petition to compel mediation and arbitration against Indian tribe, seeking to enforce the mediation and arbitration clauses in agreements pertaining to project to construct new gaming facility on tribe's reservation, stemming from tribe's failure to pay contractor for work completed on project.

The Superior Court granted tribe's motion to quash service of summons and to dismiss for lack of subject matter jurisdiction on grounds that tribe had not waived its sovereign immunity. Contractor appealed.

The Court of Appeal held that:

- Evidence was sufficient to establish that general council resolution delegating authority to waive sovereign immunity to tribal council was authentic and adopted;
- Tribe's constitution allowed general council to delegate authority to tribal council to waive immunity by adopting resolution; and
- Tribal council waived tribe's sovereign immunity by enacting resolution that included limited waiver of immunity.

WATER LAW - CALIFORNIA

Santa Clarita Organization for Planning and the Environment v. Castaic Lake Water Agency

Court of Appeal, Second District, Division 2, California - July 28, 2016 - Cal.Rptr.3d - 2016 WL 4045243 - 16 Cal. Daily Op. Serv. 8150

Objector brought action against water agency, water purveyor, their boards of directors, the company that sold the purveyor to the water agency, and an affiliate of that company for inverse validation, writ of mandate, violations of the California Environmental Quality Act (CEQA), illegal expenditure of taxpayer funds, and conflict of interest.

The Superior Court sustained demurrer with leave to amend on objector's CEQA claim, denied objector's claims for invalidation and for a writ of mandate, and rejected objector's claim based on the improper use of taxpayer funds. Objector appealed.

The Court of Appeal held that:

- Objector's pleading of validation statutes did not judicially estop objector from arguing that the validation statutes' shorter deadline to file a notice of appeal did not apply;
- Purveyor did not become agency's alter ego such that the agency was improperly engaged in the retail sale of water; and
- Agency's acquisition of purveyor's stock did not violate the constitutional provision limiting agency ownership of company stock.

Water agency's acquisition of water purveyor, through a settlement agreement in the agency's eminent domain action against the purveyor's owner, was not subject to validation proceedings under the uncodified provision of the water agency's enabling act authorizing validation proceedings for "any bonds, warrants, promissory notes, contracts, or other evidences of indebtedness" of the kinds authorized by provisions dealing with issuing bonds and borrowing money.

Water agency's acquisition of water purveyor, through a settlement agreement in the agency's eminent domain action against the purveyor's owner, was not subject to validation proceedings under the uncodified provision of the water agency's enabling act providing that retail sale of water within an area that had been serviced by another water district until the agency absorbed that district was governed by the Water Code provision making validation proceedings applicable "to determine the validity of an assessment, or of warrants, contracts, obligations, or evidence of indebtedness," since the purveyor operated outside the boundaries of the district that had been absorbed.

Water agency's acquisition of water purveyor, through a settlement agreement in the agency's eminent domain action against the purveyor's owner, was not subject to validation proceedings under the statute making validation proceedings available to determine the validity of a local agency's "bonds, warrants, contracts, obligations or evidences of indebtedness," where the agency purchased purveyor's stock using cash on hand, and the agency's settlement contract to acquire purveyor's stock did not deal with bonds, warrants, or other evidence of indebtedness, and was not inextricably bound up with other contracts that did.

Objector's invocation of the validation statutes by pleading them in its inverse validation complaint challenging water agency's acquisition of water purveyor, seeking the trial court's permission to publish the requisite constructive notice required by the validation statutes, and by informing the court that it gave that notice, did not judicially estop objector from arguing on appeal that the validation statutes' shorter deadline to file a notice of appeal did not apply, since objector's contest to the applicability of the validation statutes amounted to a dispute over the court's subject matter jurisdiction.

Trial court's finding that water agency's acquisition of retail water purveyor did not cause the purveyor to become agency's alter ego, in concluding that the purveyor's retail sales of water did not violate a provision of the water agency's enabling act requiring it to sell water at wholesale only, was supported by substantial evidence, including evidence that only three of the purveyor's five directors were agency employees, and that the acquisition agreement addressed a merger between the agency and the purveyor as at most a possible contingency.

Water agency's acquisition of all of retail water purveyor's stock did not violate the constitutional provision limiting agency ownership of company stock, where the purveyor was a corporation, and the water agency held purveyor's stock for the purpose of furnishing a supply of water for public purposes.

IMMUNITY - FLORIDA

Bair v. City of Clearwater

District Court of Appeal of Florida, Second District - August 5, 2016 - So.3d - 2016 WL 4150220

Homeowners brought action against city asserting claims of equitable estoppel and relief pursuant to the Bert Harris Act after city issued stop-work order relating to work being done on their home.

The Circuit Court dismissed estoppel claim and granted summary judgment for city on Bert Harris Act claim, and homeowners appealed.

The District Court of Appeal held that:

- Bert Harris Act's waiver of sovereign immunity did not apply to city's issuance of stop-work order;
- Bert Harris Act's waiver of sovereign immunity did not apply to city's reliance on Federal Emergency Management Agency (FEMA) guidelines;
- Even if city had applied regulations from FEMA, homeowners had no cause of action under Bert Harris act;
- Homeowners did not have a cause of action under Bert Harris Act based on city's reliance on flood insurance maps and studies;

- Legislature intended Bert Harris Act to bar claims based on the application of grandfathered legislation; and
- Homeowners' equitable estoppel claim was waived on appeal.

Bert Harris Act's waiver of sovereign immunity did not apply to city's issuance of stop-work order against homeowner's demolition and reconstruction of home, where city did not apply a law, rule, regulation, or ordinance, but merely requested additional information regarding the project, and requested revisions to plans.

Bert Harris Act's waiver of sovereign immunity did not apply to city's alleged reliance on Federal Emergency Management Agency (FEMA) guidelines in issuing stop-work order for work being done on homeowners' property, where city never argued it had the authority to administer or apply FEMA regulations.

Even if city had been delegated authority by Federal Emergency Management Agency (FEMA) to administer and apply FEMA regulations when it issued stop-work order against homeowners, such application did not give rise to cause of action under Bert Harris Act. Actions that inordinately burden real property under the Act did not include a municipality that independently exercised governmental authority when exercising the powers of the United States or any of its agencies.

Homeowners did not have a cause of action under Bert Harris Act based on city's use of flood insurance maps and studies from after Act's enactment in determining that homeowner's property was in a flood zone, and requiring improvements to meet city's flood resistance standards; any reliance on post-enactment portions of the flood standards did not inordinately burden homeowners' property.

Bert Harris Act was not only intended to bar claims of application of an ordinance that occurred prior to Act's enactment date, but was intended to bar claims based on the application of grandfathered legislation after its effective date, and to only allow claims based on newly imposed requirements that were the result of an amendment after Act's enactment date and that inordinately burdened real property.

Whether homeowners were bound by their stipulation that they were asserting a stand-alone equitable estoppel claim against city was waived on appeal, where homeowners failed to argue at trial or in a motion for rehearing that the trial court was precluded from considering stipulation and brought the issue up for the first time on appeal.

MUNICIPAL ORDINANCE - GEORGIA

Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia

United States Court of Appeals, Eleventh Circuit - August 2, 2016 - F.3d - 2016 WL 4088731

Adult bookstore brought action against city, asserting Fourteenth Amendment Due Process Clause challenge to city's municipal ordinance that prohibited the sale, rental, or lease of obscene material, including "[a]ny device designed or marketed as useful primarily for the stimulation of human genital organs."

Individuals who sought to purchase sexual devices for their private sexual activity and for use in artwork intervened.

The United States District Court granted city's motion for judgment on pleadings. Plaintiffs appealed.

The Court of Appeals held that consenting adults had no fundamental right to engage in private sexual intimacy, including by the use of sexual devices in the privacy of the home.

Consenting adults had no fundamental right to engage in private sexual intimacy, such as the use of sexual devices in the privacy of the home, and thus a city municipal ordinance did not violate the Due Process clause by prohibiting the sale, rental, or lease of obscene material, including "[a]ny device designed or marketed as useful primarily for the stimulation of human genital organs."

EMINENT DOMAIN - ILLINOIS

Illinois State Toll Highway Authority v. South Barrington Office Center

Appellate Court of Illinois, First District, Sixth Division - June 30, 2016 - N.E.3d - 2016 IL App (1st) 150960 - 2016 WL 3569556

State Toll Highway Authority brought condemnation action against property owner and other entities with interests in the property.

The Circuit Court, entered order finding that Authority was authorized to condemn owner's property and awarding preliminary compensation. Owner filed interlocutory appeal.

The Appellate Court held that resolution authorizing condemnation contained sufficiently reasonable description of property to permit Authority to proceed with condemnation.

Resolution authorizing State Toll Highway Authority to condemn property in connection with highway construction project contained reasonable description of parcels, as required for Authority to proceed with condemnation of the property. Resolution specifically identified property index numbers (PIN) in which parcels were contained, specifically provided for acquisition of the types of property interests sought by Authority, including fee title, permanent easement, and access control, and specifically authorized condemnation proceeding when no agreement could be made with respect to all or part of each parcel identified.

SPECIAL ASSESSMENTS - MINNESOTA

McCullough and Sons, Inc. v. City of Vadnais Heights

Supreme Court of Minnesota - August 10, 2016 - N.W.2d - 2016 WL 4211972

Landowner appealed city's imposition of a special assessment on its real property.

The District Court denied city's motion for summary judgment. City appealed. The Court of Appeals reversed. Landowner's petition for review was granted.

The Supreme Court of Minnesota held that:

- District court's order, which denied city's summary judgment motion seeking dismissal based on landowner's failure to file written objections to proposed assessment, was not final, appealable judgment;

- District court's order was reviewable on appeal from final judgment, and thus was not immediately appealable under the collateral-order doctrine;
- Written-objection requirement set forth in special assessment procedure statute was claim-processing rule, rather than jurisdictional requirement, that did not give rise to city's right to immediately appeal order; and
- Written-objection requirement set forth in special assessment procedure statute was not analogous to claim of immunity, and thus, did not give rise to city's right to immediately appeal order.

IMMUNITY - MINNESOTA

Hoff v. Surman

Court of Appeals of Minnesota - August 8, 2016 - N.W.2d - 2016 WL 4162949

Motorist brought action against metropolitan council and driver of council's transit bus for personal injuries and related damages after bus rear-ended motorist's van.

The District Court denied defendants' motion for summary judgment. Defendants appealed.

The Court of Appeals held that statutory snow-and-ice immunity does not extend to bar claims based solely on allegations of negligent driving.

EMINENT DOMAIN - NEVADA

Fritz v. Washoe County

Supreme Court of Nevada - August 4, 2016 - P.3d - 2016 WL 4140940 - 132 Nev. Adv. Op. 57

Property owners brought inverse condemnation claim against county after development of drainage system resulted in downstream flooding.

The District Court granted summary judgment in favor of county, and property owners appealed.

The Supreme Court of Nevada held that:

- A genuine issue of material fact as to whether or not downstream property owners had standing to assert claims against county based on plat maps it approved before property owners acquired their property precluded summary judgment, and
- In a matter of first impression, a genuine issue of material fact as to the level of county's involvement in private drainage system sufficient to deem it a public use precluded summary judgment.

LIABILITY - NEW YORK

Chang v. City of New York

Supreme Court, Appellate Division, First Department, New York - August 4, 2016 - N.Y.S.3d - 2016 WL 4131815 - 2016 N.Y. Slip Op. 05728

Motorist commenced action against municipality, alleging negligence because intersection lacked “stop here on red sign” and stop bar, and against companies responsible for maintenance of foliage in center median at intersection, alleging negligence in maintenance of foliage.

The Supreme Court, New York County, granted summary judgment for defendants. Motorist appealed.

The Supreme Court, Appellate Division, held that:

- Municipality breached its nondelegable duty to maintain roadway in safe condition;
- Factual issue existed as to whether motorist had all the notice of danger that a stop sign would have afforded and as to whether municipality’s failure to install required “stop here on red” signs at intersection was proximate cause of accident; and
- Companies responsible for maintenance of foliage were not proximate cause of motorist’s collision.

Installation of a traffic control signal, where it had not previously existed, is a discretionary governmental function that does not give rise to state liability; however, liability is imposed where there is a failure to properly maintain an already established traffic control and where that failure was a proximate cause of the accident.

Municipality breached its nondelegable duty to maintain roadway in safe condition by failing to reinstall previously established traffic control.

Genuine issues of material fact existed as to whether motorist had all notice of danger that stop sign would have afforded, and as to whether municipality’s failure to install required “stop here on red” signs at intersection was proximate cause of accident, even if motorist’s conduct also was negligent and proximate cause of accident, precluding summary judgment in motorist’s negligence action against municipality.

Companies responsible for maintenance of foliage in center median at subject intersection were not proximate cause of motorist’s collision at intersection even if foliage was overgrown, since motorist was able to see one block down avenue before he entered intersection.

REFERENDA - OKLAHOMA

Steele v. Pruitt

Supreme Court of Oklahoma - August 8, 2016 - P.3d - 2016 WL 4189723 - 2016 OK 87

Petitioners filed application for Supreme Court to assume its original jurisdiction over challenge to sufficiency of Attorney General’s rewritten ballot titles on two proposed measures.

The Supreme Court held that mandatory language in ballot title asking voters for “yes” or “no” vote on proposed measures was not included in 200-word limitation.

Mandatory language in ballot title, asking voters for “yes” or “no” vote on proposed measure to amend statutes concerning criminal sentences, was not included in 200-word limitation for ballot petitions. Mandatory language was boilerplate and did not reflect character and purpose of proposed measure.

CDFA Intro Energy & Water Finance Course.

September 13-14, 2016
New York, NY

Energy development & water finance are the fastest growing areas of development finance nationwide. From new production facilities and renewable energy source development to the retrofitting and renovation of existing infrastructure to support efficient energy & water projects, this finance has become a driving force in the economic development community.

CDFA's Intro Energy & Water Finance Course explores the wide range of tools available for financing energy & water projects, including bonds, tax credits, revolving loan funds, grant programs, and more. This course will cover how new energy production/generation, energy efficiency, retrofitting and support programs are used throughout the country to encourage investment in large and small projects alike.

The Intro Energy & Water Finance Course begins with an overview of the complex energy development industry and introduces attendees to the terminology and technology driving this movement. We'll then examine the entire spectrum of energy financing solutions from bonds to revolving loan funds and innovative incentive programs available to businesses, home owners, development professionals, investors, and government entities.

Day two of the Intro Energy & Water Finance Course will focus on financing water infrastructure development. Because water financing has become one of the critical financing needs in the development finance industry, speakers will explore programs and resources available through the federal government to support water infrastructure development. This course is essential for public leaders, economic development professionals, financial experts, and anyone working to address energy development challenges.

To learn more and to register, click here.

GFOA 21st Annual Governmental GAAP Update.

Training Type: Web-Streaming
Course Status: New Course
Date and Time: Nov 3 2016 – 1:00pm to 5:00pm EST
Region: Eastern
Level: Intermediate
Field of Study: Accounting – Governmental
CPE Credits: 4
Member Price: $180.00
Non-Member Price: $195.00
Prerequisite: Intermediate Governmental Accounting (or equivalent = basic understanding of GAAP for state and local governments)

To learn more and to register, click here.

The Benefits of Helping Struggling Cities.

For financially distressed municipalities, it's good to be in a state that intervenes, according to a new study.

Earlier this month, New Jersey stopped Atlantic City from defaulting on its debt with a $74 million bridge loan. While there was plenty of bluster and several hollow threats from legislators that they would not step in to help the financially beleaguered gambling town, it didn't surprise anyone when they finally did.

That's because New Jersey has a reputation in the credit market for going to any lengths to prevent one of its municipalities from entering Chapter 9 bankruptcy. In fact, no New Jersey municipality has defaulted on debt since the Great Depression. This extra layer of protection is not only comforting to local officials in struggling cities like Camden or Trenton, it's viewed as a big plus by those who invest in New Jersey municipal debt.

Now, preliminary research affirms the benefits of being a municipality in a more proactive state. Scholars at the University of Notre Dame and University of Illinois at Chicago have found that creditors tend to give municipalities in these states a slightly lower borrowing rate than they do municipalities in states without any kind of bankruptcy intervention program.

All other things being equal, the research found that municipalities in proactive states tend to get an initial interest rate on their bonds that is 1.4 basis points or 0.014 percentage points lower than those in states that don't have restrictions on entering bankruptcy. It may not seem like much but the difference in borrowing rates amounts to real cash. According to the researchers, it means that total local borrowing costs in an unrestrictive state were at least $105 million higher over the 12 years studied than in a proactive state.

The findings provide new information in an ongoing debate about the appropriate role of a state in its distressed localities. "I think what this answers is that getting a second set of eyes and additional input can help when you compare that against the municipalities who are authorized to file for Chapter 9 without conditions," said James Spiotto, an attorney and municipal restructuring expert.

Only about half of U.S. states even allow their municipalities to file for bankruptcy. Of those, the authors identified Maine, Michigan, Nevada, New Jersey, New York, North Carolina, Ohio and Pennsylvania as states with proactive policies designed to intervene before bankruptcy. These interventions are characterized by programs that allow the state to restructure a distressed locality's finances and often feature emergency loans and revenue transfers.

It's worth noting of course that proactive states do not always succeed in keeping a municipality from default or bankruptcy. One of the primary factors in whether an intervention is successful is the economy. After all, economic conditions are generally out of a state's control. A 2013 Pew Charitable Trusts study found this to be the case in Michigan, where Detroit filed for bankruptcy and five other cities were under emergency managers, and Pennsylvania, where Harrisburg was at the time was run by a receiver. The effects of the Great Recession in these cities continue to make it harder to rebound.

The Pew study recommended that states consider establishing an early warning system for localities and designing a program that includes all stakeholders when possible.

The research from Notre Dame and the University of Illinois offers an additional insight: an active intervention program comes at a cost. Proactive states tend to have a slightly higher interest rate on their general obligation bonds than states with unrestrictive policies.

Still, noted Spiotto, all states pay a price when a municipality — particularly a major one — defaults on debt. “It’s the perception of risk,” he said. “If a major municipality is having a problem, investors assume the state has a problem. Rightfully or wrongfully, it reflects poorly on the state.”

States that allow bankruptcy but generally don’t step in to try and avoid municipal Chapter 9 filings include Alabama, Arkansas, Arizona, California, Idaho, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Texas, and Washington.

GOVERNING.COM

BY LIZ FARMER | AUGUST 11, 2016

[The China Factor in America's State and Local Economies.]

As the world’s second-largest economy falters, pensions and tax revenues here are feeling the pinch.

Earlier this summer, New York state’s pension fund announced a mediocre year. Investment earnings were essentially flat, and as a result the fund lost $5 billion because its other receipts — contributions from government and from current employees — didn’t cover retiree payouts.

The New York pension system was the victim of a global event that began halfway across the world a year ago this month. In August 2015, the world’s second-largest economy officially began to stumble. China’s central bank stunned investors by devaluing the yuan, lending credence to what outsiders had long been suspecting: China’s years of astounding annual economic growth — at times cresting at double digits — was slowing down.

Toward the end of that month, China’s stock market endured its biggest one-day fall since 2007. The state media dubbed it “Black Monday” and the result shocked the world. Emerging market currencies slumped, commodity prices fell and Western financial markets reeled. At one point, General Electric’s stock was down by more than 20 percent. The markets seemed to recover just in time for a January report from China that the country’s growth rate for 2015 — 6.9 percent — was the weakest in a quarter-century. Although robust by U.S. standards — GDP growth in the United States last year was 2.4 percent — the bad news from Beijing once again sparked market volatility here and abroad.

In short, China has made it a difficult year for institutional investors, public pension plans prominent among them. But financial markets aren’t the only way China’s economy can impact states and localities.

For the last decade, with China a reliable engine for economic growth, other countries around the world have been feeding off it. China is the leading destination for a handful of states’ exports and accounts for more than $115 billion in goods shipped annually from the U.S. The country is a key consumer of U.S.-made airplanes, cars and medical equipment. Meanwhile, Chinese companies have stepped up their investment in U.S. cities and industries, building auto plants, investing in oil fields and buying real estate — a Beijing-based company now owns the Waldorf-Astoria hotel in New York. There is essentially no region in the U.S. without some connection to China, and at least some vulnerability to a downdraft.

U.S. economists and state development officials are familiar with the ways negative economic events in Europe, such as Britain's recent vote to leave the European Union, can have an effect here at home. And for the near future, events in Western Europe and some other developed powers, such as Japan, will continue to have the greatest impact on states and localities. But if things in China worsen, the economic pain for governments in this country could be severe.

Even before China's crisis rattled the U.S. stock market, state and local pension plans were struggling. Last year, annual investment returns were meager. Because of the 2015 market plunge in China, most pension plans in the United States will likely report even worse returns for 2016. The two-year hit, says a Moody's Investors Service analysis, will effectively wipe out the funding improvements seen in 2013 and 2014.

Under Moody's most optimistic scenario, according to which U.S. investment returns average 5 percent for this year, overall pension plan liabilities will increase by 10 percent. Under the credit rating agency's most pessimistic outlook, where investment losses are 10 percent for the year, Moody's sees liabilities growing by more than half. In that case, governments would be faced with demands to put significantly more general fund money into pension plans than was previously forecast.

Market volatility doesn't just affect pension plans. A number of state governments find their tax base is significantly exposed when investment income — capital gains revenue — has a bad year. California, Connecticut and New York all tend to "get clobbered" when financial markets have a down year, says Donald Boyd, the Rockefeller Institute of Government's fiscal studies director. These three states and Oregon (which banks heavily on personal income tax payments in general), have the highest reliance in the nation on capital gains revenue. "If you have a lot of rich people and you tax them relatively heavily," Boyd says, "then you're going to be most affected by this kind of scenario."

While there's unlikely to be anything like the 20 percent revenue drops seen during the U.S. financial crisis in 2008 and 2009, states are already starting to feel the revenue impact of the past year's stock market reactions to China's slowdown. Income tax collections make up about one-third of the average state's total revenue. In April, the single biggest income tax collection month for states, the average state's income tax revenue was down nearly 10 percent from the previous year, according to a Reuters analysis.

It's a taste of what could happen if China falters further. California had to trim its overall income tax revenue expectations for the 2016 fiscal year by nearly $2 billion, thanks to an April shortage of about $1 billion in collections. Connecticut, Massachusetts, New Jersey and Pennsylvania also announced declines in actual or projected income tax receipts after April.

What made this issue doubly challenging was that the news came in around the time state lawmakers were in the midst of the tricky business of drawing up the next year's budgets. "This throws a monkey wrench into it," Boyd says, noting that it creates future problems as well. "When you're dealing with a budget shortfall with only a few weeks to go in the fiscal year, there's a good chance lawmakers aren't going to find some kind of [permanent] solution. So that sets them up a year down the road for more trouble."

Over the past decade, states and localities have jumped at chances to increase their business with fast-growing China. U.S. merchandise exports to China increased by 177 percent between 2005 and 2015. Chinese investment in U.S. companies and properties went up exponentially over the same time period, from $2.5 billion in total investment across 24 states to nearly $63 billion spread over all but three states.

Admittedly, the growth represents only a tiny slice of overall U.S international business. Exports to China account for less than 8 percent of overall outbound U.S. shipments. Chinese foreign direct investment totals less than 1 percent of all foreign investment here.

Some regions, however, have more established business ties. When it comes to exports, Washington state-based businesses are by far the most exposed to fluctuations in China. Last year, Washington businesses exported $19.4 billion in goods to the Asian nation — about one-fifth of all the state's exports. Over the past year, Washington's dealings with China have been ratcheting down. Last year saw a 5 percent drop in exports to China; data through May of this year shows exports to China down by about 25 percent. Robert Hamilton, Gov. Jay Inslee's trade adviser, says trade activity is being driven down from weak economies "everywhere — not just China." Indeed, overall U.S. exports fell 5 percent last year, the largest decrease since the recession.

Still, Washington state's exposure creates some concerns. Trade directly and indirectly accounts for one out of every four jobs in the state. Last year, Moody's flagged it for being an at-risk state thanks to a slower China. This year, Moody's has been careful not to sound apocalyptic about Washington state's situation. "They're pretty well insulated," says Moody's Washington analyst Kenneth Kurtz. But China-watchers in the state remain nervous.

Other regions in the U.S. will see an impact if China's demand for consumer products wanes significantly. Computer equipment, for example, is a top export to China. Companies based in San Jose, Calif.; Boise, Idaho; and Austin, Texas, are the nation's top producers of those products, and will feel a pinch if Chinese shoppers stop buying. Detroit and other regions reliant on auto manufacturing could also see a dip in business if China's high demand for U.S.-made cars slows.

Chinese investment in the United States has grown rapidly over the past decade, although it has been concentrated on a limited number of targets. The vast majority of the investments from China have been in mergers and acquisitions. These ownership changes tend to grab headlines — like when Chinese insurance giant Anbang bought the Waldorf from the Hilton hotel chain for nearly $2 bllion last year. In most cases, new Chinese ownership does not change a company's economic footprint. Hilton, for example, remains the Waldorf's operator.

One other area where Chinese investment has had an impact is in so-called greenfield purchases. Those are investments where the parent company builds its operations here from the ground up, such as Yuhuang Chemical's $1.85 billion methanol plant in Louisiana or Tranlin Paper's $2 billion paper plant in Virginia, both of which broke ground last year. In the San Francisco Bay Area, which has long been a favorite of Chinese companies, more than one-quarter of greenfield investment value in the region comes from China, according to the Brookings Institution's Joseph Parilla. Other top areas in the country for greenfield purchases are Chicago, New York City, San Jose and Seattle.

Most greenfield investments are typically made with a long-term view, so a Chinese slowdown like the current one might not have much immediate effect on them. It's possible that a slower economy at home could cause Chinese companies to direct more new investment toward stable economies like the United States and away from riskier markets in emerging countries. But it's also possible that a weaker economy at home could force Chinese investors to pull back in all world markets as foreign development becomes a more expensive proposition than the country's corporations want to make.

From time to time, there are fears about a local real estate market in the United States "being gobbled up" by the Chinese and other private global investors. "If they all pull back, then all of a sudden, you've got this glut of really high-end real estate built for folks who are not necessarily in your metro area," Parilla says, adding that this is something to watch in New York City and San

Francisco, and to a lesser extent Chicago and Seattle.

For now, China is a lesson in perspective. Long isolated from the rest of the world, it has taken advantage of its rapid growth and fast-growing connections to other countries to become a major force in global markets. As state and local governments in the United States have become more enmeshed with the Chinese economy, opening offices in China to attract more direct development, they have increased their exposure. Fears about the effects of a prolonged Chinese downturn played a big role in the psychological contagion that roiled U.S. financial markets last year.

So far, most of the negative fallout in this country has been confined to a limited number of regions and economic sectors. But if the Chinese economy remains sluggish for a long period, the effects will be felt much more broadly by American investors and state and local governments. That is why even governments that haven't felt the effects so far may want to train a wary eye on the fiscal picture in Beijing.

GOVERNING.COM

BY LIZ FARMER | AUGUST 2016

IL Taxpayers Can Sue to Block Business Tax Credit Program Costing the State Too Much: Panel

An Illinois appeals panel in Springfield, in overturning a lower court decision, has ruled taxpayers have the right to try to block a state commerce agency from administering a business development tax credit program the group of taxpayers has argued is actually an alleged illegal state tax improperly eating up public funds.

The Aug. 2 opinion was penned by Justice Thomas Appleton, of the Illinois Fourth District Appellate Court in Springfield, with concurrence from justices Thomas Harris and Robert Steigmann. The decision upset a ruling by Sangamon County Circuit Court Judge John Madonia, who had tossed a suit by 10 taxpayers against the Illinois Department of Commerce and Economic Opportunity. The case was sent back to circuit court for further proceedings.

The taxpayers brought the action in January 2015, alleging the department overstepped the boundaries of a state law, called the Economic Development for a Growing Economy Tax Credit Act. The Act gives tax breaks to businesses that create new jobs, by giving a tax credit in the amount of the income tax withheld from new employees' paychecks. However, plaintiffs alleged the department is allowing credits in the amount withheld for both new and retained employees.

Plaintiffs argued that as a result, these overindulgent tax credits could diminish the public treasury, with taxpayers having to make up the difference. Apart from that alleged damage, plaintiffs contended they are harmed by the department's misapplication of their tax dollars to administer an illegal regulation. They sought an injunction to halt the tax breaks.

Circuit Judge Madonia ruled plaintiffs lacked standing to pursue the case, because the state had the only interest in the matter and taxpayers suffered no harm. Madonia said the only way plaintiffs could have a stake was for them to claim the tax statute was unconstitutional, not to challenge how the statute was interpreted or how funds were spent. Plaintiffs appealed.

Justice Appleton was not impressed with plaintiffs' contention taxpayers might have to make good the deficiency in tax revenue caused by the excessive tax credits, saying the argument was "speculative and simplistic."

"Can one really predict the legislature will probably raise taxes because of the excessively generous tax credits that defendant will grant?" Appleton asked.

However, Appleton was persuaded by plaintiffs' other argument that "collecting it (an illegal tax) will be a misuse of taxpayer-funded salaries and offices and, as such, a misuse of public funds."

The state maintained, as it did in circuit court, that the suit was improper, because plaintiffs were trying to exercise a right that belonged to the state alone. The state pointed to federal rulings to bolster its position, but Appleton noted Illinois courts are "more generous" in granting legitimacy to citizens bringing tax suits.

"Unless the administration of an illegal regulation is cost-free (and it is difficult to see how it ever would be), the taxpayer has standing to seek an injunction, regardless of whether the regulation would bring a net profit to the state and regardless of whether the cost of administration is small," Appleton observed. "It will always cost something to administer a regulation, including an illegal one. The machinery of the State never runs cost-free."

Appleton cautioned that although taxpayers can challenge the legality of a regulation in court, they cannot attack the regulation on the ground it is "unwise," "inefficient" or "improvident."

Plaintiffs are represented by lawyer Jacob Huebert, of the Liberty Justice Center in Chicago, which says its mission is to "revitalize constitutional restraints on government power." The Illinois Department of Commerce and Economic Opportunity is defended by Illinois Attorney General Lisa Madigan's office.

The Cook County Record

by Dan Churney

Aug. 8, 2016, 4:42pm

Taming Premium Bonds.

What sort of bonds should a municipality offer to the market? A generation ago, simple par bonds were the answer. Today, callable premium bonds are extremely popular, though they also impose burdens on both issuers and to the market in general. While there is something wild about these bonds, fortunately there may be a way to tame them.

Callable premium bonds now dominate the new issue markets. Coupons are set as high as 5% against much lower market yields. The bonds sell at a premium because they pay more interest than the market requires for a par bond. But will the high interest payments stop on the call date (price-to-call), or continue to maturity (price-to-maturity)? Fortunately for premium bond buyers, the price-to-worst rule means that they typically pay only the price-to-call, often much lower than the price-t--maturity.

The call option takes on a different character when it applies to a premium bond instead of a par bond. In either case, there is the "time value" of a possible, but not guaranteed, decline in future rates. However, options on premium bonds also have "intrinsic value" built into them from the outset. Callable premium bonds become immediate candidates for excellent savings from an advance refunding, or at least they would be, if not for negative arbitrage on escrow securities. Although immediate refunding after issuance is impractical, premium callable bonds are likely to be advance refunded well ahead of their call date to lock in savings.

Callable premium bonds are popular. The professionals involved in issuing bonds enjoy two rounds of fees. The high coupon protects investors against the danger that the price could fall through the "de minimis" threshold for market discount tax treatment. A callable bond can be an attractive (and higher yielding) substitute for a noncallable bond that matures on the callable bond's call date. Savvy investors also expect a ratings upgrade from the eventual backing of a Treasury escrow.

The Case Against Callable Premium Bonds

When an issuer sells a callable premium bond, it receives the price-to-call instead of the higher price-tomaturity. The difference between these prices constitutes "lost proceeds" – the issuer cannot spend this value on a project. It is instead stored as intrinsic value in the call option. The call option can be liquidated later with a refunding for "savings" even if interest rates never drop.

While it is certainly pleasant to find savings, illusory savings do not serve an issuer's constituents. The callable premium bonds make it virtually certain that the issuer will pay issuance expenses twice.

Certainty in the long-term funding costs for long-term assets is important for some issuers. Par bonds provide that certainty, while callable premium bonds place only a loose cap on costs. The ultimate debt service is only known when the bonds are refunded.

Callable premium bonds may have helped to drive out individual investors, who now comprise only a tiny part of the market. The bonds make it harder for investors to evaluate the fairness of quotes from their brokers. It no longer suffices to compare similar bonds of similar maturities. Benchmark yields near the call date can be more relevant to fair pricing than those near the stated maturity date. And it does not help that redemption information is often buried in the back pages of documents or on the secondary screens of electronic systems.

If callable premium bonds are driving out individual investors, support for the tax exemption could erode.

There may be regulatory risks. Given their fiduciary responsibility, municipal advisors should take care that a structure that practically requires the issuer to double their issuance costs is truly in their clients' best interest. Regulators might also question whether these bonds confuse investors or inflate the supply of outstanding tax-exempt bonds.

In summary, the problems with callable premium bonds include that they:

- lead issuers to incur additional issuance costs;
- distort the meaning of refunding savings;
- deprive issuers of committed long-term funding at current market rates;
- may be driving individuals out of the market, thereby weakening support for the federal tax exemption;
- are making the market more opaque and less liquid; and
- may draw increased regulatory scrutiny.

A Solution

One way to mitigate the side effects of callable premium bonds is for issuers to diminish the importance of the options. For traditional par bonds, call options had time value – they were used only if interest rates fell, or if the issuer needed to restructure – but they had no intrinsic value at the time of issuance. Though options were important to bond pricing, they did not cause wild adjustments to prices.

Issuers can continue to sell callable premium bonds to meet the demand for premium bonds (to reduce the chance of triggering the market discount rule), while also preserving the traditional structural benefits of the call option. Rather than bury the intrinsic value in an option, only to extract it through a later refunding, the issuer can take the intrinsic value as immediate proceeds.

The key is to change the par call prices to premium calls in a way that equates the price-to-call and the price-to-maturity. This is possible because the price-to-call includes the present value of any call premium. To find a "breakeven" call price, set the premium on each call date to the amortized premium (as if the bond runs to maturity). This new call price matches the price-to-maturity at the original yield, with the call date replacing the settlement date.

Now return to the issuance date. The price to the premium call matches the price-to-maturity. The price-toworst rule has no effect if all call prices are set to their breakeven levels (the chart shows how the call prices will decline toward par for longer call dates). Now the issuer is fully paid for its entire debt service schedule.

A premium bond with a par call has complex dynamics, like the motion of a hinged pendulum. A premium bond with a premium call can behave more simply, like a par bond with par call. Where premium bonds with par calls are intermediate-term bonds disguised as long-term bonds, premium bonds with premium calls are true long-term debt. In today's low rate environment, issuers would be wise to secure true long-term funding.

Premium bonds with breakeven premium calls offer the following benefits to the issuer:

- The issuer is fully compensated if the bonds run to maturity.
- The issuer obtains long-term committed funding at the current market rate.
- The issuer only pays to refinance the bonds if interest rates fall or there is a structural need.
- The issuer's bonds will be easier for investors to value and understand, leading to better liquidity and pricing for issuers.
- High coupons continue to shield investors from market discount treatment.

Of course, there are always potential downsides and unintended consequences to new methods. One of these is that the market may not welcome bonds with large call premiums. As a first step, issuers could set call prices that begin at a modest premium and then decline to par.

Industry groups and leading issuers should consider this proposal. With time, premium call prices could become an accepted way to make premium bonds behave more like par bonds and to bring some clarity to the market.

The Bond Buyer

By Winthrop T. Smith

August 10, 2016

Winthrop Smith is the president of Win Analytics LLC, an independent research and consulting firm.

Why Dealers and Academics Are Clashing Over MSRB Trade Data Proposal.

WASHINGTON – While dealer groups are pushing the Municipal Securities Rulemaking Board to place more restrictions on its proposal to share trade data with academics, researchers say the ones the MSRB has already floated threaten to render the data hard to use or even useless.

"It's not going to get as much use as we would like it to because of all the legal rules that it looks like are going to be imposed," said Bart Hildreth, a professor in the Andrew Young School of Policy at Georgia State University and former MSRB board member.

The Securities and Exchange Commission and Financial Industry and Regulatory Authority already get the full scope of MSRB trade data, with the identities of dealers, for audit and enforcement purposes.

The academic trade data product, which the MSRB first proposed in July 2015 after academics periodically asked for data for studies, has drawn support from market participants for its potential to increase transparency, but dealer groups like Bond Dealers of America and the Securities Industry and Financial Markets Association are still concerned that the introduction of anonymous identifiers could open their members up to the detrimental effects of reverse engineering. An anonymous identifier would allow the MSRB to show all of the trades of a dealer without identifying the firm.

Under the proposal, the data would be made available only to researchers associated with a higher education institution who subscribe and pay a fee. The data would be that gathered from required reports dealers make to the Real-Time Transaction Reporting System within 15 minutes of the time of trade. The MSRB makes some of that post-trade information available now, but none of it currently contains dealer identifiers.

The dealer groups' concerns led the MSRB to make several changes to the proposed product before submitting it for approval with the SEC earlier this year, including lengthening the wait time before data can be released to three years from two and bolstering the steps the self-regulator said it would take to combat the threat of reverse engineering.

The MSRB also agreed with a dealer suggestion to exclude primary trades from the product's data sets by not including list offering price and takedown transactions. But BDA and SIFMA both asked for further changes in recent comment letters to the SEC.

Leslie Norwood, managing director and associate general counsel with SIFMA, and Sean Davy, SIFMA's capital markets division managing director, said the three-year timeframe before data would be released was still too short and asked for it to be released after four instead of three years.

Mattia Landoni, an assistant professor of finance at Southern Methodist University, said, in response to the proposed longer delay, that it is important that researchers are able to write about topics that people are interested in at the time that the researcher releases his or her findings.

"With a three-year delay, that means I would be able to write [a] paper in the best case, three years later and in the worst case [even] later because [I] will have moved onto something else," he said.

Mike Nicholas, chief executive officer of Bond Dealers of America, said BDA "remains extremely concerned" with the risks associated with the proposal and added it is "simply inappropriate" to give higher education institutions the dealer-specific transaction information that dealers are required to submit to the MSRB.

“Because of the interconnected nature of our markets, it would only take one large dealer working in collaboration with a researcher at an institution of higher education to completely identify the dealer names that match MSRB’s ‘dealer identifier’ and then have full visibility and transparency into the business strategy and transactions of every dealer,” Nicholas wrote.

He added that the dealer-specific transaction data that the product would provide could easily be exposed to hacking attempts or a freedom of information act request if the data is being held by an academic at a public university.

Landoni said academics would not be opposed to agreeing to the MSRB rules designed to prevent misuse of the product.

“None of us would have a problem with promising not to reverse engineer individual dealer strategies,” he said. “That’s just not what we do.”

Hildreth said that many universities, especially state schools, are going to have “real difficulty” in agreeing to the liability restrictions the MSRB would tie to reverse engineering that would have to be agreed to if academics wanted to access the product. He also said it is unclear how confidentiality rules tied to the data would transfer if for example a PhD candidate started a dissertation at one school but then moved schools during the several years it took to get the dissertation published.

Both BDA and SIFMA urged the MSRB to group similar dealers together and use the groups instead of the anonymous identifiers. However, SIFMA added that it would like to see the MSRB widen the eventual product’s availability to any not-for-profit organization that has a separately identifiable research department and regularly publishes research reports instead of just academics with higher education institutions.

Hildreth and other academics said the dealer identifiers are important.

“Without dealer identifiers [the research process] is going to be less rigorous,” he said. “The delay in the data [release] just adds to that.”

“It’s not going to be as used as the research community would like it to be used out of the gate,” Hildreth said. “But then again, I respect MSRB’s concern about what the market is telling them.”

The Bond Buyer

By Jack Casey

August 11, 2016

Why Market Groups Want SEC Disclosure Guidance.

WASHINGTON – Five municipal market groups are asking the Securities and Exchange Commission for guidance that would help create a streamlined process for issuers to amend their continuing disclosure agreements without running afoul of Rule 15c2-12 on disclosure.

The groups, which include the Government Finance Officers Association, Bond Dealers of America, and the Securities Industry and Financial Markets Association, made their request in a letter to

Jessica Kane, director of the SEC's office of municipal securities. The National Association of Bond Lawyers and the National Association of State Auditors, Comptrollers and Treasurers also signed the letter.

An SEC spokesman declined to comment on the letter.

The groups said their request stems from discoveries that issuers and underwriters made while reviewing continuing disclosure agreements (CDAs) as part of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The issuers and underwriters found that many of the issuers' agreements had ambiguities and inconsistencies that often resulted in overlapping, varying, and outdated information in the required disclosures.

The groups attributed these problems to the SEC's allowing issuers, in its 1994 amendments to Rule 15c2-12, to be flexible in drafting CDAs. As a result of this flexibility, there has not been a uniform CDA that everyone has used over the last 20 years and disclosure obligations have differed depending on the specifics of the issuance, according to the groups.

"In some cases, a CDA may require information that may be no longer relevant, available or able to be produced without significant burden or cost," the groups wrote. "Under current guidance … there is no simple way to amend and fix such CDAs."

For example, an issuer that has been active in the market for a number of years may have one previous CDA for a water utility issuance that said it will continue to provide investors with specific tables from rate reports on the water utility. That issuer might then embark on a new bond issue for capital improvements to the water system ten years later and include internally prepared financial information and operating data for the water system that excludes rate tables because they are less applicable and harder to obtain. Unless the issuer can amend its ten-year-old CDA, it will be contractually obligated to bondholders to produce the old tables until the bonds are paid or redeemed while still providing the annual updates to the information promised in the most recent CDA.

"We think that if the amendments that an issuer wants to make to an outstanding [CDA] are in keeping with that issuer's current practice and are consistent with what an issuer would commit to if they were issuing the bonds today and they don't have any material adverse effect on outstanding bondholders, that should be a reasonable set of guidelines for making amendments to outstanding continuing disclosure agreements," said Michael Decker, managing director and co-head of munis with SIFMA.

Jessica Giroux, general counsel and managing director for Bond Dealers of America, said the organizations sent the letter with the hope of getting "some commonsense changes … based upon what the practitioners in the field see as something that might streamline the system and not burden any one individual player."

The SEC's current requirements for amending CDAs include that the amendments only be made in connection with a change in circumstances that arises from a modification in: legal requirements; law; or the identity, nature, or status of the obligated person, or type of business conducted. The amended disclosure undertaking also must have complied with the requirements of 15c2-12 at the time of the primary offering after taking into account any amendments or interpretations of the rule as well as any change in circumstances. Finally, the amended CDA must also not impair the interests of bondholders.

The groups are asking the SEC to provide interpretive language that classifies a change in issuer disclosure practices as fitting into the "change in circumstances that arises from a change in legal requirements" guidance. They also are asking the SEC to agree that it would fit with current guidance to have the information required in the amended CDA be consistent with the disclosure that would be included in a primary market offering document if the bonds were issued today.

Additionally, they want the commission to sign off on the idea that a CDA change is acceptable if both the amendment to the CDA does not materially impair the interests of the bondholder and the notice through the Municipal Securities Rulemaking Board's EMMA system is an appropriate way to notify bondholders of the changes.

The letter is the product a subset of the many municipal market organizations that began discussing ways to improve disclosure after the SEC began its MCDC initiative. MCDC was first announced in March 2014 and allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements. The initiative has already led to settlements totaling $18 million with 72 underwriters representing 96% of the market by underwriting volume. The SEC has been contacting issuers that self-disclosed violations, but it is unclear when issuer settlements will be released.

Some groups see the collaboration as a way to preempt any SEC action to further regulate disclosure in the market.

Several representatives of the organizations that signed the letter said the larger group of organizations will continue to share ideas on improving disclosure, but could not point to any specific initiatives or future letter they have planned.

The Bond Buyer

By Jack Casey

August 9, 2016

Behind California's Effort Targeting Bond Measure 'Pay-to-Play'.

LOS ANGELES — California Treasurer John Chiang's efforts to combat "pay-to-play" activities among local bond issuers received mixed reviews from municipal bond industry participants.

Chiang announced policies July 27 designed to limit what he called questionable municipal bond industry bankrolling of local bond election campaigns.

He has asked all finance firms that wish to participate in the sale of state issued bonds to sign certificates by the end of August pledging to not engage in what Chiang describes as pay-to-play practices related to bond measure campaign funding.

Chiang's program asks that the 105 financial and law firms in the state's pools, made up of 13 advisory firms, 26 law firms, and 66 underwriters, take the pledge. But he has gone a step further by extending it to any financial firms that do state business, Schaefer said.

"There are any number of state agencies that want to hire bond counsel for non-transactional work, who look to the state's pool," said Tim Schaefer, California's deputy treasurer for public finance.

“That is why we wanted to up the ante.”

The idea is that “if you want to do business in Sacramento, we want you to take the pledge that you will not engage in this activity, because we think this activity is corrosive for California issuers,” he said. “The idea is not to humiliate anyone, or put them in the penalty box, because we are not a regulator; it is to change this behavior that is bad for California taxpayers.”

Chiang’s efforts continue the work of former treasurer Bill Lockyer and former Los Angeles County Treasurer and Tax Collector Mark Saladino, who both criticized what they saw as a pay-to-play environment in the state’s municipal bond market.

Lockyer announced in 2012 that the state would no longer work with financial firms that engaged in pay-to-play or that had been involved in the sale of what he considered to be egregious capital appreciation bond deals.

“We certainly salute and applaud what Lockyer did, but if we thought it was sufficient, we would not be taking it to the next level,” Schaefer said. “We are not deeming Lockyer’s efforts a failure, but we will just have to wait and see if we get a better effect – and I think we will get a better effect.”

Municipal bond firms are already charging lower fees, said Adam Bauer, president and chief executive officer of Fieldman, Rolapp & Associates.

“We have already seen the costs come down when we negotiate the underwriters’ discount,” Bauer said. “That has come down from years’ past.”

Bauer said he did not know if previous efforts by Lockyer or enforcement efforts by the Municipal Securities Rulemaking Board and U.S. Securities & Exchange Commission are responsible for the decline; or what part increasing competition among municipal finance firms has played.

Issuers are free to set their own standards and requirements above and beyond those set by the MSRB and other regulators, said Leslie Norwood, managing director and associate general counsel of the Securities Industry and Financial Markets Association. But SIFMA does advocate that such requirements are clear and effective to achieve their stated goals, she said.

Twelve of SIFMA’s biggest dealer firms signed a letter in July 2013 asking the MSRB to adopt further restrictions on bond ballot contributions by broker-dealers, and each of those firms pledged a two-year moratorium on making any such contributions related to bonds they sought to underwrite.

Chiang’s program is another step in the right direction, Bauer said, because firms that engage in such activities make it harder for ethical firms to compete.

“I think it is great they are doing something like this,” Bauer said. “But the firms in the pool are not the firms I understand to be doing this type of thing.”

The financial advisory firms engaged in “pay-to-play” bond measure activities do not have the resources to go after the state’s business, Bauer said.

He believes the activities the treasurer is targeting are more prevalent in smaller districts that don’t have the resources to pay for campaign services.

“The steps that Lockyer took set the tone and it is not now taking place in the areas in which I work, but I think it is good to formalize it so there is more pressure to conform by firms who operate outside of the norm," he said.

A Bond Buyer data review found a nearly perfect correlation between broker-dealer contributions to California school bond measure campaigns in 2010 and their underwriting of subsequent bond sales, and financial advisors have similarly been accused of using "pay-to-play" tactics.

Some underwriting firms in the state pool that used to provide free bond campaign services to school districts have discontinued the practice, Bauer said. He knows of one firm where the person who had that role split off from the company to form her own firm to avoid the conflict.

Another area where Chiang has expanded Lockyer's efforts is by including bond counsel in the mix.

Restrictions placed under Rule G-37 by the MSRB and the U.S. Securities & Exchange Commission do not apply to bond counsel, because those entities only regulate broker-dealers, said Lisa Greer Quateman, a partner with Polsinelli, one of the law firms in the state's pool.

"We personally do little school bond work, so we have happily executed the certification and are unaffected by it," Quateman said. "Polsinelli was very comfortable signing the certification."

Though school district general obligation bond referendums have been the focus of previous efforts, Schaefer said Chiang's efforts are aimed at all local bonds.

Quateman said some lawyers would actually like to have Rule G-37 apply to law firms. But she said there are others who are concerned about how such restrictions would impact their First Amendment rights to participate in the political process.

"I am very happy that I am able to participate in the political process and help worthy candidates get their messages out," Quateman said. "I am glad I am free to do that. I think the MSRB was very careful in the way it shaped Rule G-37."

Quateman also thinks the treasurer was careful in how he structured his certificate so that it only asks participants to certify that they will not make campaign contributions toward bond transactions on which they plan to bid.

But Benjamin Keane, a managing associate at law firm Dentons and a member of its ethics & disclosure team, thinks there may be reason for concern.

The treasurer's certificate is more all-encompassing than MSRB and SEC restrictions, Keane said in an interview.

"While the addition of a few basic certifications statements may seem minor to the untrained eye, requiring affirmative statements such as these will also almost certainly heighten the compliance risk borne by the regulated community," Keane wrote in a blog post he co-authored with Dentons partner Stefan Passantino. "After all, the "inadvertent non-compliance" defense is dramatically more difficult to assert, and a "false statement" indictment is dramatically more easy to obtain, when affirmative certifications are a compliance obligation."

Firms that wish to be included in the state's bond pool have to make an affirmative statement that neither the firm, or any officer, director, partner, co-partner, shareholder, owner, or employee will make any cash or in-kind service contribution.

That differs from MSRB and SEC regulations where the restrictions are directed at the companies or directors of the company, Keane said.

He will be watching to see if some of the larger companies in the pool are removed if a shareholder or employee violates this rule, he said.

“It doesn’t just include contributions to ballot measures, but to any campaign in the state,” Keane said. “It is harder for an underwriter in the pool to tell its employees that they cannot donate to any ballot measures in the state than to restrict them from any activities that involve bond campaign services.”

The treasurer’s office not only wants to impact the way financial firms operate in California, but hopes to set an example for the entire $3.7 trillion municipal bond industry.

“We are hoping this will bend the discussion similarly to what Lockyer’s efforts did,” Schaefer said. “It has already attracted more attention than what Lockyer did, because this one has more teeth to it.”

The treasurer’s office did not act capriciously, Schaefer said, adding that it has been meeting for a year to line up support. Supporters include the California Association of County Treasurers and Tax Collectors.

“You would be startled by the number of people at financial firms who reached out and said ‘Thank you for doing this,'” Schaefer said. “Now they feel like they won’t get undo pressure to do what the fringe players are doing.”

Schaefer said Lockyer laid the groundwork for Chiang’s efforts.

“It increased awareness of the phenomenon, because this situation we are trying to address lives in the shadows,” Schaefer said.

No contracts are signed outlining what occurs in pay-to-play arrangements.

“Pay-to-play cases even in white collar cases can be hard to prove, because they are often quid pro quo,” Keane said.

School districts or municipalities that later hire financial firms who donated to a bond measure campaigns or provide free campaign services don’t sign contracts agreeing to pay higher fees on the transaction.

California Attorney General Kamala Harris had an opinion earlier this year that school district officials could be subject to penalties if they hired someone who had contributed to a bond campaign, Keane said.

“But you run into a situation of how do you prove that quid pro quo is going on?” Keane said. “It is difficult to show unless there is smoking gun evidence.”

The Bond Buyer

By Keeley Webster

August 11, 2016

Kyle Glazier contributed to this article.

TAX - GEORGIA

[Columbus, Georgia Board of Tax Assessors v. Medical Center Hospital Authority]

Court of Appeals of Georgia - July 7, 2016 - S.E.2d - 2016 WL 3654495

Hospital authority filed action against board of tax assessors, city, and county tax commissioner, seeking a declaration that its leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation.

The Superior Court granted summary judgment for the authority. Tax board appealed.

The Court of Appeals held that hospital authority's leasehold interest was public property exempt from ad valorem taxation.

Hospital authority's leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation. Revenue bond validation proceedings had conclusively established that the retirement facility furthered a legitimate function of the hospital authority.

Under state constitution, a judgment in a revenue bond validation proceeding is conclusive as to all questions which could and should have been asserted and adjudicated during the bond validation proceedings.

[Assessing Claims About Public-Private Partnerships.]

The United States faces a growing backlog of infrastructure repair and expansion projects. Many of the assets that propelled rapid economic growth and household wealth formation following the end of World War II have come to the end of their useful lives. In order to remain economically productive in the 21st century, government at all levels must increase infrastructure investment. The American Society of Civil Engineers estimates that, across all sectors, the United States needs to invest more than $3 trillion in the coming years. In the absence of a sustained commitment to rebuilding and expanding critical facilities, the United States will face an infrastructure drag that reduces economic productivity and access to opportunity for millions of Americans.

Historically, state and local governments have carried out public infrastructure finance through the issuance of municipal bonds. In recent years, a less traditional actor has entered the picture: Wall Street.
Specifically, investment managers have opened up funds dedicated to investing private capital in U.S.
infrastructure projects through public-private partnerships, or P3s. Public-private partnerships are an alternative form of infrastructure procurement that may include equity financing and a long-term maintenance and operations contract for the private concessionaire.

Liquidity

Public-private partnership supporters make two fundamental assertions about infrastructure finance in the United States that deserve scrutiny. The first is that one of the reasons why governments have been unable to invest sufficiently across sectors is a lack of liquidity. The term liquidity has several meanings. In the context of infrastructure finance, liquidity simply refers to access to financial capital. When lamenting the current state of infrastructure disrepair and promoting P3s as the solution, financiers frequently talk about the vast amount of private equity capital ‘sitting on the sidelines’ waiting to be invested in infrastructure. The implication is that if only state and local governments would undertake more P3 projects, this money would flow into the system and solve the infrastructure backlog.

Yet there is a reason why P3s with an equity component have been slow to emerge in the United States: Equity capital is a substantially more expensive source of project financing than municipal bonds. The cost of funds for equity capital can exceed highly rated municipal debt by a factor of five. Currently, there is more than $3.7 trillion in outstanding municipal debt. While not all of this debt was issued to build infrastructure, the volume of debt indicates that nonfederal borrowers have no problem accessing project financing; the municipal bond market is robust.

The single most important factor constraining overall government investment in infrastructure is not access to credit but rather insufficient government revenues. The problem is fundamentally political: The public has a finite willingness to pay the taxes and fees necessary to service project debts.

The borrowing behavior of state and local governments over the past 15 years demonstrates that tax revenues constrain indebtedness not a lack of investor demand. Between 2000 and 2008, total outstanding municipal debt increased by more than $2 trillion, or 138 percent. This number is significant for two reasons. First, the growth in municipal debt outpaced overall economic growth as measured by gross domestic product, or GDP. This reveals the tendency of governments to leverage even modest upward trends in tax revenues to borrow more through the bond market.

Second, the economy experienced a brief recession in 2001, losing 0.6 percent in economic output before returning to growth. Because the downturn was relatively short-lived, state and local governments chose to borrow money through the bond market to cover operating and capital needs as opposed to eliminating projects and substantially reducing services or raising taxes. From 2003 to 2004, total municipal indebtedness increased by $921 billion. In other words, the shallowness of the downturn combined with the expectation that growth and tax revenues would soon rebound fueled borrowing.

By comparison, the Great Recession demonstrated that a steep decline in tax revenues combined with indications that the recovery would be slow produced a significantly different borrowing behavior. Again, the issue was a dramatic drop in tax revenue as opposed to a shortage of market liquidity. The Great Recession resulted in a GDP contraction that was more than seven times greater than the downturn in 2001.

According to research from the Pew Charitable Trusts, state tax revenues declined by 13 percent in 2009 compared with baseline collections prior to the start of the Great Recession. As a result, between 2008 and 2015, total municipal debt increased by only $198 billion, or 6 percent. State and local governments understood that they would not have the revenues necessary to support another major round of borrowing and therefore held off on significantly increasing their overall indebtedness.

Importantly, investor demand for municipal debt held strong through both cycles. In fact, the demand for low-risk public debt continues to be so overwhelming that real interest rates on securities from the U.S. Department of the Treasury are currently negative over a seven-year period and less than 1 percent over a 30-year period; investors are paying the federal government to hold their money. The municipal bond market—as well as the Treasury securities market—does not have a liquidity problem.

This is not a claim about the soundness of buying and selling municipal debt as an investment strategy. The salient point is that the governments that build infrastructure projects have no trouble accessing capital markets. The reason that some observers see equity capital as sitting on the sidelines is that governments do not need equity debt to build their projects. What they need is revenue.

Understanding finance terminology

The claims that P3 supporters makes about liquidity raise an important point about terminology. Specifically, what does it mean to say that private capital is sitting on the sidelines ready to invest? For starters, this statement implies that traditional project financing involves something other than private capital. In reality, every dollar used to purchase municipal debt tied to a project is private capital being put to use to build America's infrastructure.

This is not to say that municipal debt and equity are the same. In the finance world, the term equity typically refers to ownership in a company. When it comes to infrastructure, the government project sponsor retains ownership of the completed facility. Instead, project equity refers to a legal claim on a stream of revenues. For example, in the case of a toll highway project, an equity investor would have the right to a share of the stream of toll revenues over and above what is needed to repay senior project debts. Large infrastructure projects almost always involve multiple sources of debt financing. These may include debt from the TIFIA loan program, private activity bonds, or traditional municipal bonds. Once these senior debt holders have been repaid, the equity investors receive their share of toll revenues.

Equity investments are different from municipal bonds in three ways. First, project equity is not listed on a public exchange. By comparison, a municipal bond is a type of tradable fixed-income security. Second, the return that equity investors receive over time is subject to federal taxation. And third, the rate of return on equity can be variable, depending on the structure of the P3. In the case of a toll highway where the concessionaire assumes revenue risk, the ultimate rate of return on equity will depend on travel demand and overall toll revenues. Thus, while municipal bonds and equity investments have different characteristics, the important point is that both are private dollars financing infrastructure projects.

Simply stated: There are no sidelines.

Public pensions

The second assertion that P3 supporters make is that public-private partnerships have the potential to advance two disparate policy goals: strengthening workers' retirement and building needed infrastructure projects. In reality, the low-volume of P3 transactions with an equity component means that infrastructure deals will not provide meaningful relief to public pensions.

Public pension funds face two significant challenges. First, pension funds are obligated to provide benefits to future retirees, a requirement for which they lack adequate funding. Second, due to the unique tax status of pension funds, investing in municipal debt is simply unattractive.

Unlike individuals and private corporations, pension funds are tax-exempt investors, meaning they have no federal income tax liability. The interest income from municipal bonds is not subject to federal income taxation. As a result of this favorable treatment, municipal bonds offer a lower interest rate than taxable corporate debt. Yet because this tax treatment provides no benefit to pension funds, the low rate of return on municipal debt makes this an untenable asset class.

By comparison, the equity component of a P3 infrastructure project provides a substantially higher return and therefore presents a more attractive vehicle for large institutional investors. While the return on equity varies by project and phase of development, the Federal Highway Administration cites a rate that ranges from 8 percent to 14 percent annually. Simply put, this rate of return dwarfs what is available through municipal bonds. Currently, AAA-rated bonds offer only 2.4 percent annually over a 30-year period.

As for unfunded liabilities, the numbers are daunting. As just one example, the California Public Employees' Retirement System, or CalPERS, is a state agency that manages a large-scale pension fund on behalf of participating state and local public employees. Currently, CalPERS pays an average monthly benefit of $2,627 to 611,000 retirees and manages the contributions of another 1.2 million active and inactive employees.

The total value of the CalPERS fund stands at $293 billion—making it the largest public pension fund in the United States. While impressive, CalPERS faces a significant shortfall. The agency's most recent financial statement reveals a total unfunded liability—the difference between the value of the fund's assets and the assets necessary to meet future benefits payments—of $93 billion. To put that in perspective, the shortfall is greater than the individual GDP of 15 states, including Mississippi, New Mexico, West Virginia, and New Hampshire.

CalPERS is not the only public pension facing a shortfall. For instance, the California State Teachers' Retirement System, or CalSTRS, estimates its unfunded liability at $72.7 billion. And the Colorado Public Employees' Retirement Association, or Colorado PERA, estimates its unfunded liability at $25.9 billion. The Pew Charitable Trusts estimates that total unfunded public pension liabilities exceed $1 trillion nationally.

Given the magnitude of the shortfall facing public pensions, infrastructure investments—if they are to attract the interest of pension funds—must not only offer an attractive rate of return but also a sufficient volume of transactions to make meaningful progress in addressing outstanding liabilities. Public-private partnerships pass the first test but fail the second. For starters, not all P3 deals involve private equity financing. Second, when equity is used as part of project financing, it tends to account for only a small share of the total because it is so expensive relative to other forms of financing—namely, municipal bond debt and low-cost loans from the federal government.

A review of projects financed through the Transportation Infrastructure Finance and Innovation Act, or TIFIA, loan program at the U.S. Department of Transportation demonstrates the limited role of equity. Congress established the TIFIA loan program in 1998. Since its inception, the program has helped finance only 24 public-private partnership projects involving an equity component. Excluding the Chicago Skyway and Indiana Toll Road projects, which were lease transactions of existing facilities as opposed to new construction or reconstruction, the average equity investment is $183 million as part of a project with a total cost of $1.28 billion.

Using these averages, it is possible to develop an estimate of how many major P3 projects a pension fund such as CalPERS would need to invest in to reduce its unfunded liability by just 5 percent. As with any model, this relies on a number of assumptions, including:

1. The extent to which CalPERS would expose itself to the downside risk that an infrastructure project would fail to perform financially
2. The annual rate of return on the equity investment
3. The length of the concession
4. The discount rate used to calculate a net present value of the anticipated cash flow over time

First, CalPERS would almost certainly try to reduce portfolio risk by taking a limited share of equity in any given project. For example, assume that CalPERS would be willing to take a 20 percent position. Based on the average equity investment of $183 million derived from the TIFIA project list, a 20 percent share would translate to an investment of approximately $36.6 million. Second, investors expect an annual return of between 8 percent and 14 percent on infrastructure projects. Third, P3 concession contracts vary greatly, with some lease agreements stretching as long as 99 years. Assuming a more traditional 30-year term and a 12 percent rate of return, CalPERS would receive a return of $131.7 million. After applying a discount rate of 7.5 percent—which is the long-run rate of return that CalPERS assumes when projecting fund performance and calculating unfunded liabilities—CalPERS would receive a stream of payments with a net present value of $51.8 million. The net present value number is important because the $93 billion unfunded liability CalPERS reports is the amount of additional fund capital in 2016 dollars needed to meet future obligations.

In order for CalPERS to reduce its unfunded liability by just 5 percent, or $4.85 billion, the fund would need to invest in 90 infrastructure projects that offered terms equivalent to those assumed in the hypothetical case. In other words, CalPERS would need an enormous volume of P3 projects in which to invest and then have to take a significant position in every one of them in order to reduce its liabilities by even a small amount. If CalSTRS and Colorado PERA and others attempted to reduce their unfunded liabilities by an equivalent amount, the number of P3 projects would need to grow substantially. In fact, in order to reduce total unfunded public pension liabilities by 5 percent, pension funds—assuming they were able to collectively take a 100 percent position equivalent to the $183 million average equity share on every project—would need 193 projects with a total cost of $246.7 billion. This seems exceedingly unlikely, as TIFIA has provided financing assistance to only 24 P3 projects with an equity component in the past 18 years. While the TIFIA list is by no means exhaustive of the infrastructure sector, it provides a useful measure of the overall pipeline. According to research by Squire Patton Boggs—a global law firm that provides legal and other services to the infrastructure sector—only five P3 projects closed in 2014. Of this total, four were surface transportation projects.

Public-private partnerships are best suited to very large, complex projects for which it is more likely to be cost-beneficial for the state to pay the premium associated with risk transference. Yet, the very nature of infrastructure investment is that most projects do not meet the size and complexity threshold. In order words, the number of P3 projects will remain relatively low not due to regulatory barriers but the fact that the vast majority of small and medium-size projects don’t lend themselves to a P3 procurement model.

Beyond financing

Underlying everything from the smallest repair project to the largest new build is the unglamorous world of procurement—the process by which government buys goods and services. Traditionally, state and local governments have procured transportation facilities such as highways and bridges through a process referred to as design-bid-build. Under this approach, the state separates the procurement process into three distinct phases:

1. Design and engineering
2. Construction
3. Operations and maintenance

The traditional design-bid-build process involves two independent phases of project development that are carried out by separate private firms. First, one firm completes the design and engineering work and then hands this product off to the state. Next, that state uses these specifications to develop a request for proposals for the construction phase. Finally, following construction, the state assumes complete responsibility for the operation and maintenance of the facility. This includes everything from snow removal to reconstruction of deteriorated segments. In this way, a design-bi--build procurement model allows the state to retain control over each stage in the process.

A public-private partnership is an alternative approach to infrastructure procurement for large-scale, complex projects. Under this approach, the private firm exercises greater control and decision-making authority since the procurement stages are bundled together into one contract. From the government's perspective, one of the key benefits of using a P3 approach is the ability to transfer risk. The nature of P3 contracts allows the public sector to transfer some or all of the project development, design, construction, operational, and revenue risk to a private entity. This is not a small benefit. After all, large infrastructure projects frequently take longer and cost more to complete than initially estimated. This benefit does not come cheaply. In exchange for accepting delivery or revenue risk over time, the private entity will require additional compensation.

In order to determine if the additional cost of transferring risk and working through the complexities of a P3 transaction are economical, state and local governments must engage in value-for-money analyses. For those projects that pencil out, P3s are a valuable alternative procurement strategy.

Conclusion

Public-private partnerships have been fundamentally miscast as a solution to a growing government funding deficit. In reality, P3s are an alternative form of procurement that offers government a way to manage risk. This may be especially appealing if a state or local government is attempting to develop a complex facility for which it has little experience letting contracts and overseeing delivery. Moreover, a long-term concession that locks in a private entity to providing a specified level of service or repair may help insulate a critical infrastructure asset from the vagaries of state budgets and recession. Provided that governments have the skill to negotiate effectively with their private sector counterparts in order to extract maximum value, P3s have a place in the U.S. infrastructure landscape. This will still leave, however, the politically challenging task of building support for the taxes and fees necessary to repay project debts, regardless of their source.

Endnotes and citations are available in the PDF version.

The Center for American Progress

By Kevin DeGood | Wednesday, August 10, 2016

Kevin DeGood is the Director of Infrastructure Policy at the Center for American Progress.

Has The California State Treasurer's Office Gone Underground?

Late last month, the California State Treasurer's Office announced a "move to stop 'Pay-to-Play' school bond campaigns". According to the announcement:

> Municipal finance firms seeking state business will be required to certify that they make no contributions to bond election campaigns. Firms that fail to do so will be removed from the state's official list of acceptable vendors and barred from participating in state-issued bonds.

The Treasurer's office has sent a letter to prospective underwriters advising them of the imposition of this "new minimum qualification" and requesting that they return a certification form by August 31, 2016.

However well intended, I question whether this action is legal. California's Administrative Procedure Act provides:

> No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

Cal. Gov't Code § 11340.5(a). A "regulation" is broadly defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Cal. Gov't Code § 11342.600. It cannot be gainsaid that the Treasurer's "new minimum qualification" is a "standard of general application" and hence a "regulation" within the meaning of the APA.

I contacted the Treasurer's office and received the following response:

> The Treasurer's Office has the sole authority to establish a pool of qualified underwriters for State bond work and enter into agreements in connection with State bond sales. (Government Code section 5703.) As a matter of longstanding practice, the Treasurer's Office has established such pools not just for underwriters, but also for bond counsel firms and financial advisors. Generally speaking, the pools are "re-established" every two years via a Request for Qualifications process. Much like any other procurement process initiated by government agencies, the Treasurer's Office issues an RFQ that outlines the types of services the office may contract for, minimum qualifications for both entrance into and on-going membership in the pools, and proposal requirements. Interested firms then submit proposals and those firms that meet the minimum requirements are admitted to the pools. The recently announced requirement for municipal finance firms was introduced in conjunction with this process. It is an on-going requirement for current pool members and will be incorporated into the next round of RFQs, when the pools are re-established in the near future.
>
> Because this is a procurement process relating to this office's need to contract for services with municipal finance firms, the Administrative Procedures [sic] Act does not apply, as it does not apply to other procurement processes utilized by government agencies throughout California. Generally speaking, the requirements and qualifications for procurements are laid out in the procurement documents themselves and not through regulations adopted pursuant to the Administrative Procedures Act.

The Treasurer's office may think it has a good dog, but I don't think it will hunt.

Government Code Section 5703 does not exempt the Treasurer's office from compliance with the APA. As explained in this determination from the California Office of Administrative Law (OAL):

> Provisions of a contract, which are rules of general applicability interpreting a statute (or a regulation), are not shielded from APA challenge. There is no express statutory language which provides that agency rules placed in contract provisions are exempt from the APA.

> Applying Government Code section 11346, which requires that exemptions be expressly stated in statute, OAL presumes that no such exemption exists.
>
> In addition, it appears the Legislature intended that there be no exemption for contract provisions. Exempting public contracts was – and is – a clear policy alternative. The federal APA first enacted in 1946, exempted "matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts" (emphasis added) from rulemaking requirements. In enacting the California APA in 1947, the Legislature rejected a proposal to exempt "any interpretative rule or any rule relating to public property, public loans, public grants or public contracts" (emphasis added) from APA notice and hearing requirements. It therefore seems that the 1947 Legislature considered and rejected the idea of following the federal example of exempting rules contained in public contracts from notice and comment requirements.

1998 OAL D-30 (footnotes omitted). See also 2000 OAL D-17 ("The fact that a rule or criteria may have been issued or utilized as part of a bidding and proposal process does not insulate them from scrutiny under the APA.").

Readers with a long memory may recall that in 2009 I challenged a CalPERS' attempt to impose disclosure requirements on placement agents without complying with the APA. After the OAL accepted my petition for review of the requirements, CalPERS backed down and adopted regulations under the APA. See CalPERS' Proposed Placement Agent Disclosure Rule Likely to be Amended.

by Keith Paul Bishop | Allen Matkins Leck Gamble Mallory & Natsis LLP

8/11/2016

S&P: Fiscal Resilience Among U.S. States Varies As Economic Expansion Surpasses Seven-Year Mark.

A majority of the 10 U.S. states with the most tax-supported debt outstanding have only a limited capacity to withstand the effects of a moderate recession, S&P Global Ratings found when it assessed their 2016-2017 budgets. The results of our scenario analysis underscore that fiscal health across the U.S. state sector is subject to the powerful countervailing effects of pro-cyclical revenue trends and countercyclical expenditure pressures. We have previously asserted that from a credit perspective states fare better when they leverage periods of economic growth to restore fiscal alignment and build budgetary reserves. This simulation affirmed our view.

Throughout 2016, we have described state fiscal health as uneven. Several states have yet to fully recover from the recession that ended in 2009 and some remain ill-equipped to withstand unanticipated fiscal stress. Others—because their economic and revenue bases depend on oil extraction—are mired in more acute fiscal stress brought about by the dramatic fall in oil prices. Complicating matters is that since 2000, state tax revenues have, to varying degrees, grown increasingly responsive to changes in economic performance.

Overview

- Fiscal imbalance in the latter stage of economic expansion indicates heightened vulnerability to a recession scenario;

- States with more volatile revenue bases necessitate relatively larger budget reserves to achieve the same budgetary protection from recessionary conditions as states with more stable revenues;
- Countercyclical Medicaid enrollment patterns exacerbate the fiscal pressure on states during economic downturns;
- The magnitude of revenue shortfalls in a recession is a function of baseline forecast assumptions and the sensitivity of the tax base to economic conditions;
- Stress scenario analysis illustrates that aggregate potential revenue shortfall of $27 billion among the 10 states in our study could exceed these states' $21 billion in budget reserves

Continue reading.

09-Aug-2016

S&P Public Finance Podcast (U.S. State Stress Test & Detroit Public Schools)

In this week's episode, Managing Director Gabe Petek provides an overview of our recent report examining how 10 large states would be impacted by a hypothetical recession, and Senior Director Jane Ridley discusses our recent rating action on Detroit Public Schools.

Listen to the podcast.

Aug. 12, 2016

Even the Giants Are Complaining About San Francisco Real Estate.

A prominent tenant with a gorgeous waterfront location in the nation's most expensive city wants a big break on its property tax bill. It may have a case for getting one.

The tenant is the San Francisco Giants, who hold the lease at AT&T Park, where they play baseball. The stadium's location is prime real estate, with stunning bay views and close proximity to downtown, light rail and the Bay Bridge. Home prices have more than doubled in the city since the team built the park 16 years ago. Even though city assessment increases are limited under California law, the land value is expected to rise another 7 percent this year.

Assessor-Recorder Carmen Chu argues that it's only right for the Giants to pay their fair share of the increased worth, just like any homeowner or office building. "At the end of the day," Chu says, "we're talking about real estate values, which fundamentally come down to location. San Francisco and particularly the area of the city that the stadium is in is highly desirable," Chu says. "It's one of the fastest-growing areas."

But the Giants say Chu is asking for way too much. Two years ago, she retroactively doubled the team's property tax bill going back to 2011. The Giants have taken their case to the San Francisco's assessment appeals board. The team argues that its lease on the land is decreasing in value the longer they are tenants. The lease still has 66 years left to go, but the Giants seem to believe the value of the stadium itself is depreciating in the same way a car does.

That argument prevailed a decade ago, when the Giants won an earlier dispute over their property tax bill. But it's a debatable point, says Victor Matheson, a sports economist at College of the Holy Cross. Under income tax rules, the value of a property can depreciate over time. But that's not true under property tax rules. No one could argue that a 100-year-old house in good shape in an upscale neighborhood has no value.

The case for depreciation is undercut by the fact that AT&T Park not only still sparkles but is clearly bringing in lots of money for the team. "It's not like it's now generating half the money that it did when it opened," Matheson says.

The two sides are far apart. But regardless of the appeal's outcome, Chu should take heart from one thing. The Giants may not be paying as much as the assessor thinks is right, but anything at all is more than most sports franchises pay in property taxes. Usually, they're either playing in a municipally owned stadium or they've gotten a break on taxes as part of the initial deal. "They avoid paying taxes almost all over the country," Matheson says.

GOVERNING.COM

BY ALAN GREENBLATT | AUGUST 2016

Puerto Rico's Record Restructuring Seen Surviving Junk Rating.

The fate of the prototype for Puerto Rico's debt-restructuring effort hinges on winning an investment-grade credit rating on new bonds investors have agreed to accept in exchange for providing relief to the island's main electric utility.

While that may appear to be an arduous task for an agency already in technical default, it may not matter in the long run, according to two people involved with the negotiations who declined to be identified because the talks are private. After two years of negotiations, creditors have too much at stake to let the Puerto Rico Electric Power Authority's $9 billion restructuring unravel, they said.

What's giving investors comfort is the structure of the new securities, which will be repaid with dedicated revenue that the agency known as Prepa doesn't have access to and flows straight to the bond trustee. The island's electricity commission approved in June a 3.10 cent per kilowatt hour surcharge that will go toward repaying the bonds.

"You have to be able to trust that the revenue stream is protected and it can't be taken away and manipulated," said Daniel Solender, head of municipals in Jersey City, New Jersey, for Lord Abbett & Co., which manages $20 billion of state and local debt, including Prepa bonds. "If that type of structure can be set up, than a lot of things are possible."

Restructuring Template

In what would be the largest restructuring in the $3.7 trillion municipal-bond market, creditors holding about 70 percent of Prepa debt agreed in December to accept 85 cents on the dollar for the securities.

Analysts have pointed to the agreement as a road map for future debt talks once the financial control board being set up for the island by the U.S. takes effect later this year.

A junk rating doesn't necessarily prohibit Prepa from restructuring, said Matt Fabian, a partner at

Concord, Massachusetts-based Municipal Market Analytics. The utility would need to amend its creditor agreement, he said.

“Creditors still want to exit and a non-investment grade rating means that the economics are a little bit worse for everyone, but in the absence of any other good ideas, this is all they have,” Fabian said.

Prices of the existing securities suggest investors remain wary. Bonds maturing in July 2040, the agency’s most-actively traded security in the past three months, changed hands Aug. 5 at an average price of 65 cents on the dollar, 20 cents below the recovery rate, data compiled by Bloomberg show.

It’s unlikely that Prepa will receive an investment-grade rating after the commonwealth defaulted in July and August on general-obligation debt that was guaranteed by its constitution, said Dick Larkin, director of credit analysis at Stoever Glass & Co., who spent nearly 26 years assigning municipal credit ratings at S&P Global Ratings and Fitch Ratings.

“I don’t believe any kind of a securitized deal coming out of Puerto Rico can get an investment grade when the sponsor itself is breaking constitutional law,” Larkin said.

S&P has already told Prepa that its restructuring, as of now, wouldn’t garner an investment grade, Caribbean Business reported, quoting Carlos Gallisa, a utility board member who represents residential customers. Prepa said in response that it hasn’t started the formal rating process yet.

Rating Process

“While the outcome of the rating process cannot be predicted at this stage, Prepa maintains that there is a path to obtaining an investment grade rating for the securitization bonds and intends to continue working diligently and collaboratively together with its creditors and other stakeholders to implement the deal agreed as part of the restructuring support agreement,” Lisa Donahue, Prepa’s chief restructuring officer, said in a statement. “Prepa intends to start engaging with Moody’s and also start the formal process with S&P in the near future.”

“We continue to have strong confidence that the securitization bonds are well-positioned to receive an investment-grade rating,” Stephen Spencer, managing director at Houlihan Lokey, adviser to a group of Prepa bondholders, said in a statement.

Getting investors to trust that it won’t default on the new bonds no matter what the rating is still a challenge. Hedge funds and insurance companies are already suing Puerto Rico and its agencies over a local debt-moratorium law and for redirecting certain revenue that the creditors say go against commonwealth or federal laws. That’s even after the federal legislation authorizing the island’s overall debt restructuring included a stay on litigation.

Upgrade Potential

Investors also face the risk that the electricity surcharge may not be enough with a declining population and if customers fail to pay bills on time, Fabian said. Overdue accounts totaled $1.8 billion as of May, the bulk of that from government entities, according to the utility’s website.

Prepa and its creditors have been negotiating since August 2014 on how to improve the utility’s finances after it raided reserve funds to pay for fuel. Creditors agreed to accept losses and wait longer to be repaid to enable the utility to rehabilitate a system that relies on oil to produce electricity. The goal is for Prepa’s operating costs to decrease over time so that it can repay its obligations. That’s a risk that investors appear to be willing to take whether the new debt is rated investment grade or not.

“This is a financing that’s not impossible, and could season itself into an investment-grade security,” Fabian said.

Bloomberg Business

by Michelle Kaske

August 9, 2016 — 2:00 AM PDT

Memphis Ministry’s Conduit Debt Put on Watch by S&P on HUD Probe.

Credit ratings on about $360 million of multifamily-housing bonds issued by Global Ministries Foundation, a Tennessee-based operator of low-rent apartments, were placed under review for possible downgrades by S&P Global Ratings because the U.S. Department of Housing and Urban Development is probing the non-profit.

The placement on CreditWatch with “negative implications” affects 23 municipal-debt issues sold in states including Alabama, Florida, Indiana, Louisiana and Tennessee, the rating company said in a news release.

“In our view, effective ownership and management are essential to an affordable housing program’s economic feasibility and sustainability,” S&P said. “The HUD investigation therefore warrants our review of GMF’s full portfolio and our assessment of the project owner’s overall strategy and management.”

GMF has come under scrutiny after the the U.S. Department of Housing and and Urban Development cut rent subsidies to more than 1,000 residents at GMF apartments in Memphis because the buildings were infested with roaches and had numerous health and safety violations. The loss of the federal funds caused bonds issued for the apartments to default, pushing the price to as little as 21 cents on the dollar.

HUD Section 8 subsidies support 15 of the 23 bond issues. S&P said that if it confirms that any of the Section 8 properties are at risk of losing their subsidies, it could downgrade or withdraw its ratings. Most of the issues carry investment-grade ratings, while four are already considered junk.

S&P said it was reviewing its assessment of GMF’s strategy and management “based on our view of GMF’s lack of strategic planning for the properties’ current state and weak operational effectiveness.”

“GMF is fully cooperating with recent HUD inquiries and requests for documentation, and we will continue to aid HUD and other government representatives should they have additional inquiries,” said GMF spokeswoman Audrey Young in an e-mailed statement. “In the interim, GMF remains focused and committed to its mission to provide housing to some of America’s families most in need of safe, affordable housing.”

Daryl Madden, a spokesman for HUD’s Office of Inspector General, confirmed that search warrants were executed at GMF’s office in Cordova, Tennessee, and a third party based in Dexter, Missouri. The Commercial Appeal of Memphis reported that the third party was the Gill Group, which appraised many of the properties GMF has purchased in Memphis.

Bloomberg Business

by Martin Z Braun

August 9, 2016 — 1:16 PM PDT

Treasury Didn’t Tell Puerto Rico to Default, Lawyer Says.

U.S. Treasury officials didn’t tell Puerto Rico to default on general-obligation bond payments, according to a lawyer representing the island in its $70 billion debt restructuring.

“At least in my experience, U.S. Treasury doesn’t say to the commonwealth ‘do x or y,’ ” Richard Cooper, a partner at Cleary Gottlieb Steen & Hamilton LLP, said Tuesday during a Puerto Rico conference at the CUNY Graduate School of Journalism in New York. “That is ultimately, I think fueled, by creditors speculating for their own purposes.”

Puerto Rico skipped paying nearly $1 billion to bondholders on July 1, including $780 million of principal and interest on general obligations. It was the largest default in the $3.7 trillion municipal-bond market and the first time a state-level borrower failed to pay on its direct debt since the 1930s.

Cleary Gottlieb is Puerto Rico’s legal adviser as it seeks to reduce a $70 billion debt load. The firm has been in discussions with U.S. Treasury staff, commonwealth officials and creditors as the parties negotiate on a how to restructure the island’s debt.

“Anyone who is seriously looking at this situation could tell you there wasn’t enough funds on July 1 to make those payments,” Cooper said.

U.S. Senator Orrin Hatch sent a letter in June to the Securities and Exchange Commission, asking the agency to investigate the information shared between some investors, Puerto Rico and U.S. government officials about the island’s fiscal state.

Hatch’s letter asks SEC Chair Mary Jo White to look into “whether information asymmetries, including asymmetries between public investors and government officials of Puerto Rico and the U.S. government have led to acts, actions and activities in violation of laws designed to protect investors and the integrity of the municipal-debt market.”

Bloomberg Business

by Michelle Kaske

August 9, 2016 — 9:12 AM PDT Updated on August 9, 2016 — 9:52 AM PDT

Detroit Schools Split Raises Risk of Default on State-Aid Debt.

Michigan’s plan to bail out the troubled Detroit public schools is putting debt backed by state aid at risk of falling into default if the bonds aren’t refinanced by mid-October.

Ratings have been slashed twice by S&P Global Ratings since late June on the district’s debt by a total of six levels to junk. Michigan's restructuring of the district's finances diverts state payments on about $370 million of bonds sold in 2011 and 2012 to a newly created school district that doesn't have any responsibility for the old debt. The state still lacks a plan to refinance the bonds, and S&P said absent a plan, it would likely consider this a distressed exchange that would merit being labeled as a default.

"S&P was in its rights to downgrade," said Tamara Lowin, director of research at Rye Brook, New York-based Belle Haven Investments, which oversees $5.3 billion of municipal debt and doesn't own any district debt. "There was debt outstanding for which the revenue stream has disappeared. That is in itself alarming."

The restructuring approved by state lawmakers and Governor Rick Snyder was designed to the give Detroit's schools, reeling from the same population decline that bankrupted the city, a "clean slate," Snyder said when he signed the bill June 21. Moody's Investors Service, in a report issued a week later, said the restructuring was "credit positive" for bondholders "given that the district was teetering on bankruptcy and was reportedly unable to make payroll absent an immediate infusion of revenue."

The restructuring separates the district into two entities, with a new district responsible for the education of about 46,000 students and funded with state aid. The existing district would continue to pay off the district's old debt, including about $2.2 billion of bonds and pension liabilities from property taxes. The state will provide about $467 million to help repay the old debt.

The Michigan Finance Authority, which issued the debt cut by S&P for the district, is putting together a plan to refinance the debt by Oct. 20, said Danelle Gittus, spokeswoman for State Treasurer Nick Khouri. She declined to provide any additional details.

"We're still in the middle of preparing, so there's nothing else we can say," said Gittus.

Negative Outlook

Since the legislation was signed, the dollar price of the 2012 bonds maturing in four years has fallen to par from about 108 cents on the dollar. S&P cut the 2011 bonds to BB from A and the 2012 bonds to BB- from A-. Moody's doesn't rate the bonds S&P cut, but has a Caa1 rating with a negative outlook on the district, seventh in the junk category.

"It's a surprise that it was in the A category, then it's BB," said Bill Bonawitz, director of municipal research at PNC Capital Advisors, which oversees $6.5 billion in municipal bonds. "How do you go from being an A rated bond to a BB rated bond in a matter of five weeks? That's a huge difference."

S&P said it made its assessment based "on the lack of a formal plan regarding bondholder repayment terms" and the elimination of one of the pledged revenue streams in the fiscal year that begins Oct. 1.

The restructuring needs to be in place before Oct. 20, when state aid moves to the new district, leaving the bonds rated with S&P with just the property-tax pledge. Lack of specific details on the plan to refinance the two bond series creates uncertainty for bondholders, S&P said, raising the risk of default.

Eroding Value

"If they don't get it refinanced, the loss of the revenue stream is going to seriously erode bondholder value," said Jane Ridley, an S&P analyst, in a phone interview. "The bondholders will lose security."

S&P, the only firm that rates the 2011 and 2012 bonds, said in an Aug. 3 report that separating the state-aid payments from the bonds creates a more than 50 percent chance the debt could be cut again in the next two months. It warned that it could use its D, or default category, if repayment is less than originally promised. The bonds will keep a property-tax pledge under the new structure once state aid goes to the new district.

"As October approaches and ushers in the new fiscal year, it creates greater uncertainty as to whether bondholders will receive full and timely payment," S&P wrote. "If the actions taken through this process provide bondholders with anything less than the full promise of the original bonds, it is likely to be considered a distressed exchange and therefore a default under our criteria."

It appears the district will end up refinancing its debt, said Lowin, who noted there's questions about the strength of the security on the bonds.

"It'll be interesting to see what kind of market access the new debt will have," she said.

Bloomberg Business

by Darrell Preston

August 10, 2016 — 2:00 AM PDT

Moody's Issues First Muni Green Bond Assessment in U.S.

WASHINGTON — The Upper Mohawk Valley Regional Water Finance Authority received a green bond assessment of GB1 for $8.78 million of water system revenue bonds on Wednesday from Moody's Investors Service — the first GBA the rating agency has issued in the U.S.

The GBA, which ranges from GB1 for excellent to GB5 for poor, is designed to help investors determine if green bond proceeds are being used to achieve "positive environmental outcomes," said Henry Shilling, Moody's senior vice president who has played a key role in the development and use of the GBA.

Moody's rolled out the final methodology for the GBA, which is not a rating, at the end of March. Since July, the rating agency has assigned four GBAs, the first three of which went to European entities.

The Upper Mohawk Valley Regional Water Finance Authority bonds are to be issued soon to help finance an increase in the water system's resiliency and the furtherance of its mission to provide safe drinking water to users. The authority is an instrumentality of New York State that serves 130,000 residents through 38,900 service connections in the eastern portions of Oneida and Herkimer counties as well as the city of Utica.

And Moody's expects to see more green bond issuances in the future.

In a report on the sector issued about two weeks ago, Moody's said global green bond issuance during the second quarter reached a new quarterly high of $20.3 billion, raising total volume for the first half of the year to $37.2 billion, an 89% increase over the same period a year ago.

The U.S. accounted for about 22.8% of the second quarter issuance and 19.8% of first quarter issuance, Moody's said. U.S. Issuers in the second quarter were from Massachusetts, New York, California, Maryland, Indiana, Cleveland, Ohio, New Jersey, Rhode Island, and St. Paul, Minn.

"With strong issuance already observable in the first two weeks of the third quarter, the global green market is poised to reach $75 billion in total volume for the year and set a new record for the fifth consecutive year," Moody's said in the report.

"The green bond market is gaining traction," Shilling told The Bond Buyer.

Up until this year, green bonds were rated by Moody's based on their creditworthiness, Shilling said. But institutional investors that buy them, which include banks, insurance companies and pension funds, wanted the rating agency to begin assessing whether they were actually being used to improve the environment, he said.

Investors want to know, for example, whether bonds issued to finance a project that will reduce a carbon footprint and deter climate change or to improve water quality were really accomplishing those goals.

The GBA is part of a broader strategy at Moody's to address environmental, social and governance risk more systematically and more consistently, Shilling said.

It is based in part on the disclosure practices of the issuer and borrower and how transparent they are. The GBA is determined according to five key factors: organization; use of proceeds; disclosure of the use of proceeds; management of proceeds; and ongoing reporting and disclosure on environmental projects financed or refinanced with the bonds.

In its rationale for giving the Upper Mohawk Valley Regional Water Finance Authority its GBA1 rating, Moody's said the authority is effectively organized and properly staffed with qualified and experienced personnel.

The bonds, which are explicitly designated as green bonds in the draft official statement, are to be issued under the authority's capital improvement plan to improve the water system's infrastructure through increased capacity and dependability, Moody's said.

About $4.05 million of the proceeds will be allocated to raw water transmission upgrades that will improve the authority's ability to draw water from the Hinckley Reservoir during major droughts that lead to below-normal water levels in the reservoir.

Another $650,000 is to be used to design two new water storage facilities in Marcy as well as improvements to a water treatment plan in Prospect and upgrades to pumps and regulating stations.

The final $4.13 million will be used to refinance callable bonds previously issued in 1999 and 2000 for improvements.

The authority has disclosed information on these projects in its annual comprehensive financial reports and on its website in capital projects committee reports.

"The MVWA has committed to track the net proceeds of the 2016 bonds and will confirm that such proceeds were used to finance the projects," Moody's said in its release. "The MVWA is committed to providing disclosures that demonstrate the environmental benefits resulting from the planned expenditures of the 2016 bonds."

The projects are expected to be completed within 12 months after they become available, the rating agency said.

“The first-year initial disclosure will indicate in detail how the proceeds were expended, the contractors performing the work and receiving payments, and the actual work that was completed,” Moody’s said in the release.

“Annual reporting will also include updates on four key metrics that at the same time link up to base line disclosures that permit comparative analysis,” the rating agency added. “These include reservoir water levels versus transmission capacity, conveyance of purified potable water during the year, trihalomethane levels and the total amount of hydroelectric power produced by the turbines within the water treatment facility.”

The Bond Buyer

By Lynn Hume

August 10, 2016

MSRB Files Rule Change and Guidance Related to ABLE Programs.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a rule change under MSRB Rule G-45 to delay reporting of information by underwriters to programs established to implement the Achieving a Better Life Experience Act (ABLE). The MSRB’s filing also provides guidance under MSRB Rules G-42 and G-44 to municipal advisors to sponsors or trustees of municipal fund securities, including ABLE programs. The amendments are effective immediately.

Read the regulatory notice.

View the SEC filing.

MSRB Provides Guidance on Trade Reporting Rule.

The Municipal Securities Rulemaking Board (MSRB) today published guidance in question-an--answer format to support compliance with MSRB Rule G-14, Reports of Sales or Purchases of Municipal Securities. Rule G-14 requires municipal securities dealers to report all executed transactions in most municipal securities to the MSRB’s Real-Time Transaction Reporting System (RTRS) within 15 minutes of the time of trade, with limited exceptions.

Amendments to Rule G-14 to enhance post-trade price transparency became effective on July 18, 2016.

View the new guidance.

N.J. Approves $800 Million Bond Plan to Complete Mega Mall.

New Jersey's Local Finance Board approved a plan to use an out-of-state lending agency that specializes in risky securities to finance an $800 million bond sale to resurrect American Dream, the unfinished mega mall begun more than a decade ago.

The project in East Rutherford, about 10 miles (16 kilometers) west of Manhattan, has failed to fulfill several promised grand-opening dates as developers ran out of cash. It now anticipates opening in mid-2018.

The latest idea calls for public financing of $125 million more than the mall's latest owner, Triple Five Group of Canada, proposed in May. The bonds would be sold by the New Jersey Sports and Exposition Authority to the Wisconsin Public Finance Authority, according to agency documents. The Wisconsin pass-through operation charges a fee to market tax-exempt bonds for out-of-state entities.

Higher Costs

Triple Five expects the debt to be unrated and tax-exempt, and the offering made in September, according to Tony Armlin, vice president of development and construction. The deal swelled to $800 million, he said, because issuance and construction costs have increased.

"We've been working with Wisconsin for several years," Armlin told reporters after Wednesday's finance-board meeting in Trenton. He called it an "efficient, economical" issuer.

An agreement earlier this year had made the borough of East Rutherford the issuer of the so-called redevelopment-area bonds, a decision that is expected to be rescinded, according to Emike Omogbai, a spokeswoman for the Local Finance Board.

"The new sale structure of the RABs does further insulate the borough and the state, since neither will be involved in the public issuance and sale," Omogbai said in an e-mail.

Taxpayers Uneasy

East Rutherford Mayor James Cassella said homeowners had been uneasy with the notion of issuing hundreds of millions of dollars in debt. The borough has fewer than 10,000 residents and an annual budget of about $26 million. The sports authority, he said, was the more logical issuer, because it owns the land on which the mall is built.

Scott Carper, a program manager for the Wisconsin issuer, said the agency received details of the New Jersey deal from Triple Five on Tuesday.

"Staff is currently processing the application and in the process of receiving all of the application materials," he said in an e-mail.

The agency has had no contact with the New Jersey Sports and Exposition Authority, Carper said. That panel also must approve the bond issue.

Repayment Risk

Agencies like the Wisconsin entity sell securities and immediately lend the proceeds to borrowers whose projects qualify for federal tax exemptions for public works. The authorities aren't on the hook if the money isn't repaid. That makes the bonds among the riskiest in the municipal market: They make up as much as 30 percent of outstanding debt but account for almost 60 percent of defaults, according to Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics.

The Wisconsin authority has had no payment defaults. Last year, when it was the most active conduit issuer in the U.S., more than half its issues were unrated, according to data compiled by Bloomberg.

"The Public Finance Authority can issue bonds in all 50 States and has assisted many eligible borrowers nationally to access tax exempt financing," Carper said. "PFA partners with local governments to assist in the financing of public benefit projects that create temporary and permanent jobs, affordable housing, community infrastructure and improve the overall quality of life in local communities."

A bond summary prepared by Goldman Sachs Group Inc., the underwriter, shows that total debt service would be $1.9 billion assuming a 2049 maturity, according to the application. Average annual debt service would be $59.3 million until August 2049, with $615.9 million due then.

American Dream's multicolored exterior, with an indoor ski slope jutting above East Rutherford's swampy meadowlands, is a garish landmark along the New Jersey Turnpike. Republican Governor Chris Christie called it "the ugliest damn building in New Jersey, and maybe America."

Triple Five, based in Edmonton, Alberta, owns the Mall of America, ranked by Time magazine as the most-attended U.S. attraction with 40 million annual visitors. The New Jersey mall's construction costs have reached almost $5 billion to include a theme park, the first U.S. indoor ski slope, retail and restaurants.

Bloomberg Business

by Elise Young

August 10, 2016 — 10:08 AM PDT Updated on August 10, 2016 — 12:37 PM PDT

IRS Ends Eight-Year Audit of Florida's Villages Without Penalty.

The U.S. Internal Revenue Service has closed an eight-year exam of about $300 million of tax-exempt bonds issued for The Villages, one of the world's largest retirement communities, without imposing a penalty, according to a filing by the development districts that issued the debt.

The Village Center Community Development District and the Sumter Landing Community Development District, located about 60 miles (97 kilometers) northwest of Orlando, said the IRS notified them on July 14.

"We were steadfast in maintaining that the districts had followed the law and that there was no factual basis for the IRS examination," wrote district manager Janet Tutt in a July 18 memo listed Wednesday on the Municipal Securities Rulemaking Board's disclosure website. "To have this examination finally closed without penalty is a tremendous victory for our community and vindication of our supervisors and district staff who do a tremendous job serving our residents."

The districts, created by the late billionaire developer H. Gary Morse, issued the bonds to purchase golf courses, recreational centers and other amenities that Morse build. The IRS said that the bonds shouldn't have received tax-exempt status because the boards were appointed by Morse and the majority of the members worked for him. The IRS also maintained the bonds were issued for private, not public, purposes.

“We have concluded that closing this examination without further IRS action supports sound tax administration,” wrote Allyson Belsome, an IRS field operations manager for tax-exempt bonds in a July 11 letter to the development districts.

“Federal law prohibits the IRS from discussing specific taxpayers,” said IRS spokesman Dean Patterson.

During the course of the audits the district refinanced the bonds in 2014 with taxable bonds to take advantage of lower interest rates.

Bloomberg Business

by Martin Z Braun

August 10, 2016 — 1:50 PM PDT

[Chapin Joins New York’s Exclusive Schools in Muni Borrowing Boom.]()

The Chapin School, the more than 100-year-old private girls’ school whose alumnae range from members of the Roosevelt family to fashion designer Vera Wang, is the latest of New York City’s elite educators to borrow in the tax-exempt bond market to expand.

Build NYC Resource Corp. sold $75 million in debt on Wednesday for the kindergarten-through-hi-h-school institution to help finance ongoing construction at its 100 East End Ave. location, including a new gymnasium, cafeteria and more classrooms. The three-story expansion will also provide additional space for its performing arts programs, a common area and a studio for the robotics program.

The Chapin sale follows simple municipally financed expansions by other New York preps schools such as the Brearley School and the Ethical Culture Fieldston School. Tuition at Chapin for the 2016-17 academic year is $47,500 for all 769 students across its lower, middle, and upper schools, an increase of 4.7 percent from the previous year, bond documents show. That doesn’t cover the cost for uniforms, books, supplies and other extracurricular activities, which families must pay for out of pocket.

In addition to rising tuition and the bonds, Chapin has also raised about two-thirds of its $90 million funding goal for its capital campaign. The school raised about $18.6 million in the most recent fiscal year, according to bond documents.

S&P Global Ratings assigned the offering a rating of AA-, the fourth-highest investment grade rank, with a stable outlook, reflecting the school’s “very strong enterprise profile as evidenced by its very selective profile, solid matriculation, high retention and incremental enrollment growth,” credit analysts said in a report.

Tax-exempt 10-year securities were priced at a yield of 1.66 percent, or 0.19 percentage point above benchmark debt, data compiled by Bloomberg show. Wednesday’s sale also reduced some of Chapin’s outstanding debt burden, which now only includes the $75 million of funds raised through the offering, S&P said.

Bloomberg Business

by Molly Smith

August 11, 2016 — 9:28 AM PDT

Barclays Center Owner Prokhorov to Refinance Arena's Debt.

Mikhail Prokhorov, the Russian-born billionaire owner of the Brooklyn Nets and the Barclays Center, is taking advantage of rock-bottom interest rates in the U.S. municipal bond market to refinance about $480 million of debt issued in 2009.

The bonds, which are backed by payments in lieu of taxes, were issued at a top yield of 8 percent and rated BBB- by S&P Global Ratings Inc., and Baa3 by Moody's Investors Service, the lowest investment grade. BBB rated revenue bonds maturing in 30 years yield 3.42 percent, according to data compiled by Bloomberg. The 17,732-seat arena, which is also home to the National Hockey League's New York Islanders, will generate operating profits of $46 million before paying debt service in 2016-2017, according to the preliminary offering statement.

Refinancing the 2009 bonds may reduce debt payments by $6 million annually, according to the statement. Net debt service for the proposed 2016 bonds will peak at an estimated $48 million in 2043.

Prokhorov, who has a net worth of $10 billion, according to the Bloomberg Billionaires Index, completed his acquisition of the National Basketball Association's Nets and the arena from developer Bruce Ratner's Forest City Enterprises Inc. in December 2015. Bloomberg News reported last month that the Islanders were in talks with the owners of Major League Baseball's New York Mets about building a hockey arena in Queens.

Prokhorov and the Islanders have the right following the upcoming NHL season to start talks regarding modifying their 25-year license agreement. If the parties can't reach an agreement by Jan. 1, 2018, either party has the right to terminate the agreement, according to the offering statement.

"Although the loss of the Islanders would result in the immediate availability of a minimum of 44 event dates, arena management could leverage the Advisory Board, its Los Angeles-based office, and other existing relationships to fill a portion of those dates with third party events," according to a consulting report included in the offering statement. The Advisory Board is made up of media, music, live entertainment and artist management "industry leaders" and advises the arena's event booking team.

Past Advisory Board-aided concerts include shows by Rihanna, Justin Bieber, and Ariana Grande. The Los Angeles office of the board has secured shows by Selena Gomez and Kygo.

In addition to the Nets, Islanders, and concerts, Barclays hosts family shows, boxing, college basketball and professional wrestling. Last year, the arena has the second-highest concert ticket sales of any arena in the U.S. and the eighth-highest worldwide, according to the consulting report. Third-party events generated $14.7 million in profits for the arena last year.

Bloomberg Business

by Martin Z Braun

August 9, 2016 — 8:14 AM PDT Updated on August 9, 2016 — 10:11 AM PDT

Hedge Funds Press Banco Popular for Puerto Rico Deposits.

Hedge funds that own Puerto Rico bonds are putting pressure on Banco Popular over commonwealth funds deposited at the bank that they say should go to them.

Lawyers representing the Ad Hoc Group of General-Obligation Bondholders sent a letter Thursday to Banco Popular de Puerto Rico in San Juan, notifying the bank of the group's rights and remedies regarding government funds redirected to meet other obligations.

The so-called clawback revenue should be used to help repay general-obligation debt because the island's constitution says those securities must be repaid before other bills, the group said. The commonwealth defaulted on about $1 billion of principal and interest due July 1, including $780 million for general obligations, the largest payment failure in the $3.7 trillion municipal-bond market.

Some members of the bondholder group, including Aurelius Capital Management, Autonomy Capital, Covalent Partners, FCO Advisors, Monarch Alternative Capital and Stone Lion Capital Partners last month sued Governor Alejandro Garcia Padilla, claiming that a federal law enacted on June 30, called Promesa, which means promise in Spanish, prohibits Puerto Rico from redirecting cash or assets that violates its constitution.

Revenue Redistribution

"Our clients reserve all rights and remedies with respect to the clawed back funds referenced in the pending lawsuit and any and all actions Banco Popular may take that are inconsistent with the constitution and laws of the U.S., as well as the constitution and laws of Puerto Rico and the debt obligations issued there under," Andrew Rosenberg, a lawyer at Paul Weiss Rifkind Wharton & Garrison, which is representing the hedge funds, said in the letter.

Teruca Rullan, a spokeswoman for Banco Popular in San Juan, declined to comment.

Garcia Padilla began clawing back agency revenue last year to help pay general obligations due Jan. 1. The administration redirected $289.2 million of revenue from January to June of this year, with $143.2 million deposited at Puerto Rico's Government Development Bank, according to the commonwealth's most recent audit.

Puerto Rico deposited the remaining amount at Banco Popular, according to the investor group.

Bloomberg Business

by Michelle Kaske

August 11, 2016 — 2:00 PM PDT Updated on August 12, 2016 — 6:24 AM PDT

Illinois, New Jersey Among Most Vulnerable in S&P Stress Test.

Municipal-bond investors in Illinois, Pennsylvania, New Jersey, and Connecticut have good reason to be worried.

The states are among those that S&P Global Ratings has deemed to have "only a limited capacity" to withstand the effect of a moderate recession, according to a report published by the credit-ratings company.

The report, titled "Fiscal Resilience Among U.S. States Varies As Economic Expansion Surpasses Seven-Year Mark," found that a majority of the 10 states with the most tax-supported debt outstanding have a limited ability to handle the effects of an economic downturn, judging by stress tests S&P conducted on their 2016-2017 budgets. States are better off by leveraging periods of economic growth to build reserves, S&P concluded.

"The results of our scenario analysis underscore that fiscal health across the U.S. state sector is subject to the powerful countervailing effects of pro-cyclical revenue trends and countercyclical expenditure pressures," said credit analyst Gabriel Petek.

Of the 10, S&P found that Illinois, Pennsylvania, New Jersey, and Connecticut are the most vulnerable to significant fiscal stress. Washington, Florida and New York are best-positioned should the economy turn south, the report said. California, Massachusetts, and Wisconsin rounded out the list of those states evaluated.

Bloomberg Business

by Molly Smith

August 9, 2016 — 6:35 AM PDT

Memphis Ministry's Muni-Bond Sales Being Investigated by SEC.

The U.S. Securities and Exchange Commission is investigating a Tennessee ministry that owns two municipal bond financed low-income apartment complexes in Memphis that were infested with roaches, caked with sewage and replete with broken windows and damaged walls.

The SEC's Atlanta office is conducting an inquiry into Global Ministries Foundation and the 2011 sale of about $12 million of bonds to purchase the Warren and Tulane apartments, according to a letter filed in U.S. court in a case brought by the bondholders' trustee. The trustee, Bank of New York Mellon Corp., sued GMF in May and won the appointment of a receiver after the bonds defaulted.

"We believe you may possess documents and data that are relevant to an ongoing investigation being conducted by the staff of the United States Securities and Commission," EC senior counsel Michael Adler wrote in a July 18 letter to the receiver, Donald Shapiro. "Accordingly, we hereby provide notice that such evidence should be reasonably preserved and retained until further notice."

The letter from the SEC was filed as part of the receiver's report to the court for the period July 1 through July 31.

“GMF will continue to fully cooperate with the government’s investigation as called upon,” Audrey Young, a spokeswoman for GMF, said in an e-mail statement.

In March, the U.S. Department of Housing and Urban Development cut off rent subsidies for more than 1,000 residents that backed the bonds and said it would relocate them because of numerous health and safety violations. As a result, the Warren and Tulane bonds defaulted.

GMF, which is run by Richard Hamlet, a Baptist minister, has built a 10,500-unit, low-rent real estate empire with money raised in the $3.7 trillion municipal-bond market. In 2011, GMF issued $12 million in bonds through the Memphis Health, Educational and Housing Facility Board, to finance the purchase of Warrant and Tulane in an area where as many as 40 percent of the families live in poverty. A Las Vegas-based environmental consultant concluded that the apartments were in “good to fair” condition at the time and an appraiser valued them at more than $15 million, according to an official statement for the bond issue.

The SEC told the receiver, Shapiro, to preserve documents created on or after June 1, 2010, by Hamlet, and three members of his staff or those related to the 2011 bond issue, HUD, and the GMF Preservation of Affordability Corp., the ministry’s housing non-profit arm. The housing unit transferred $7.1 million to the ministry in 2014, according to federal tax filings, subsidizing its missionary work, which includes training pastors, producing a national radio program and undertaking evangelistic crusades overseas.

Bloomberg Business

by Martin Z Braun

August 11, 2016 — 5:22 AM PDT Updated on August 11, 2016 — 6:15 AM PDT

Ignore the Rules (If They Don’t Apply): Squire Patton Boggs

We are rather fond (because you are rather fond) of discussing Rev. Proc. 97-13 and related authorities that address private business use from management contracts. Back in 2014, when the IRS amplified Rev. Proc. 97-13 in Notice 2014-67 (collectively, “97-13”), we even made a holiday present of it. Now more than ever, 97-13 is an essential tool that allows issuers and borrowers to use managers in their facilities and still stay within the private business use limitations. But 97-13 is not a panacea, nor do you always need it to avoid private business use. So, to mix things up, we’ll now discuss when you can ignore 97-13, either because you don’t need it, or because it can’t help you anyway. Many people fall into the habit of thinking that the 97-13 rules apply to any arrangement in bond-financed facilities. However, that’s not the case.

Let’s start with a key definition from 97-13: a “management contract” is “a management, service, or incentive payment contract between a qualified user and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility.”

From the definition alone, it is clear that some contracts are not “management contracts.” Only contracts with “service providers” are included, which means that private parties that have more significant rights to the actual or beneficial use of the bond-financed property (such as lessees of the bond-financed property) will cause private business use of the bond-financed facilities even if the terms of the arrangement technically fall within a safe harbor. In other words, 97-13 cannot help you escape the private business use that may arise from a lease of bond-financed property. (Other exceptions may apply, though, including those in [Reg. 1.141-3(d)](#).)

In addition, not all service contracts rise to the level of a "management contract" that must be scrutinized under 97-13. These contracts fall outside of what the regulations and 97-13 say when they refer to a "management contract" that can give rise to private business use. Four notable exceptions from the definition of "management contract" are provided by the Treasury Regulations and referenced in the 97-13. We include these below, along with comments on each:

- Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing or similar services);

The "solely incidental" language allows certain minor contracts to be excluded. If the particular contract you are reviewing is one of those that is contained within the parenthesis, even better. However, those are only examples, which means that other contracts may also qualify. To date, despite repeated requests from professionals to provide more guidance regarding the scope of "similar services," we have not gotten any.

- The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of its facilities;

Similarly, "mere" admitting privileges do not fall within 97-13. This exception, like the prior exception, focuses on the economically insignificant and incidental nature of such agreements. What about if you aren't considering a contract with a hospital? Don't forget that this exception may also help by analogy to establish an exception from 97-13 based on facts and circumstances, although one should tread lightly in doing so.

- A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property (as defined in § 168(i)(10) of the 1986 Code), if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and
- A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

We lumped these two together because they are quite similar. The third and fourth exception each depend on reimbursement consisting only of "actual and direct expenses." Like the prior exceptions, these two also focus on the economic insignificance of such agreements.

The fourth exception is particularly helpful because it is not tied to any particular type of services. An important limit to the exception is that it is limited to actual and direct expenses; therefore, if a contract involves a payment to compensate a service provider for projected expenses, it would not qualify for the fourth exception from being treated as a management contract.

Note that this fourth exception dovetails with the provision of 97-13 that reimbursement of actual and direct expenses is not treated as "compensation" that factors into 97-13's list of safe harbors that link permitted compensation to permitted length. So, even if a contract doesn't meet an exception from the definition of a "management contract," to the extent that compensation involves reimbursement of actual and direct expenses, that compensation is ignored for purposes of the safe harbor. In sum, it may be tempting to treat 97-13 as a one-size-fits-all tool that either fixes (or doesn't) every private business use issue. But remember that 97-13 applies only to "management contracts," and that this term has a specific definition.

Squire Patton Boggs

by Alexios S. Hadji

USA August 11 2016

[The Houston Pension Question: How the City's Pension Liability Grew and the Options for Reform.]

Houston today faces an increasing unfunded liability for its employee pensions that totals at least $3.9 billion, as of 2015, up from $212 million in 1992. If no action is taken, that unfunded liability is expected to continue growing. However, the city has some options, however painful, that can reduce the unfunded liability and restrain its future growth. This report is designed to contribute to the ongoing discussion of the future of Houston's pensions by:

- Clarifying the specific nature of the challenges affecting each of Houston's three pension systems.
- Putting Houston's pensions in greater budgetary context.
- Comparing and contrasting the position of Houston's pensions to those of other large U.S. cities.
- Identifying potential options for reform and explaining the advantages and disadvantages of each of those approaches.
- Highlighting the experience of several large U.S. cities that have pursued strategies to address their pension systems' liabilities.

Read the Report.

Rice | Kinder
Institute for Urban Research

Black & Veatch: Electric Industry Report.

Black & Veatch is pleased to offer you the ***2016 Strategic Directions: Electric Industry Report***. The full report is available for you to download here.

This report captures Black & Veatch's global engineering and thought leadership to examine how distributed generation, the low price of natural gas and modern customer information systems represent growth opportunities for the electric industry — even as security concerns are on the rise and legacy power generation sources cede their prominence to new technology.

Bloomberg Brief Weekly Video - 08/11

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

Watch the video.

August 11, 2016

BDA and Others Submit Comments to the SEC on CDAs.

Today, BDA and other associations sent a letter to the SEC Office of Municipal Securities on amending issuer continuing disclosure agreements (CDAs).

"In the Adopting Release for the 1994 Amendments to Rule 15c2-12, the Securities and Exchange Commission ("SEC") promoted flexibility in drafting CDAs required by the amended Rule while adhering to a basic framework, in line with the official statement for the particular offering. As a result, there is no uniform CDA used by all over the last twenty years. Under current guidance, however, there is no simple way to amend and fix such CDAs and thus we are requesting that the SEC address this issue by elaborating on the SEC's outstanding guidance on CDA amendments."

You can find the final letter here.

The Insurance Industry Has Been Turned Upside Down by Catastrophe Bonds.

Investors are flocking to securities that shield the risks of hurricanes, pandemics and hackers; reinsurers are suffering

Catastrophe bonds were invented in the early 1990s to help insurance companies mitigate the risk of disasters such as hurricanes and earthquakes. Today, like the very storms they protect against, catastrophe bonds are upending the insurance business.

The oddball securities have exploded in popularity, driven by pension plans, sovereign-wealth funds and wealthy families seeking better returns. Investment banks and insurers' own securities-brokerage operations churn out billions of dollars a year in catastrophe bonds.

There are "cat bonds" that pay off if too many people die in a pandemic. Others cover the opposite problem of people living beyond their expected lifetimes. An American International Group Inc. unit sold cat bonds this spring to insure itself against a potential rash of foreclosures. A Credit Suisse Group AG bond sale in May insured the Swiss bank against the risk of rogue traders, cyber hacking and accounting fraud.

Traditionally, insurers raise capital and use it to back policies that are priced by the companies' actuaries. To unload some of their risk, insurers pay premiums to companies known as reinsurers, a low-profile corner of the industry that serves as insurance for insurers.

Catastrophe bonds have disrupted this way of doing business. The bonds are sold by insurers or the entity itself seeking insurance, like a local government or transit agency. An independent risk-modeling firm calculates the odds of a particular disaster occurring. Investors are paid relatively high interest rates but lose their principal if disaster hits.

As a result, the price of reinsurance is falling, as are profits. These bonds have also injected a new source of volatility into the otherwise staid insurance world, since money flows are driven by broader forces in the bond market.

In all, there are $72 billion of cat bonds and similar investments outstanding. The total is equivalent to 12% of the $565 billion in capital in the reinsurance business. The volume of cat bonds and related investments is widely expected to double in the next several years, a sign that the transfer of risk from the insurance industry to capital markets has opened up access to a seemingly limitless source of funding.

That means the fixed-income market “is acting like one giant insurance company,” says John Seo, a biophysics Ph.D. and former insurance-risk trader who co-founded Fermat Capital Management LLC in 2001 to invest in cat bonds and other securities.

The surge is partly an unintended consequence of economic-stimulus efforts by central banks. Low interest rates are pushing investors such as pension funds to seek out higher returns.

Ordinary bonds pay buyers interest to cover the risk of default by the issuer. With cat bonds, the payments compensate buyers for taking on the risk of extreme events, typically for several years.

United Services Automobile Association sponsored $250 million of cat bonds in May to help cover potential losses from U.S. storms, wildfires, meteorite strikes and a solar flare. Companies usually sell the bonds through a specially formed entity.

If any of those disasters occurs in a four-year period and causes losses at USAA of between $910 million and $1.2 billion, buyers of the deal’s riskiest slice will lose some or all of their money, according to a person familiar with the deal. An independent risk-modeling firm calculates the probability of a $1.2 billion loss at 7.6%.

In return, those investors will earn 11.5% a year, plus interest on their principal held in escrow, which is invested in Treasurys. Investors buying the least risky slice, which kicks in only if claims exceed $1.9 billion, will collect annual interest of 3.25%.

Premiums for reinsurance covering catastrophic property damage, reinsurers’ largest business line, is down by half since 2011, according to Bryon Ehrhart, a senior executive at insurance broker Aon PLC, in part because of this new flood of money. A multiyear streak of no severe U.S. hurricanes is compounding the pressure.

Citizens Property Insurance Corp., run by the state of Florida, used a mix of cat bonds and conventional reinsurance to buy $3.9 billion in coverage last year, up 20% from 2014. Citizens also paid less: about $282 million in 2015, compared with $304 million a year earlier.

Such savings are a boon for Florida residents such as Greg Truax of Tampa. When he opened this year’s policy-renewal package from Homeowners Choice Property & Casualty Insurance Co., he saw that his premium had fallen 5.7% from a year earlier, saving him $233.

Dulce Suarez-Resnick, an agent at NCF Insurance Associates in Miami, says lower rates have been a “lifesaver” for clients rebuilding their finances following the financial crisis and recession.

Sawgrass Mutual Insurance Co. has cut the annual premium on Ms. Suarez-Resnick’s own house by $484, or 15%, since 2013. “Thank God the rates started to go down to make it more affordable,” she says.

Warren Buffett, whose Berkshire Hathaway Inc. owns some of the biggest reinsurers, had a different reaction. Mr. Buffett used to brag about the scale and profitability of the business.

At last year's Berkshire annual meeting, Mr. Buffett complained to shareholders that reinsurance has become "a fashionable asset class." Faced with lower prices and poor returns, Berkshire is doing fewer deals.

Mr. Ehrhart, the Aon executive, says he used to call the profit squeeze "the battle of six and 16." Reinsurers historically aimed for returns of 16% a year. The pension funds snapping up cat bonds are happy with just 6%.

By last year, though, the overall return of reinsurers tracked by Fitch Ratings had fallen to 9.9%.

Over the past decade, yields on cat bonds have outpaced junk-rated bonds by half a percentage point and high-quality securities by more than three points.

Catastrophe bonds were born after Hurricane Andrew cut across southern Florida in 1992 and left roughly $25 billion in damage in today's dollars. At the time, Andrew was the costliest hurricane ever.

German insurance executive Eberhard Müller had a brainstorm while riding the London subway in 1993. He wondered if some of the financial risk from hurricanes and earthquakes could be shifted to bond investors.

Mr. Müller and a colleague at Hannover Re, Dirk Lohmann, were working on ways to build up the reinsurer's capital base so that the German company could take advantage of rising rates. Some of their bosses worried about opening up the lucrative business to Wall Street and asked: "Are we opening Pandora's box?"

Mr. Lohmann replied: "If we don't do this, somebody else will."

With help from the bank now known as Citigroup Inc., Hannover pitched to investors a bond called "Kover," a mashup of the German word "katastrophe" and "coverage." Mr. Lohmann toted an extensive presentation and pitchbook. Details such as mathematical formulas demanded by lawyers were spelled out in two thick binders that the deal's team called "the Bible."

Mr. Müller, who retired from Hannover in December and now runs his own consulting firm, expected investors to sign up for the cat-bond deal immediately. It took months, and the $100 million deal was downsized to $85 million.

Mr. Lohmann called it "the roadshow from hell." He now leads Secquaero Advisors Ltd., which advises asset manager Schroders PLC on cat bonds.

Sales of cat bonds proceeded haltingly until the financial crisis. The bonds as a class had a return of 2.65% in 2008, according to Lane Financial LLC. The U.S. stock market slid nearly 40%, and U.S. corporate bonds posted negative returns.

The crisis also ushered in the ultralow interest rates that sent big investors scrambling for higher yields.

When executives with Florida's Citizens Property Insurance began marketing a $400 million cat bond in 2014, they realized during their 11-day roadshow they could blast past that target.

“We kind of joked around: ‘How big do you think it will get?’ ” recalls Jennifer Montero, Citizens’ finance chief. “We thought it would be cool if we could do $1 billion.” Orders totaled a whopping $1.74 billion. Citizens’ board of governors decided $1.5 billion was large enough to meet Florida’s needs.

Cat bonds aren’t the only option for investors. Some favor “sidecars” and “collateralized reinsurance,” arrangements that allow reinsurers to directly share some of the risk on their books with investors. Also popular are smaller “cat bonds lite,” or deals with less documentation.

Demand has been so high that some executives, analysts and investors worry that returns are starting to suffer from the flood of issuance. Cat bonds returned 4.2% in 2015, according to Lane Financial. That is less than half the 8.8% annualized return by the Swiss Re Cat Bond Global Total Return Index since 2006.

Another risk is several major hurricanes hitting just as interest rates rise. The resulting losses could deplete reinsurers’ capital and drive many cat-bond buyers out of the market at the same time.

“You have a double whammy,” says Thomas Leonardi, a senior adviser at investment bank Evercore Partners Inc. and former Connecticut insurance commissioner. “How will the market react?”

Still, he believes cat bonds are here to stay. Brokers say hundreds of pension funds around the world own cat bonds or want to buy them. Pension funds typically allocate $50 million to $200 million to such investments, or as much as 2% of their total assets.

At an insurance conference in June, Rod Fox, chief executive of strategic reinsurance and capital adviser TigerRisk Partners LLC, pointed to a slide of a waterfall. “How do you stop that waterfall?” he said. “It will continue to come.”

Some companies are starting to obtain insurance by issuing notes directly to bond investors. Last year, Amtrak sponsored $275 million of cat bonds that will pay out if specified storm surges, winds or earthquakes hit the Northeast during a three-year period.

Phil Balderston, Amtrak’s director of risk management, said at a recent conference that it was hard for the passenger railroad to get enough traditional insurance coverage.

Amtrak’s cat bonds were oversubscribed because investors had ample Florida hurricane risk in their portfolios and wanted to diversify their exposure.

Some reinsurers have responded by creating their own direct investment opportunities. Axis Capital Holdings Ltd. is using money from such investors to help insure corn, soybeans, wheat and cocoa against bad weather, says Albert Benchimol, the specialty insurer and reinsurer’s chief executive.

“The halcyon days of easy underwriting profits and steady investment returns are in the rearview mirror,” he adds.

THE WALL STREET JOURNAL

By LESLIE SCISM and ANUPREETA DAS

Updated Aug. 8, 2016 4:46 p.m. ET

Write to Leslie Scism at leslie.scism@wsj.com and Anupreeta Das at anupreeta.das@wsj.com

Court Overturns Ruling Allowing Municipal Broadband to Grow.

MEMPHIS, Tenn. — A federal appeals court on Wednesday overturned a Federal Communications Commission ruling allowing city-owned broadband services to expand into areas overlooked by commercial providers.

The decision comes as part of a dispute between the FCC and two states, Tennessee and North Carolina, about expanding superfast internet service in their respective cities of Chattanooga and Wilson to surrounding areas.

Both states had passed laws preventing such expansion. The FCC last year voted 3-2 to override those laws. The states then asked the 6th Circuit Court of Appeals to review the FCC's ruling.

The appeals court said that the FCC's order pre-empted the state laws and "the allocation of power between a state and its subdivisions." The court said the FCC's action requires a "clear statement" of authority in federal law, but the law does not contain a clear statement authorizing pre-emption of Tennessee's and North Carolina's laws.

State lawmakers have argued that private broadband providers will have difficulty competing with service subsidized by local governments. Attorneys for Tennessee and North Carolina had argued the issue is one of state sovereignty.

In a statement, FCC Chairman Tom Wheeler said the commission is reviewing the ruling. It is not clear if the FCC will appeal.

Wheeler said the ruling "appears to halt the promise of jobs, investment and opportunity that community broadband has provided in Tennessee and North Carolina." He said the FCC has a mandate to make sure that people have access to the best possible broadband.

"The efforts of communities wanting better broadband should not be thwarted by the political power of those who, by protecting their monopoly, have failed to deliver acceptable service at an acceptable price," Wheeler said.

Tennessee Attorney General Herbert H. Slatery III said in a statement that he was pleased with the ruling. The case was not about access to broadband, but instead it was about preventing the federal government from exercising power over the states that it does not have, Slatery said.

"Today's decision preserves Tennessee's right to determine the authority and market area of a political subdivision organized under Tennessee law," Slatery said.

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

Chattanooga's utility provider, EPB, said in a statement that Tennessee has a "broadband gap" that is a problem for its residents. A survey of Tennessee residents and businesses by the state Department of Economic and Community Development found that about 13 percent do not have access to broadband internet service.

EPB and other municipal broadband providers had refrained from delivering services to a wider area while the appeal was pending.

“We will continue to work with the growing number of state legislators and grass-roots citizens interested in removing the barriers that prevent EPB and other municipal providers from serving our neighbors in surrounding areas who have little or no access to broadband,” said David Wade, president of EPB.

The appeals court said its ruling was a limited one, and it does not address other issues debated in the case, including whether the FCC has any pre-emptive power at all under the Telecommunications Act of 1996.

“We do not question the public benefits that the FCC identifies in permitting municipalities to expand Gigabit Internet coverage,” the ruling said.

By THE ASSOCIATED PRESS

AUG. 10, 2016, 6:19 P.M. E.D.T.

SIFMA Issues U.S. Municipal Credit Report, Second Quarter 2016

About the Report

The municipal bond credit report is a quarterly report on the trends and statistics of U.S. municipal bond market, both taxable and tax-exempt. Issuance volumes, outstanding, credit spreads, highlights and commentary are included.

Summary

According to Thomson Reuters, long-term public municipal issuance volume totaled $119.0 billion in the second quarter of 2016, an increase of 24.5 percent from the prior quarter ($95.5 billion) and an increase of 7.3 percent year-over-year (y-o-y) ($110.9 billion). Including private placements ($3.0 billion), long-term municipal issuance for 2Q’16 was $108.7 billion. Year to date ending June 30, municipal issuance totaled $214.5 billion, well above the ten-year average of $190.6 billion although nearly unchanged from last year’s year to date issuance of $214.5 billion.

Tax-exempt issuance totaled $104.9 billion in 2Q’16, an increase of 19.0 percent and 4.8 percent, respectively, q-o-q and y-o-y. Taxable issuance totaled $6.8 billion in 2Q’16, an increase of 3.8 percent q-o-q but a 14.4percent decline y o y. AMT issuance was $7.3 billion, an eightfold increase q-o-q and a 153.7 percent decline y-o-y.

By use of proceeds, general purpose led issuance totals in 2Q’16 ($28.7 billion), followed by primary & secondary education ($21.0 billion) and higher education ($11.4 billion).

Refunding volumes as a percentage of issuance fell slightly from the prior quarter, with 49.7 percent of issuance attributable to refundings compared to 52.6 percent in 1Q’16, but was unchanged from 2Q’15.

Read the Report.

August 11, 2016

NFMA Issues Comment Letter on Primary and Secondary Market Disclosure in the Municipal Market.

Read the NFMA's letter.

Issuers: Watch a Step-By-Step Video on Customizing EMMA Issuer Homepages.

Watch the video.

- MSRB Files Clarifying Amendment to Rule G-37.
- Why MSRB Is Giving a $5.5M Rebate to Dealers.
- BDA Submits Comment Letter to the SEC on FINRA's CMO Reporting and Dissemination Proposed Rule.
- American Paradox: It's Never Been Cheaper for Cities and States to Borrow Money…And They Refuse to Do It.
- Split Coupons Make Municipalities Pay Up in Low-Rate Environment.
- CDFA Releases Annual Volume Cap Report.
- New Rules for Lessees of Investment Tax Credit Property: Baker Botts
- Final Arbitrage Regulations Require "Look Through" to a Grantee's Use of Bond Proceeds: A Big "So What?": Squire Patton Boggs
- IRS FY2017 Update: Effect of Sequestration on State & Local Government Filers of Form 8038-CP.
- What Municipal Analysts Need to Know about Governmental Accounting.
- And finally, Understatement of the Week is brought to you this particular week by *City of Missoula v. Mountain Water Co.*, in which the City of Missoula served up "thousands" of documents (that's right, documents, not pages) three weeks prior to trial. Although he denied Mountain Water's motion for a continuance, the trial judge was at least generous enough to admit that the resulting discovery burden had indeed been, "difficult". The thousands of associates that died during this three-week discovery window are no doubt posthumously grateful for this acknowledgment. R.I.P. You did not die in vain. Wait, the City won. Guess you did die in vain. Sorry 'bout that.

EMINENT DOMAIN - GEORGIA

Summerour v. City of Marietta

Court of Appeals of Georgia - July 8, 2016 - S.E.2d - 2016 WL 3675726

City filed a condemnation petition to acquire landowner's property. The court-appointed special master condemned the property and awarded landowner $225,000.

Both parties filed appeals and special exceptions to the special master's return with the trial court. The trial court affirmed the special master's award. Landowner obtained a certificate of immediate review from the trial court and filed an application for interlocutory appeal.

The Court of Appeals held that:

- City’s offers to landowner did not comply with summary requirement in eminent domain statute, and
- City ran afoul of eminent domain statute’s directive that negotiations occur expeditiously.

City’s offers to landowner did not comply with statute, requiring a condemning authority to establish an amount which it believed to be just compensation and to make a prompt offer to acquire the property for the full amount so established prior to initiation of negotiations. City’s offers did no more than note that city had engaged real estate appraiser to conduct appraisal of landowner’s property, current appraised value of the property, value of the business located on the property, total value of the property, and city’s desire to purchase the property for the total value of the property identified in the offers.

Summary envisioned by statute, requiring condemning authority to provide landowner with summary of the basis for the amount it established as just compensation, requires, at a minimum, information sufficient, as part of the prompt offer required by statute, prior to the initiation of the negotiations, to provide the landowner with the ability to meaningfully evaluate the offer. Simply informing the landowner that the property has been appraised and that the amount offered is the appraised amount fails to convey the sum and substance of the basis of the offer.

City’s offer to landowner, which contained a summary of the city’s appraiser’s report, complied with summary requirement in statute, requiring condemning authority to provide landowner with summary of the basis for the amount it established as just compensation.

Fact that condemning authority’s summary to landowner was not provided until nearly four years into the parties’ negotiations demonstrated that condemning authority ran afoul of eminent domain statute’s directive that such negotiations occur expeditiously and bore on the issue of whether condemning authority acted in bad faith to compel an agreement on the price to be paid for the property, and as such, city did not comply with statute.

UTILITY LIENS - MICHIGAN

Sau-Tuk Industries, Inc. v. Allegan County

Court of Appeals of Michigan - June 28, 2016 - N.W.2d - 2016 WL 3524811

Property owner appealed the validity of liens for unpaid utility charges assessed by the City of Holland’s Board of Public Works (BPW) under the city’s charter and ordinances as authorized by the state Revenue Bonding Act (RBA) and enforced in the same manner as delinquent property taxes.

The liens in question secured payment for electric and water services to the property – which owner had leased to a tenant – and were enforced by the Allegan County Treasurer at its annual sale of properties to satisfy delinquent taxes.

The RBA contains a provision MCL 141.121(3) whereby a property owner may exempt its property from utility liens that otherwise would apply in the event that the owner’s tenants fail to pay utility charges by providing the Board of Public Works (BPW) with a written notice and a copy of the lease of the affected premises.

Property owner appealed the trial court’s order that granted Allegan County’s motion for summary disposition because appellant failed to comply with the plain language of MCL 141.121(3) and the city's ordinances to exempt the property from the utility liens. Owner also appealed the portion of the trial court's judgment of foreclosure of the property.

Sometime in October 2006 MWP contacted the BPW about providing utility services to the property. Because MWP was a new business without an established good credit history, and because MWP was renting the property, the BPW required MWP to provide either a surety bond or a cash deposit as a condition of obtaining utility services. According to Julie Thompson, the BPW's corporate designee, the BPW does not require security by owners of property who request utility services. MWP complied with the request and obtained a surety bond in the amount of $54,000 in May 2007. The amount of the surety bond was determined by the BPW and approved by an assistant city attorney in an April 2, 2007 letter to the insurance company. Sau–Tuk argues that this letter and Thompson's testimony show that the BPW had actual knowledge of MWP's tenancy and obligation to pay for utility services provided to the property.

The Court of Appeals disagreed, concluding that even if owner could prove that Holland's BPW had actual knowledge of the tenancy and responsibility under its lease to pay for utility charges, owner failed to follow the clear and unambiguous direction of MCL 141.121(3) and the city's ordinances to prevent the utility liens at issue from arising.

EMINENT DOMAIN - MINNESOTA

Zweber v. Credit River Tp.

Supreme Court of Minnesota - July 27, 2016 - N.W.2d - 2016 WL 4051613

Property owner brought § 1983 civil rights action against county and township, alleging that they had deprived him of his property without just compensation and had violated his equal protection rights.

The District Court denied summary judgment motion filed by county and township, determining that it had subject matter jurisdiction over constitutional claims. County and township appealed. The Court of Appeals reversed. Property owner petitioned for review, which was granted.

The Supreme Court of Minnesota held that district court, rather than Court of Appeals, had subject matter jurisdiction over § 1983 claims stemming from zoning decision.

Neither claim required an examination into the validity of any quasi-judicial decisions made by a local governmental entity, and therefore district court, rather than the Court of Appeals, had subject-matter jurisdiction over a property owner's takings and equal-protection claims under § 1983 stemming from denial of property owner's application for re-subdivision of property. Takings claim contended that conditions placed on application were valid, but that they constituted regulatory taking, and equal protection claim sought money damages, rather than reversal or modification of decision of county and township.

IMMUNITY - MISSISSIPPI

Smith ex rel. Smith v. Leake County School Dist.

Supreme Court of Mississippi - July 28, 2016 - So.3d - 2016 WL 4051290

Student who was beaten and severely injured by other students on school bus brought action for negligence and negligence per se against school district.

The Circuit Court granted district's motion for summary judgment. Student appealed.

The Supreme Court of Mississippi held that:

- Discretionary-duty immunity provided by Mississippi Tort Claims Act (MTCA) does not apply to violations of statute requiring each superintendent, principal, and teacher to enforce statutes, rules, and regulations prescribed for operation of schools;
- Discretionary-function immunity provided by MTCA does not apply to claims for violations of requirement to prevent bullying; and
- Provision of MTCA granting immunity to acts taken by school officials to maintain control and discipline of students applies only to claims by those students to whom school officials administered control and discipline.

BONDS - MISSISSIPPI

Watkins Development, LLC v. Hosemann

Court of Appeals of Mississippi - June 28, 2016 - So.3d - 2016 WL 3512479

In April 2012, Watkins Development LLC defaulted on the payment of a loan of taxable revenue bond proceeds issued to Retro Metro LLC by the Mississippi Business Finance Corporation ("MBFC").

Pursuant to its statutory authority to enforce and regulate the Mississippi Securities Act and the sale of securities in Mississippi, the Secretary of State issued a Notice of Intent to Impose Administrative Penalty and Order Restitution and Disgorgement of Profit ("Notice of Intent") to Watkins.

Watkins requested an administrative hearing in response to the Notice of Intent, and the administrative hearing was held on October 29–30, 2013. The hearing officer ultimately found that Watkins engaged in four violations of the Mississippi Securities Act.

The Secretary of State adopted the findings and conclusions of the hearing officer and the Secretary of State then issued a Final Order setting forth Watkins's violations of the Mississippi Securities Act and the penalties and remedies thus imposed.

Watkins appealed to the chancery court for judicial review. The chancellor affirmed in part the Secretary of State's Final Order, by affirming only three of the findings of violations of the Mississippi Securities Act. The chancellor set aside the Secretary of State's finding that Watkins violated the Mississippi Securities Act by failing to disclose in the Private Placement Memorandum ("PPM"), Loan Agreement, and bond documents the February 21, 2011 Development Agreement ("Development Agreement"), which contained Retro Metro's financial obligation to Watkins Development. The chancellor held that this finding exceeded the authority of the Secretary of State.

The Court of Appeals upheld the chancery court's finding of three violations, and reinstated the violation of the Mississippi Securities Act. The court found that the Secretary of State possessed statutory authority to render these findings and to impose the respective remedies.

EMINENT DOMAIN - MONTANA

City of Missoula v. Mountain Water Co.

Supreme Court of Montana - August 2, 2016 - P.3d - 2016 WL 4124135 - 2016 MT 183

City filed eminent domain action against record owner of water system and global investment partnership, which was controlling member of holding company that owned record owner, seeking condemnation of water system. Water system employees intervened.

Following a bench trial, the District Court entered preliminary order of condemnation. Defendants appealed.

The Supreme Court of Montana held that:

- Trial court acted within its discretion in denying defendants motion for continuance;
- Defendants failed to demonstrate that denial of motion for continuance violated procedural due process;
- Trial court acted within its discretion in limiting valuation evidence;
- Global investment partnership was proper party in condemnation proceedings;
- Unsuccessful prior condemnation proceedings did not collaterally estop city from bringing current proceedings;
- Lack of franchising agreement or contract between parties did not bar condemnation action;
- Effect of condemnation on system employees was non-dispositive factor to be considered in determining whether condemnation was appropriate; and
- Evidence supported finding that public use was more necessary than private use, so as to support condemnation.

Trial court acted within its discretion in denying motion for continuance by owners of water system, which city sought to condemn, though city disclosed thousands of pages of documents in discovery only three weeks before scheduled bench trial and timelines in case were difficult, since trial court entered thorough orders denying motion for continuance and did not blindly adhere to arbitrary deadlines but rather considered the matter carefully.

Owners of water system, which city sought to condemn, failed to demonstrate that trial court's denial of their motion for continuance prejudiced them to extent that bench trial was rendered fundamentally unfair, in violation of procedural due process, and thus reversal was not warranted on that ground, though owners were inconvenienced and frustrated by city's disclosure of thousands of pages of documents only three weeks before scheduled bench trial. Owners did not point to single piece of evidence that they were unable to discover or present, or to which they were unable to respond at trial, fact that city's production was delayed and occurred shortly before trial was insufficient, by itself, to demonstrate prejudice, and owners presented full and well-prepared defense at trial.

Trial court, in necessity phase of city's condemnation proceedings against owners of water system, acted within its discretion in limiting valuation evidence to evidence that, as the city's cost of acquiring water system increased, so would the cost to rate payers, though owners asserted additional valuation evidence was required for determination of whether public ownership was more necessary than private ownership. Statutes required that condemnation proceeding occur in two phases, a necessity phase and a valuation phase, bifurcation dictated which evidence was of consequence to which proceeding, and owners sought to import valuation questions into necessity phase to much greater extent than necessary for determination of public necessity.

Global investment partnership, which was controlling member of holding company that owned record owner of water system, was proper party in eminent domain action brought by city seeking to condemn water system, though partnership did not hold title to assets being condemned. Partnership was ultimate owner of system, as it controlled record owner and potential sale of system to city, and the partnership took credit for the role it played in providing water to city.

Prior proceeding in which city unsuccessfully attempted to condemn water system did not collaterally estop city from bringing subsequent condemnation action approximately 30 years later, though question of whether public or private use was more necessary was same in both litigations. Change of circumstances was sufficient to warrant new analysis of whether public ownership of water system was more necessary than private ownership, including that while city's motivations of public health, safety, and welfare remained the same, corporate owner's profit motive had changed significantly, as in prior action system was owned by family-held business and profits were largely reinvested into system improvement, whereas new corporate owner's primary goal was to maximize profits for investors.

Lack of franchising agreement or contract requiring owners of water system to provide city with water did not bar city from initiating eminent domain action seeking to condemn system under statutes governing acquisition of private water supply system and use of eminent domain powers to acquire water supply system. Statute governing acquisition of private water supply system did not make franchise or contract prerequisite to condemnation, and statute governing use of eminent domain powers to acquire water supply system only provided that if parties had an agreement, such an agreement would control, but if there were no such agreement, the city could proceed with condemnation.

Effect of condemnation of water system on system employees was factor to be considered in determination of whether city ownership was more necessary than private ownership, so as to support city's condemnation of system, but effect on employees was not dispositive factor.

Evidence in proceedings regarding condemnation of water system was sufficient to support finding that system employees would receive comparable salaries if employed by city, so as to support determination that public use of system was more necessary than private use. City mayor testified that city did not want to terminate employees or reduce their salaries or benefits, that he took salaries of city employees into consideration when determining what to offer to system employees, and that same income was guaranteed for one year for top executives who made significantly more than equivalent city employees and for five years for other system employees.

Evidence in proceedings regarding condemnation of water system was sufficient to support finding that system employees would receive greater job security if employed by city, so as to support determination that public use of system was more necessary than private use. Evidence was presented that system employees had five-year minimum guarantee of employment by city, that employees had no employment guarantee with current owners, which were part of large, for-profit enterprise, and that current owners were in business of buying water utilities to improve return and then sell.

Evidence supported finding that municipal ownership of water system was more necessary than current use as privately-owned for-profit enterprise, so as to support condemnation of system by city in eminent domain action against system's owners. Evidence was presented that public opinion supported city ownership of water system, that municipal ownership would provide stable, long-term management of maintenance planning and capital expenditures, that city could effectively manage system, that administrative costs would be significantly reduced under city ownership, that, contrary to owner, city would not operate system on for-profit basis, and that municipal rate-setting would be subject to transparency and public participation.

STATUTE OF LIMITATIONS - NEBRASKA

Lindner v. Kindig

Supreme Court of Nebraska - May 27, 2016 - N.W.2d - 293 Neb. 661 - 2016 WL 3036328

Resident brought action against city and its mayor seeking declaration that ordinance creating off-street parking district adjoining store was unconstitutional.

The District Court dismissed action on limitations grounds. Resident appealed. The Supreme Court reversed and remanded. On remand, the District Court granted summary judgment for city and mayor. Resident appealed.

The Supreme Court of Nebraska held that:

- A constitutional claim can become time-barred just as any other claim, and
- Four-year catchall limitations period applied to action.

Four-year catchall limitations period applied to action brought by resident against city and its mayor seeking declaration that ordinance creating off-street parking district adjoining store was unconstitutional.

ZONING - NEW JERSEY

Jai Sai Ram, LLC v. Planning/Zoning Bd. of Borough of South Toms River

Superior Court of New Jersey, Appellate Division - July 27, 2016 - A.3d - 2016 WL 4005449

Convenience store chain applied for a use variance to construct a combined convenience store and gas station on a piece of property located partially in a highway development zone and partly in a residential zone.

Borough planning/zoning board approved the application. Gas station operator filed an action in lieu of prerogative writs challenging board’s decision. The Superior Court affirmed. Operator appealed. While appeal was pending, the borough amended its zoning ordinance to benefit of chain.

The Superior Court, Appellate Division, held that time of application rule does not apply when the municipality amends the ordinance to specifically permit the use which is the subject of the application.

Time of application rule, providing that development regulations which are in effect on the date of submission of an application for development shall govern review of that application and any decision made regarding such, does not apply when, after a use variance application is filed, seeking relief under existing zoning ordinance, the municipality amends the ordinance to specifically permit the use which is the subject of the application, and the developer is entitled to the benefit of the ordinance as amended.

Where there is a pending appeal challenging the grant of a use variance, the appeal becomes moot by virtue of an amendment to zoning ordinance specifically permitting the use which is the subject of the development application, because the applicant could proceed with the project without the variance.

ZONING - VERMONT

Gould v. Town of Monkton

Supreme Court of Vermont - July 29, 2016 - A.3d - 2016 WL 4061878 - 2016 VT 84

Landowner brought declaratory judgment action seeking to invalidate new municipal zoning regulations on ground that regulations were enacted in violation of statutes governing municipal and regional planning and development.

The Superior Court granted municipality's motion to dismiss. Landowner appealed.

The Supreme Court of Vermont held that:

- Environmental Division of Superior Court had exclusive jurisdiction over landowner's declaratory judgment action;
- Landowner did not have constitutionally protected due process property interest in municipality's strict compliance with statute concerning adoption of zoning ordinances; and
- Landowner's permit application, made at time new zoning regulations were in effect, could not serve to retroactively vest constitutionally protected due process property interest in municipality's application of prior zoning regulations.

Buffett Exits Credit Derivatives, Pays $195 Million on Last Deal.

Warren Buffett just took another step to simplify Berkshire Hathaway Inc.'s stockpile of derivatives.

The company paid $195 million in July to wind down the last contract in which Omaha, Nebraska-based Berkshire provided protection against losses on bonds, according to a regulatory filing Friday that didn't identify the counterparty. As of June 30, the maximum risk on that credit-default agreement was about $7.8 billion.

Buffett labeled derivatives "financial weapons of mass destruction" in 2003, but went ahead and entered a number of the contracts in the following years. The billionaire has argued that agreements he made were attractive because they gave him money up front that he could invest. Berkshire's derivatives also differed from contracts that brought down other financial institutions during the 2008 credit crisis, because he had less onerous collateral requirements.

Still, Berkshire's derivatives have been the source of some pain. In 2008, the U.S. Securities and Exchange Commission asked Berkshire to make "more robust disclosure" on how it valued the contracts, which the company eventually did. The following year, Moody's Investors Service and Fitch Ratings cited derivatives when the ratings firms stripped Berkshire of its top credit grade. Changes in the values of the contracts are reflected on Berkshire's income statement, sometimes causing wild swings in quarterly profit.

"That was a very interesting chapter for Berkshire and its shareholders," said David Rolfe, chief investment officer at Wedgewood Partners, a Berkshire investor that oversees about $7.8 billion. "And it looks like that chapter is winding down."

Sparing Successor

Berkshire's last credit derivative had such a long potential lifespan that it could've continued under the next chief executive officer. Buffett may have been thinking, “why even bother someone with that?” Rolfe said.

Buffett, 85, has told shareholders to look past the fluctuations from derivatives and focus instead on the underlying earnings for Berkshire’s dozens of businesses, from railroad BNSF to ice-cream chain Dairy Queen.

On Friday, the company reported that operating earnings climbed 18 percent to $4.61 billion in the second quarter, driven by gains at insurance and manufacturing businesses.

The contract covered in the July agreement was written in 2008 and related to municipal debt issues with maturities from 2019 to 2054, according to regulatory filings. Buffett didn’t respond to a request for comment outside normal business hours.

For years, the billionaire has been winding down derivatives or letting them expire. In 2012, he struck a deal to terminate contracts linked to municipal bonds. Others tied to corporate debt expired the following year.

‘Minor Positions’

Concerns about derivatives holdings could prove inconvenient during market crises — times when Berkshire has typically used its financial strength to seize opportunities and make lots of money.

“When you have to mark these contracts to market in a downturn like 2008, it gives the appearance that Berkshire’s fortress balance sheet is weakened,” said Richard Cook at Cook & Bynum Capital Management, which oversees about $350 million including Berkshire shares. “I would prefer Buffett to have as much flexibility as possible when the tide rolls out.”

Berkshire still has some derivatives tied to the performance of stock indexes. Potential liabilities on those agreements have narrowed in recent years as markets rallied. Liabilities on the equity index puts — which expire between June 2018 and early 2026 — stood at about $4.4 billion at the end of the second quarter.

Some of Berkshire’s energy businesses also use derivatives to hedge fuel costs. But Buffett has been downplaying the role the contracts will play at his company when he’s no longer around.

“I don’t think there’ll be much of a derivatives book” under a new CEO, he said at Berkshire’s annual shareholder meeting in 2012. “There are a few operating businesses that will have minor positions.”

Bloomberg Business

by Noah Buhayar

August 8, 2016 — 2:00 AM PDT

Falling Rates Create Bond-Call Frenzy.

Companies and government agencies are calling bonds at the fastest pace in four years

Bond issuers are heeding the call of tumbling interest rates.

Companies and government agencies are “calling” bonds at the fastest pace in four years, taking advantage of provisions that let them redeem securities under certain circumstances and save money by reissuing at lower rates.

Redemptions hand investors their money back at a time when many portfolio managers are struggling to find attractively priced securities to purchase. Some investors now are paying up for so-called noncallable bonds that don’t give the issuer a redemption option.

The trends are particularly acute in the markets for bonds sold by government-sponsored enterprises such as the Federal Home Loan Banks, Fannie Mae and Freddie Mac, companies that provide financing to the mortgage market. Investors have had almost $248 billion in callable GSE debt redeemed this year through July, according to Performance Trust Capital Partners LLC, a fixed-income trading firm. GSE calls in the second quarter hit $125 billion, the most since 2012.

“We’ve seen lots and lots of callable bonds,” said Andrew Pace, a vice president at the firm. “It’s interesting to see how different returns can be with that call feature.”

The FHLB sold debt in both formats in July 2015, offering coupons of 2% on callable bonds and 1.875% on noncallable ones. The callable debt was redeemed in July of this year, giving investors an annual return about 2%. The noncallable debt returned 4.3% during that year, according to Performance Trust data, reflecting the price increase as investors snapped up noncallable debt.

In July of this year, the FHLB issued new callable bonds, offering a coupon of 1.32%. Hypothetically, that means it stands to save about $6.8 million in interest costs for every $1 billion in debt. That assumes one bond was issued to replace the other, which isn’t necessarily the case.

Calls are growing more popular throughout the bond market. Mr. Pace said 59% of GSE debt sold in the last quarter of 2015 has already been called. Global corporate issuers have called more than $300 billion, including roughly $90 billion in U.S. corporate bonds, according to Performance Trust.

The large amount of calls comes as the yield on the 10-year Treasury note has fallen more than half a percentage point since the end of last year. It touched the lowest on record last month.

Still, some investors are using calls as an opportunity to bulletproof their portfolios in case rates rise. Craig Brothers, who manages about $3 billion of mostly municipal bonds at Bel Air Investment Advisors in Los Angeles, said that many of his holdings that are eligible to be called have already been redeemed.

“The calls are helping us,” Mr. Brothers said. “Getting the money back is essentially allowing us to take that money and redeploy it” in investments that are less sensitive to rising interest rates.

THE WALL STREET JOURNAL

By BEN EISEN

Aug. 8, 2016 11:55 a.m. ET

Write to Ben Eisen at ben.eisen@wsj.com

[American Paradox: It's Never Been Cheaper for Cities and States to Borrow Money…And They Refuse to Do It.]

Plunging global interest rates have made borrowing cheap, but many are struggling with sluggish revenue growth and higher expenses

Wall Street is urging governments to invest in big-ticket infrastructure projects. Voters and public officials have a different message: not so fast.

Plunging global interest rates have made borrowing cheaper than ever. But instead of spending on aging roads, bridges and buildings, many state and local governments are scaling back.

New government-bond issues have dropped to levels not seen in the past 20 years. Municipal borrowers issued about $140 billion in bonds for new projects last year. Adjusted for inflation, that is 53% lower than in 2006 and 21% lower than in 1996. So far this year, municipalities have borrowed $95.1 billion, about $10 billion more than at this time last year.

Seven years after the recession ended, voters and government officials remain scarred by the deep budget cuts they endured at the height of the financial crisis and the sluggish revenue growth that has constrained spending since then.

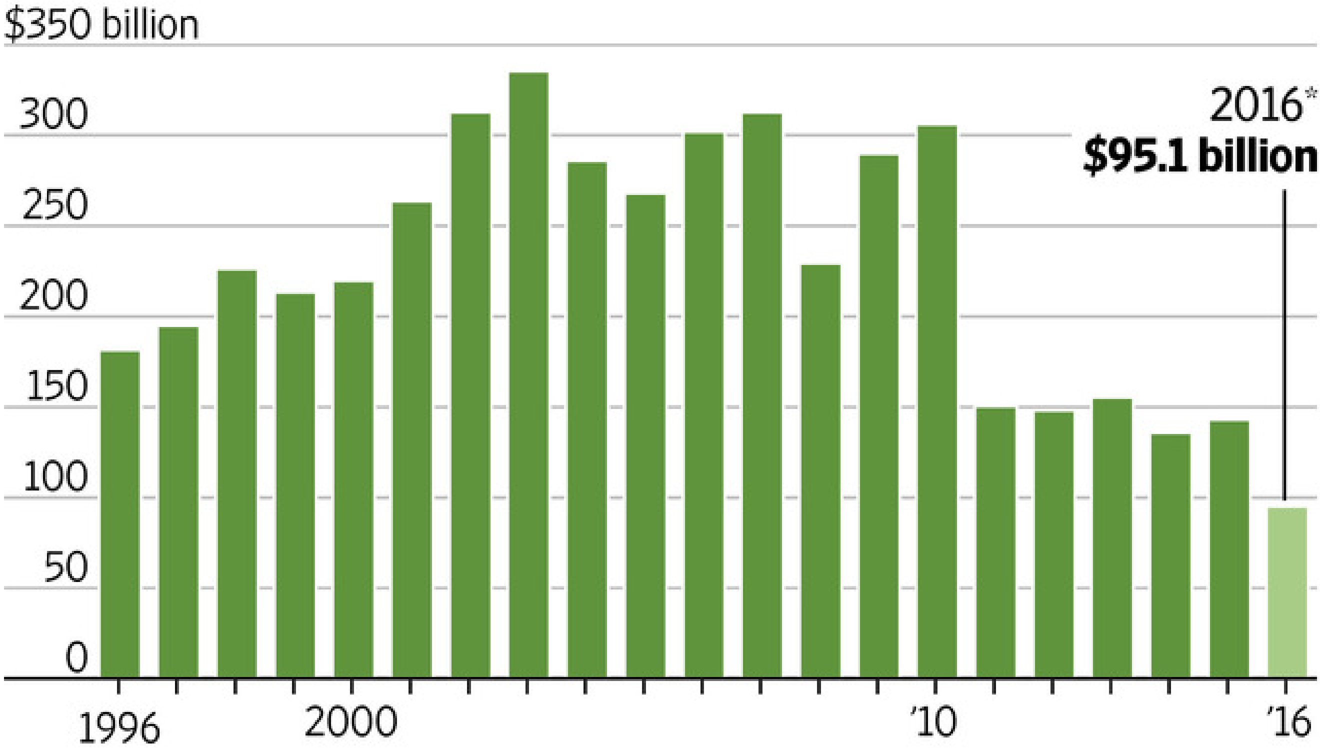
"The collapse in interest rates corresponded with the recession and with a political trend toward antitax sentiment," said Dan Seymour, an analyst with Moody's Investors Service. "Even as state and local governments are looking at lower bond yields, they are facing a public that is reluctant to pay more taxes."

As a share of the economy, state and local governments are investing less in capital projects than they have since the early 1980s, according to Commerce Department data.

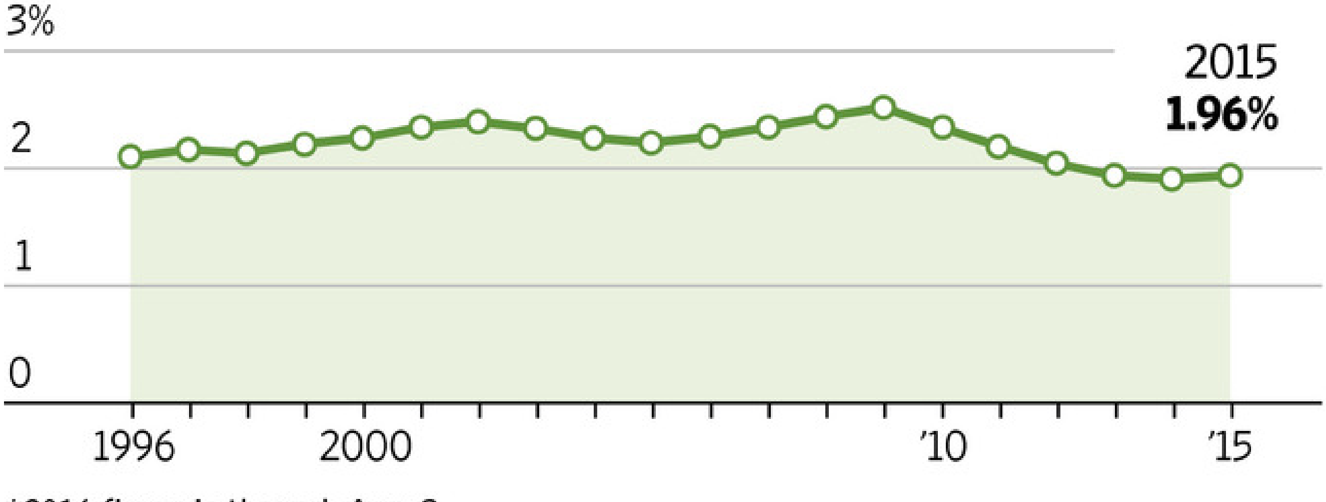
Scaling Back

Government borrowing for new projects has fallen to the lowest level in more than two decades, while state and local investment as a share of the economy has declined.

U.S. municipal borrowing for new projects in 2016 dollars.



State and local investment in capital projects as a percentage of GDP



*2016 figure is through Aug. 3.

Sources: Thomson Reuters (issuance); Department of Commerce (investment)

THE WALL STREET JOURNAL.

Last week, Hawaii became the latest state to pare new highway construction after legislators turned down a gas-tax increase.

In May, California transportation officials announced a 28% cut to construction plans between now and 2021. New public-sector borrowing in the state last year dropped almost 40% from 2009.

Florida officials went five years without approving any new borrowing by the state's main construction program for public schools and universities despite a long list of projects. When the legislature and governor finally signed off on new borrowing again in March, they limited the new debt to $275 million, down from $1.4 billion in fiscal 2007.

"Our governor is a debt hawk," said Ben Watkins, Florida's director of bond finance.

Governments have reported significant drops in borrowing costs while their ratings have remained unchanged. Barclays PLC's municipal-bond index, which is a gauge of municipal-debt yields, this summer reached a 20-year low of 1.6%, compared with about 4.2% in summer 2006.

Wall Street executives are calling for investments in infrastructure. J.P. Morgan Chase & Co. CEO James Dimon cited a "need for good, long-term infrastructure plans" in a letter to shareholders this year, echoing economists' sentiments.

Asset managers that invest in municipal bonds too would like to see increased issuance, because the additional supply could force governments to pay more to entice purchasers, driving up yields.

State and local governments are carrying about the same amount of debt as they were when they emerged from the recession, in part because tax revenue has been slow to rebound.

S&P Global Ratings analyst John Sugden said that in many places, the hesitation "reflects good budget management" by governments whose revenue projections leave no room for additional debt payments or upkeep costs for newly constructed projects.

On the other hand, he said, forgoing timely repairs to existing structures could drive up costs in the long run.

A McKinsey Global Institute study released in June found the U.S. should boost infrastructure spending by 0.7% of its gross domestic product between now and 2030 to meet transportation, water, power and telecommunications infrastructure needs. Doing so this year would mean roughly $129 billion in new spending.

Many struggling legislatures and city halls are instead focusing on underfunded employee pensions and rising Medicaid costs. Some cash-strapped areas, such as Puerto Rico and the city of Chicago, face high annual debt payments.

Federal grants to state and local governments for capital investment are expected to total less than $68 billion in 2016, according to data from the Office of Management and Budget. They hovered around $80 billion in the early part of the last decade and surpassed $90 billion in the aftermath of the recession. Estimates are in 2009 dollars.

State tax revenue, meanwhile, isn't expected to bounce back soon. The National Association of State Budget Officers estimates state spending will rise 2.5% in fiscal 2017, down from 5.5% in 2016 and 4.2% in 2015.

"There aren't a lot of additional dollars to go around to spend on infrastructure, transportation and other areas of the budget," said Brian Sigritz, director of state fiscal studies for the association.

Many states require a voter referendum before taking out new loans. That means political considerations often matter more than interest rates when governments consider a new round of borrowing.

Voters in Wisconsin school districts have rejected 40% of ballot questions seeking to issue debt over the past 10 years, according to the Department of Public Instruction.

The 1,300-student Dodgeville School District, about 45 miles outside Madison, scrapped plans to build a $34 million high school in 2014 after voters roundly rejected a $48 million borrowing referendum. This April, the district gained approval for a roughly $20 million proposal to expand the existing high school.

Among the improvements the district decided to forgo was a second gym. "We need that, but it was perceived to be a want, rather than a need," said District Administrator Jeff Jacobson.

THE WALL STREET JOURNAL

By DAVID HARRISON and HEATHER GILLERS

Aug. 7, 2016 5:30 a.m. ET

Write to David Harrison at david.harrison@wsj.com and Heather Gillers at heather.gillers@wsj.com

---

CDFA Releases Annual Volume Cap Report.

—An Analysis of 2015 Private Activity Bond & Volume Cap Trends—

Columbus, OH — The Council of Development Finance Agencies (CDFA) is thrilled to announce the release of the Annual Volume Cap Report: An Analysis of 2015 Private Activity Bond & Volume Cap Trends. The report provides comprehensive data of the use of volume cap and the issuance of cap-subject private activity bonds nationwide.

Cap-subject private activity bond issuance reported to CDFA increase for the second consecutive year. The change in issuance seen in the past two years mirrors the change seen in the two years prior to hitting a low of $8.8 billion in 2013.

The Annual Volume Cap Report is available online along with CDFA's interactive and searchable National Volume Cap Map.

CDFA collected the information for the report from surveys and interviews with the allocating authority in each state. As a leader in the development finance industry, CDFA serves as the leading source of private-activity bond volume cap data, reporting, and trends. CDFA advocates for the preservation of this critical, catalytic financing tool and encourages interested parties to learn more about the Council's efforts online.

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

Structuring Successful Broadband P3s: Nossaman

Public entities have recently been looking for new ways to harness right of way (ROW) for broadband public-private partnership (P3) projects. Last year, the city of Santa Cruz made history by entering into a roughly $50 million P3 with local Internet service provider Cruzio to deliver 1-gigabit broadband access to every property in the city's jurisdiction. Construction began this month. San Francisco is now considering pursuit of a similar P3. On the other side of the country, the Pennsylvania Turnpike Commission ("PTC") recently released requests for proposals for legal and financial services for a broadband network P3 along the Turnpike right of way. The State of Kentucky entered into a 30-year P3 in 2015 with a private consortium with the goal to build a middle-mile broadband network to promote economic development, education and research capabilities, public safety, healthcare delivery and connectivity for libraries and communities.

The Santa Cruz and PTC P3 projects offer a study in contrasts. These two projects are using the P3 delivery model to meet different goals. Santa Cruz is using a P3 to expand broadband service within the municipality where the public will benefit from improved internet service and the private partner will benefit from increased business. The city plans to fund the project through a municipal bond backed by the future revenues from the service. Santa Cruz will own the network and Cruzio will operate it, paying the city rent.

While some of the details are unclear, it appears that the PTC is pursuing a shared resource model for its broadband P3. The PTC will make ROW available for a broadband fiber optic backbone with a WIFI overlay in exchange for dark or lit capacity (conduit alone or conduit plus service, respectively). The public benefit from this model is the increased service and capacity of the network for agency needs, and the private benefit is the ability to build and run a major backbone fiber optic system while avoiding right of way rental fees. In essence, the shared resource model allows a public entity to leverage private investment within its ROW to receive broadband capacity in return.

The economic beauty of the shared resource model lies in the fact that the incremental cost to the broadband provider of delivering backbone capacity to the public agency is a fraction of the value of that capacity to the agency and a fraction of the rental value for the right of way. For this low incremental cost, the broadband provider delivers value equal to or greater than the fair market rent that the public agency would otherwise charge. A true win-win.

As public entities continue to pursue broadband P3 projects, they must carefully assess and allocate the respective roles and responsibilities of the public and private partners. In addition to the design, construction, finance, and operations/maintenance of the broadband infrastructure, public entities must also consider how the telecommunications service will be provided and how it will be marketed. Unsurprisingly, how these roles and responsibilities ought to be allocated will depend on the government's objective. Project success depends on tailoring the delivery model to these objectives and financial constraints.

For this reason, the Santa Cruz P3 is going to allocate roles and responsibilities differently from the project the PTC is pursuing. The PTC is not seeking to provide last-mile internet service as a utility to a broad citizenry, as Santa Cruz is. Instead, entering into a broadband network P3 will provide the PTC and the Pennsylvania Department of Transportation improved network connectivity through lit capacity for these agencies' own needs along the Turnpike's 550 miles of right of way.

Under the utility model, the public agency usually owns and maintains the fiber network and the private entity usually designs, constructs, administers, and markets the project and its resulting

Internet service. Financing may be done by either or both parties. This model can scale and fund the project in one of two ways—first, as a ubiquitous system with a corresponding basic "utility" charge to all residents to finance the project with a corresponding option for each resident to enter into an individual contract with the Internet service provider, or second, on a pay-as-you-go basis that would be less expensive initially but would not provide ubiquitous service. San Francisco is grappling with these choices in its own quest to provided 1-gigabit services throughout the city and county.

This allocation of roles does not necessarily make sense for a broadband P3 project like the PTC's. The public agency does not need to own, operate or maintain the backbone system in order to attain its objectives. It merely needs the rights to its allocated capacity from the larger system. The broadband provider needs to finance, build, operate/maintain and market the rest of the system in order to generate revenues and profit from its capacity.

The Institute for Local Self-Reliance recently published a report addressing many of these issues, ultimately concluding that successful broadband P3s are structured in a way that provides meaningful benefits and control for both the public and the private entities involved. Public entities interested in pursuing broadband P3s must weigh the unique risks and rewards associated with such an arrangement and carefully allocate control to deliver a project that will succeed. As has been clear from the Santa Cruz and PTC cases, how broadband P3s are structured may vary greatly in order to tailor the P3 delivery model to different objectives and financial circumstances.

Nossaman LLP

by Fredric W. Kessler and Shant Boyajian

August 1, 2016

Is Green Striping the Future of Green Bonds?

Green Bonds have led a tremendous growth in environmental finance over the past five years, but that growth has been heavily-weighted towards investment grade credits with their accompanying risk/return. The predominance of investment-grade credits partially results from the all-or-nothing approach of Green Bonds – the bond is either 100% green or 0% green. The 100% green requirement shuts out many issuers seeking to finance environmentally-sustainable projects because a company needs to be sufficiently large and well-capitalized to be able to issue bonds of a sufficiently large principal amount solely for environmental purposes. Most types of bonds require a minimum principal amount to ensure secondary market liquidity, roughly speaking the equivalent of $200 million. This especially shuts out smaller and more highly leveraged companies.

To diversify Green Bonds, it may be possible for investors to rely on a promise from issuers to use a specified portion of the proceeds of a bond for environmental purposes. Currently, an issuer seeking to finance $100 million in environmental capital expenditure would be unable to obtain a "green" credential. But if that issuer were to raise $100 million for conventional purposes and $100 million for environmental purposes in the same issuance, the issuer should be able to label its bond as 50% green. Rather than all green or all non-green, the bond is "Green Striped."

To read more about "Green Striping", click here.

If you found this interesting, you might also enjoy:

[Green Bonds Need a ‘Big Tent’ Approach]

[What Is The Future of High-Yield Green Bonds?]

Latham & Watkins LLP

by Aaron Franklin

USA August 1 2016

This article is made available by Latham & Watkins for educational purposes only as well as to give you general information and a general understanding of the law, not to provide specific legal advice. Your receipt of this communication alone creates no attorney client relationship between you and Latham & Watkins. Any content of this article should not be used as a substitute for competent legal advice from a licensed professional attorney in your jurisdiction.

New Rules for Lessees of Investment Tax Credit Property: Baker Botts

On July 22, 2016, the Internal Revenue Service (the “IRS”) and the Department of the Treasury (“Treasury”) released proposed and temporary regulations under Section 50 of the Internal Revenue Code of 1986, as amended (the “Code”), setting forth certain operating rules on the calculation of the investment tax credit (the “ITC”) where the lessor has elected to treat the investment tax credit property (“ITC Property”) as having been acquired by the lessee. In such case, the lessee, rather than the lessor, is entitled to claim the ITC in respect of the property that is the subject of such election. Of particular note, these rules change the way partners and shareholders of such lessees who are partnerships or S corporations must report the gross income inclusion that applies in lieu of a tax basis adjustment.

I. Background

In general, a 30% ITC is available under current law for certain types of renewable energy property placed in service by a taxpayer during a taxable year. Under the Code and the Treasury Regulations applicable to the ITC, the taxpayer receiving the ITC must reduce its basis in the ITC Property by 50 percent of the credit (or 100 percent for certain rehabilitation expenditure credits) (the “Basis Adjustment Rule”). A recapture rule also requires the taxpayer to increase its tax liability by a recapture amount that decreases over time for the taxable year in which the ITC Property is transferred or otherwise ceases to be ITC Property (or upon disposition of interests in the taxpayer, in the case of partnerships claiming the ITC) if such transfer or cessation occurs within five years of being placed in service (the “Recapture Rule”).

A lessor of ITC Property may elect to effectively pass through the ITC to its lessee by treating the lessee as having purchased the property for purposes of computing the ITC (the “Lessor Election”). Because a lessee generally does not obtain a tax basis in leased ITC Property, the lessee cannot, if the Lessor Election were made, take a reduction in tax basis as required under the Basis Adjustment Rule. Instead, the lessee must include in gross income an amount equal to 50 percent of the credit (or 100 percent if the credit was for certain rehabilitation expenditures) ratably over the shortest recovery period applicable to the ITC Property under section 168 of the Code (the “Income Inclusion Rule”).

When the lessee taxpayer is an entity taxed as a partnership or an S corporation, the Income

Inclusion Rule potentially could have the odd effect of increasing the “outside” tax basis in the interests of partners of the partnership or shareholders of the S corporation under Code Sections 705(a) and 1367(a), respectively. Whether this result was authorized or permitted by existing tax law has been an area of uncertainty. With the issuance of these new regulations, however, the IRS and Treasury have stated their belief that such a benefit, not available to other lessees of ITC Property, is inappropriate and is inconsistent with the purposes of Sections 48, 705 and 1367 of the Code.

II. The Temporary and Proposed Regulations

The proposed and temporary regulations cement the application of the Income Inclusion Rule and provide rules coordinating the Income Inclusion Rule with the Recapture Rule for ITC Property subject to a Lessor Election. Therefore, in lieu of the Basis Adjustment Rule, the lessee must include in gross income an amount equal to the amount of the credit (or, in the case of an energy credit under section 48 of the Code, 50 percent of the credit) ratably over the shortest recovery period applicable to the ITC Property.

In addition, the proposed and temporary regulations provide special rules for lessees that are entities classified as partnerships or S corporations if the Lessor Election has been made. Under these rules, any income resulting from the application of the Income Inclusion Rule is not a partnership item or an S corporation item subject to the tax basis adjustment rules applicable to those entities. Rather, the proposed and temporary regulations generally provide that each partner or shareholder that is the “ultimate credit claimant” is treated as the lessee of the ITC Property and must include its share of the income under the Income Inclusion Rule. Because the income inclusion under this approach does not flow through the entity, there is no tax basis increase in the equityholder’s interest in the entity. An “ultimate credit claimant” is any partner or S corporation shareholder that files an IRS Form 3468, Investment Credit, with its income tax return to claim the ITC.

The proposed and temporary regulations also allow taxpayers to elect to accelerate the income inclusion upon a termination or other disposition of a lease. For partnerships and S corporations, the election is available to the ultimate credit claimant. Furthermore, partners and S corporation shareholders can elect to accelerate the income inclusion when they dispose of their entire interest, direct or indirect, in the partnership or S corporation. The election is available only if the recapture period has ended, and the taxpayer must make the election by including in gross income the relevant amount on the tax return for the taxable year of the termination or other disposition of the lease or the disposition of the taxpayer’s entire interest in the partnership or S corporation.

These regulations are prospective and apply to ITC Properties that are placed in service on or after September 19, 2016. Taxpayers wishing to comment on the proposed regulations have until October 20, 2016, to submit such comments or to request a public hearing.

Baker Botts LLP

Peter Farrell, Don J. Lonczak, and Jon Nelsen

USA July 29 2016

[Final Arbitrage Regulations Require “Look Through” to a Grantee’s Use of

[Bond Proceeds: A Big "So What?": Squire Patton Boggs]

From time to time, issuers will use bond proceeds to make grants to accomplish a governmental purpose. For example, a State bond issuer may make grants to various counties and cities to help with the cost of local transportation improvements. Under the arbitrage regulations (Reg. 1.148-6(d)(4)), the bond proceeds are treated as spent once an issuer makes a grant of bond proceeds to an unrelated party, so long as it is truly a grant (and not an advance that must be repaid). This means that the issuer can stop monitoring the investment yield that it receives from those proceeds once it makes the grant.`

Contrast this with the case in which an issuer transfers bond proceeds to a recipient in the form of a loan. In that case, the loan will be treated as an investment of bond proceeds. This means that the issuer must continue to monitor the investment yield that it receives on the loan, in the form of debt service payments from the recipient. In addition, in the case of a loan, it is clear under other provisions that apply to tax-exempt bonds that the issuer must look through to examine what the loan recipient does with the proceeds that it receives. For example, the issuer must look through to the status of the loan recipient as a governmental person or a private person for purposes of the private business use rules. However, once the loan recipient then spends the bond proceeds on something that counts as an expenditure under the arbitrage rules (for example, by paying them to a construction company in exchange for the company's services in building capital assets of the bond-financed project), at that point the bond proceeds are treated as spent for the purpose to which the loan recipient applied them. In other words, neither the issuer nor the loan recipient would need to look through to examine how the construction company invested and spent the proceeds that were transferred.

Prior to 2013 proposed arbitrage regulations covering the point, the Code and Treasury Regulations were silent on how to treat bond proceeds that are used to make a grant for purposes other than when to treat the proceeds as spent for arbitrage purposes. Faced with this silence, issuers or conduit borrowers that made a grant of bond proceeds had basically two choices: (1) treat the arbitrage rule as applying for all tax-exempt bond purposes, so that once the issuer or conduit borrower made the grant, the grant recipient would be treated like the construction company in the above example (for example, its identity as a private person would not affect the private business use analysis, and its further investment and use of the proceeds could not affect the tax status of the bonds that financed the grant), or (2) treat the arbitrage rule as applying for arbitrage purposes relating to the timing of the expenditure of bond proceeds (and any purposes that explicitly tie to that arbitrage treatment, such as the "hedge bond" rules (see Reg. 1.149(g)-1(b)), but look through to the grantee's use for other purposes, such as private business use. (One supposes that a particularly cheeky issuer might have cherrypicked Choice (1) or (2) depending on the tax issue in question, but we will rule that out in the interest of good manners.)

Choice (2) was the predominant choice, both out of conservatism in the face of uncertainty, and because Choice (1) leaves us with an entirely unsatisfying answer on one particular issue: the useful life of the bond-financed assets. Under Choice (1), there is no easy way to determine the useful life to the issuer (which is the grantor) of bond proceeds, without looking to see what the grantee does with the bond proceeds.

Now, in governmental bond financings, the useful life of the bond-financed assets is of some interest, although it is not what Mike likes to call a "third-rail" issue[1] as it is in private activity bond financings, where the bonds become taxable if the weighted average maturity of the bonds exceeds 120% of the useful life of the bond-financed assets.

Nevertheless, it is still in an issuer's interest to ensure that the useful life of the bond-financed assets is not wildly out of sync with the weighted average maturity of the bond issue. Compliance with the 120% useful life test will shelter a governmental bond issue within several safe harbors that protect the bond issue from several anti-abuse type rules (for example, the rule in Reg. 1.148-1(c)(4)(i) that can magically transform "available amounts" of the issuer into replacement proceeds of the bond issue that are therefore subject to yield restriction and rebate where bonds are deemed to be outstanding longer than necessary).

In contrast, because of the way that a "grant" is defined under the arbitrage rules, even prior to the 2013 Proposed Regulations, for private business use purposes, an issuer would be in the same place whether it looked through to the grantee's use of the proceeds or not. Recall that, to raise significant tax problems under the private activity bond rules, an issue must exceed the private loan limit, or **both** of the private business use limit **and** the private payment limit. Because even prior to the 2013 Proposed Regulations, a "grant" is not a "grant" unless the recipient doesn't have to pay it back, it is (a) by definition not a loan, so that it cannot be a private loan, and (b) will not generate a stream of private payments coming back to the issuer. Thus, for private business use purposes, if an issuer chose Choice (1) and didn't look through to the grantee's use for private business purposes (treating the grantee like the construction company in our hypothetical above), then no private business use would result, and if an issuer chose Choice (2) and looked through, then, even though private business use might result, there would be no private payments. In each case, the grant is a grant, and thus is not a loan so that it cannot be a private loan.

The 2016 Final Regulations adopt the position of the 2013 Proposed Regulations and force issuers to choose Choice (2). These regulations confirm that a grantor of bond proceeds must look through to the grantee's use of proceeds for all purposes other than determining when the bond proceeds are spent for arbitrage purposes and any other purposes (such as hedge bonds) that relate to the timing of the expenditure of bond proceeds. These rules are now in new subsection 1.150-1(f). So in some sense, the rule on grants in the Final Regulations might have been a big "so what."

However, there is value in certainty. Although even under prior law issuers essentially had to look through for useful life purposes and it may not have mattered whether they looked through for private activity bond purposes, the clarification in the 2016 Final Regulations is still helpful because it finally puts to rest any lingering uncertainty about the scope of the rules. In addition, the look-through rule will provide certainty in the case where there are unexpected repayments of a grant from a private person that might be characterized as private payments that could give rise to private activity bond problems.

Moreover, the 2016 Final Regulations also give us answers to some questions lingering at the fringes. (As my grandmother used to tell me, there's more to life than private activity bond tests and the question of when proceeds are spent for arbitrage purposes.) For example – before the proceeds are spent for a grant, can the issuer invest those proceeds at an unrestricted yield during a temporary period? If so, what temporary period applies? Does that depend on the issuer's expectations, or the grantee's expectations? To take a specific case, does the 3-year temporary period in Reg. 1.148-2(e)(2) for bond proceeds to be used for a capital project apply based on when the issuer expects to make the grant of bond proceeds, or does it depend on what the grantee plans to do with the granted bond proceeds (and when it plans to do it)? Based on the phrasing of the Final Regulations ("Except as otherwise provided . . . "), and based on the fact that there is no other Regulation or guidance that answers this question about temporary periods, the answer now seems clear. The three-year temporary period will be available based on the grantee's expectations.

So, even though the choices that issuers made in the face of uncertainty and the interaction of the grant rules and the private activity bond rules may have made the rule for grants in the final regulations a "so what," there are still aspects of the rule that are interesting; this is a phenomenon that someone who writes for a public finance tax blog can relate to.

[1] Mike tells me that, years ago, he saw an interview of Eugene Levy in which Mr. Levy said that he knew that the critically acclaimed SCTV program had become too self-referential, and therefore doomed, when it did a parody of an SCTV cameraman's mother. Could the same fate befall a critically acclaimed legal blog?

Squire Patton Boggs

By Johnny Hutchinson on August 4, 2016

CDFA Webinar: Strategic TIF Structuring for Brownfields Redevelopment.

September 1, 2016
2:00 – 3:30pm Eastern

Join CDFA, our technical assistance partners, and experienced brownfield communities on September 1, 2016 from 2:00 – 3:30pm Eastern as we discuss tax increment financing and how it can be used to compliment the redevelopment and cleanup of your brownfield project.

As one of the most common forms of local support for redevelopment, tax increment financing (TIF) plays a key role in addressing financing gaps. While TIF has successfully been used to support the cleanup and reuse of brownfield sites, brownfield projects – by definition — are the first part of a development strategy and often move forward with an uncertain timetable. This can create a mismatch in both a TIF's ability to generate revenue and how the TIF bonds are sold. In order to mitigate some of this risk, using TIF in a strategic way in the context of other funding sources becomes important.

Join us as we discuss how to structure a TIF that eases the financial pressure on your brownfield project and how communities can blend the use of TIF with other financing tools to help bring your brownfields back into productive use.

Click here to register.

Who Will Be Joining the MSRB Board in October.

WASHINGTON – Colleen Woodell, former chief credit officer of global and corporate government ratings with S&P Global Ratings, will become the Municipal Securities Rulemaking Board's new chair on Oct. 1.

In addition to Woodell, the MSRB board elected Arthur Miller, a managing director at Goldman Sachs & Co., as vice chair as well as six new members at its quarterly meeting late last week. The six new members, chosen from more than 100 applicants, represent a change from the normal seven the board would name for a new fiscal year because the MSRB is starting its multi-year transition to a board whose members who serve for four years instead of three.

"The new class of board members includes highly experienced and knowledgeable public representatives and municipal securities professionals," said MSRB chair Nat Singer. "They join an exceptional new leadership team that will oversee the MSRB's pursuit of its mission to protect investors, municipal entities, obligated persons, and the public interest."

Woodell has been an MSRB board member since 2013 and is currently serving as its vice chair. Prior to her role as CCO of global and corporate government ratings, she worked as S&P's chief quality officer and team leader for U.S. public finance. She has also worked for First Albany Corp., Fitch Investors Service, and Moody's Investors Services. Woodell is a former member of S&P's analytic policy board and a past president and member of the board of governors of the Municipal Forum of New York. She has a bachelor's degree from Wells College in Aurora, N.Y.

Miller, who currently chairs the MSRB's finance committee, joined Goldman in 1985 and, in addition to his current position, has worked in the firm's new product development group and its fixed income research group. He earned his bachelor's degree from Princeton University and also holds a master's degree from the University of North Carolina, a law degree from Duke University School of Law, and a master's of law from New York University.

Of the six new members who will be joining the 21-member, majority public board, three are public and three are regulated.

The public members include J. Anthony Beard, chief financial officer of the city of Atlanta, and Robert Brown, treasurer at Case Western Reserve University in Cleveland. Beard is responsible for the oversight and management of Atlanta's financial condition and also advises the city's mayor and city council on municipal finance and other matters. Brown manages Case Western's debt and swap portfolios, credit rating agency relationships, investor relations, and relationships with the financial industry.

Julia Cooper, director of finance for the city of San Jose and former member of the Government Finance Officers Association's debt committee, will also join the board as a public member. She is responsible for oversight of the city's accounting, treasury, revenue management, and purchasing/risk management divisions. She has worked for San Jose for 29 years and has been responsible for the city's municipal debt issuance and management since 1990.

The regulated members who will join include Jerry Ford, president of the Florida-based municipal advisory firm Ford & Associates, Inc. Ford, whose firm specializes in tax-exempt financing, has worked as a financial advisor to a wide array of municipalities for the past 32 years.

Kemp Lewis, senior managing director at Raymond James & Associates, Inc., and Edward Sisk, managing director and head of public finance with Bank of America Merrill Lynch, are the other two regulated members who will be joining the board. Lewis leads Raymond James' northeast public finance group. Sisk leads a team of investment bankers responsible for municipal underwriting in the U.S.

Members slated to leave the board on Oct. 1 include: Singer; Robert Cochran, co-managing director and chairman of the board for Build America Mutual Assurance Company; Marcy Edwards, former senior financial policy advisor for the District of Columbia; Lakshmi Kommi, director of debt management for the city of San Diego; James McKinney, senior advisor with William Blair & Co; and Brian Wynne, co-head of public finance and head of the municipal syndicate desk with Morgan Stanley.

As part of the board's first of three fiscal years shifting to four-year tenures, Woodell, a public member, received a one-year extension.

Two regulated members, Miller and Lucy Hooper, executive vice president of Davenport & Co., will receive one year extensions for the MSRB's fiscal year 2018 along with public member Richard Froehlich, chief operating officer and general counsel for the New York City Housing Development Corp. Five new members will join the board for fiscal year 2018.

In fiscal year 2019, the last year of transition, three public members and two regulated members will receive one-year extensions while five new members join the board. The public members are: Richard Ellis, senior director of compliance and communications with Utah Educational Savings Plan; Chris Ryon, managing director of Santa Fe, N.M.-based Thornburg Investment Management; and Mark Kim, chief financial officer for the D.C. Water and Sewer Authority. The regulated members receiving an extension are Patrick Sweeney, senior vice president and manager of the municipal securities department for Fidelity Capital Markets and Renee Boicourt, managing director and partner with Lamont Financial Services Corp.

By fiscal year 2020, no further extensions will be needed and five new members will join the board. After that, new classes will be named annually in a repeating sequence of six members, then five members, then five members, then five members.

The Bond Buyer

By Jack Casey

August 2, 2016

How Muni Trading Volume is Rebounding This Year.

WASHINGTON – The par amount of municipal trades reached the highest level in nearly three years during the second quarter of 2016, showing a rebound from significant declines in the second half of last year, according to Municipal Securities Rulemaking Board statistics posted Wednesday.

The total par amount traded in the second quarter was $818.2 billion, an increase of 10.4% from the $741.4 billion in trading the year before and the highest volume since the MSRB recorded a total par amount of $825.4 in the third quarter of 2013. The increase follows total recorded trading by par amount of $634.7 billion in the first quarter of the year.

Michael Decker, managing director and co-head of munis with the Securities Industry and Financial Markets Association, said the biggest factor that affects trading volume is issuance volume because bonds tend to trade more actively after they are issued.

"The second quarter of 2016 was a strong quarter for issuance," he said. "That was probably a significant driving factor in why trading volume ticked up."

He added that even with the increase, trading volume is still down significantly from before or during the financial crisis as yields remain low.

"It is hard to get investors excited about bonds at the current level of yields," Decker said.

Matt Fabian, a partner with Municipal Market Analytics, said the upward trend in trading volume shows that the market has largely found its footing again.

“There was less worry about [Federal Reserve Board] action and I think that the market was more comfortable with the prospect of yields staying lower for longer,” Fabian said about the MSRB 2016 data.

The corresponding decrease in total number of trades during this year’s second quarter, 2.34 million compared to 2.56 million a year before, shows that there’s more follow through in the immediate secondary market, where bonds are less fragmented than they generally become over time as they move more to retail investors, Fabian added.

The decrease in total trades also shows the continuation of the trend toward institutional investment in the muni market and the industry’s transition away from individual bondholders each having their own accounts and personally directing how their money is spent, he said.

“It’s been a steady move in the industry toward managed money either through separately managed accounts or mutual funds,” Fabian said.

The MSRB data also shows that customer buying activity increased to $6.44 billion in the second quarter of 2016 compared to $5.96 billion in the second quarter of 2015. The average daily number of trades of customer purchases decreased to 14,484 in the second quarter of 2016 compared to 17,009 the year before.

The most actively traded muni by par amount in the second quarter this year was a 2007 tobacco settlement asset-backed bond issued by the Golden State Tobacco Securitization Corp. The MSRB data shows a par amount of $4.7 billion of the bonds with 68 trades during the quarter.

The most actively traded bond by number of trades was a hospital revenue refunding bond from the West Virginia Hospital Finance Authority that had 1,464 trades with a par amount of $123.6 million. The refunding bonds were issued this year.

Variable rate demand obligation rate resets continued a steady decline in this year’s second quarter with only 120,725 recorded. That compares to 135,504 in 2015’s second quarter, about a 12% decrease.

The Bond Buyer

By Jack Casey

August 3, 2016

TAX - NEW JERSEY

Savage Mills Enterprises, L.L.C. v. Borough of Little Silver

Tax Court of New Jersey - June 21, 2016 - N.J.Tax - 2016 WL 3440588

Savage Mill Enterprises, LLC brought suit against the Borough of Little Silver, arguing that the subject property was entitled to a partial exemption for the portion being used by its 99–year ground lease tenant, which is an undisputed tax-exempt entity, and which owns and uses the building on that land for undisputed charitable purposes.

Borough sought to dismiss the complaint on grounds this court lacks subject-matter jurisdiction because Savage Mills, a for-profit entity, is contractually obligated to pay local property taxes on property, and thus could not seek a partial exemption for the same.

The Tax Court held that:

- Savage Mills, as fee owner of the subject property, had standing to challenge the amount and methodology underlying the subject property's assessment, which can include a claim for exemption;
- However, this standing does not equate to a grant of the exemption sought because exemption statutes are strictly construed, thus, require full compliance with the statutorily imposed qualifications for an exemption;
- Savage Mills failed to meet the statutory qualifications for a partial exemption, since the plain language of the statute affords a partial exemption only when the landlord is the non-profit entity and the tenant is the for-profit entity.

MSRB Files Clarifying Amendment to Rule G-37.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) an amendment to MSRB Rule G-37 to clarify that, consistent with the current regulatory policy under existing Rule G-37, contributions by persons who become associated with a dealer and become municipal finance professionals of the dealer, if made prior to August 17, 2016 are subject to the two-year look-back in Rule G-37 and may subject a dealer to a prohibition on municipal securities business.

The amendment is in addition to amendments to Rule G-37, on political contributions and prohibitions on municipal securities business, and related amendments to MSRB Rules G-8, on books and records, and G-9, on preservation of records, and Forms G-37 and G-37x that are effective on August 17, 2016 and extend the core standards under Rule G-37 to municipal advisors, their political contributions and the provision of municipal advisory business.

Read the regulatory notice.

Read the SEC filing.

TAX - NEW YORK

Town of Rye v. Assessor of City of Rye

Supreme Court, Appellate Division, Second Department, New York - July 27, 2016 - N.Y.S.3d - 2016 WL 4007142 - 2016 N.Y. Slip Op. 05652

Town brought action against city to strike a real property tax assessment for town park from assessment roll of city.

The Supreme Court, Westchester County, granted town's motion for summary judgment and denied city's motion for summary judgment. City appealed.

The Supreme Court, Appellate Division, held that:

- Real Property Tax Law provision that exempted from taxation public parks not within a municipality's corporate limits if the governing board of the municipality in which the park was

located agreed in writing to exemption applied to dispute, and
- Town was not entitled to exemption from taxation of town park.

Real Property Tax Law provision that exempted from taxation public parks not within a municipality's corporate limits if the governing board of the municipality in which the park was located agreed in writing to exemption applied to dispute between town and city regarding whether or not town park should be exempt from taxation, rather than Real Property Tax Law provision that automatically exempted real property owned by a municipality, held for public use, and within its corporate limits from taxation, where town park was located within corporate limits of city.

Town was not entitled to exemption from taxation of town park that was located within city's corporate limits, pursuant to Real Property Tax Law provision that exempted from taxation public parks not within a municipality's corporate limits if the governing board of the municipality in which the park was located agreed in writing to exemption, despite fact that city had exempted park from taxation in the past, where city's governing board never agreed in writing to exempt park from taxation.

Public Pensions Facing Worst Returns Since Recession.

A volatile stock market over the past year has taken a toll on public pension assets.

Public pension plans are reporting dismal investment returns this year, a development that will likely mean governments will have to pony up more money in the coming years.

So far, no major pension plan has reported a preliminary annual investment return of more than 1.5 percent. That's thanks to a volatile stock market that's seen wild swings spurred mainly by political and economic events abroad. Some smaller plans, such as the New Mexico Educational Retirement Board, have reported earnings as high as 2.6 percent. Still for many, this year marked their worst earnings year since the Great Recession.

The slim earnings for fiscal 2016, which ended June 30 for most plans, is well below the average earnings target of about 7.5 percent. It also marks the second year in a row that plans have missed the assumed rate of return: Most reported an investment gain between 2 percent and 4 percent in fiscal 2015.

Plans rely heavily on investment earnings — roughly 80 cents on every dollar paid out to retirees is from investments. When plans don't meet their earnings target in any given year, it negatively impacts their assets because annual payments from current employees and governments aren't enough to cover the annual payouts to retirees.

The nation's largest pension plan, for example, reported a preliminary investment return of 0.6 percent for fiscal 2016. The meager return means that the California Public Employees' Retirement System (CalPERS) ended the year with $295 billion — about $7 billion less than a year ago.

Meanwhile, pension liabilities aren't improving and, in some cases, are actually increasing. Public pension plans nationally were nearly 74 percent funded in 2015 with more than $1 trillion in unfunded liabilities. "Clearly this is going to generate some fresh unfunded liabilities," said Tom Aaron, a senior analyst at Moody's Investors Service.

Even an investment return of 5 percent for the year would increase plans' overall liabilities by 10 percent, according to a Moody's analysis of 56 major public pension plans. "This comes at a time," Aaron added, "when state and local governments are already dealing with heightened contribution requirements to amortize past unfunded liabilities."

With two bad years in a row, any pension funding gains made in 2013 and 2014 — when many pensions earned double-digit returns — have essentially been wiped out.

Other plans across the country are reporting similar preliminary results to CalPERS. The California State Teachers' Retirement System reported a 1.4 percent return, resulting in a decline of $3 billion in assets. New York State's pension fund, which closed its fiscal year on March 31, reported a 0.2 percent investment return. Its total assets declined by about $5 billion. San Diego County's $10.2 billion pension fund claimed a 0.5 percent return. And the Oregon Investment Council reports the state's public employees' plan has logged a 1.24 percent return for the year.

The main culprit for the poor performance was investment losses in domestic and global equities. Since August of last year, the stock market has swung wildly — twice thanks to bad economic news from China, and more recently due to uncertainty around Britain's decision to leave the European Union.

Another issue is that pension plans are relying less on more stable but low-yield investments like bonds. Instead, they rely more on potentially higher-yield investments in public and private equities. It hasn't paid off: The median annual return for public pensions over 20 years is expected to hit about 7.5 percent for the 2016 fiscal year — the lowest point in more than 15 years — according to a recent estimate from the Wilshire Trust Universe Comparison Service.

June and July, however, have been marked by stock market gains. By the time CalPERS released its investment return data in July, assets had crept back up to about $302 billion — roughly where they were a year ago.

Either way, governments will likely have to budget more in the coming years to cover expected shortfalls. The New York state controller recently warned New York City it might have to pony up at least $100 million in additional pension payments starting in 2018 if the city's fund continues to post low earnings. In Oregon, the state's pension actuary projected it would have to pay $885 million more in total pension costs next year thanks in part to low earnings but also because it lowered the plan's assumed rate of return to 7.5 percent.

Many other plans are also taking steps to gradually lower their assumed rate of return, said Cathie Eitelberg, a senior vice president at The Segal Group. While that has the effect of increasing the cost for governments and employees, it reduces the risk the pension plan will miss its investment target. "They're all very focused on risk management going forward and how they can better manage volatility," said Eitelberg.

GOVERNING.COM

BY LIZ FARMER | AUGUST 3, 2016

GFOA: August Recess Is Here - Are you Ready?

Throughout the month of August, your congressional delegation typically puts business on hold in Washington D.C. and heads home. The August Recess is designed to give members of Congress and their staff some time to reorient themselves, so it's one of the very best times for constituents to meet with their members of Congress. Your advocacy during this period of time means the most because it allows your Congressional member to come face-to-face with the impact of federal preemption legislation, especially because of the deep fiscal impacts these have on localities within their districts. In the next several weeks, please consider meeting with your members of Congress and discussing the key 2016 issues below.

Bank-Qualified Debt Legislation

Bank-qualified bonds were created in 1986 to encourage banks to invest in tax-exempt bonds from smaller, less-frequent municipal bond issuers, and to provide municipalities with access to the lower-cost borrowing that they need in order to provide services and invest in schools, roads, bridges, and other projects. Governments issuing $10 million or less in bonds per calendar year can designate those bonds as bank-qualified, which allows them to bypass the traditional underwriting system and sell their tax-exempt bonds directly to local banks. But since bank-qualified bonds were created in 1986, the program's $10 million cap has not kept pace with inflation or the cost of labor, land, and materials associated with most public infrastructure projects. Increasing the cap to $30 million not only brings the program into the modern age but also enables governments to increase the amount of bank-qualified bonds they can issue and realize corresponding cost savings. For example, a cost savings of 25 to 40 basis points on a 15-year, $30 million bond at current interest rates ranges from $696,000 to $1.1 million.

Senator, SUPPORT & COSPONSOR S3257, the Municipal Bond Market Support Act of 2016
Representative, SUPPORT & COSPONSOR HR2229, Municipal Bond Market Support Act of 2015

Preservation of the Tax Exemption on Municipal Bonds

On November 8, 2016, voters across the United States will not only elect a new president but will also fill 34 Senate seats and all 435 House seats. Moving into the 115th Congress, elected officials are thinking about which proposals will make a significant impact in the post-election season. Now is the time for state and local governments to make sure Congress understands the issues that are of crucial importance to their communities—such as preserving the tax exemption on municipal bonds. The tax exemption on municipal bonds is an essential tool for jurisdictions across the United States for the creation and maintenance of infrastructure.

What needs to be communicated to senators and representatives: 1) it is essential for my jurisdiction that you preserve this critical public financing tool to promote job creation and improve the nation's infrastructure; and 2) We request that you ensure that state and local governments retain the authority to set their own tax policies.

What can I do?

Step 1: Figure out where your member of Congress will be and when during August. They often travel around the district while at home. Be sure to ask to set an appointment, preferably when you can get to sit down in a relaxed setting. This link will direct you to your senators' and representative's local contact information.

Step 2: Draft an op-ed and send it to your local newspaper. Your local paper is an extremely powerful mode of communication, and an op-ed piece that articulates your position on current legislation will be widely distributed for your entire district to read. GFOA's suite of advocacy materials, available on GFOA's Federal Government Liaison webpage, provides information you can use to craft a general message—but make sure to emphasize the infrastructure unique to your jurisdiction.

Step 3: If you do schedule an appointment with your member of Congress or his or her staff, or if you plan to see him or her at a local event, glance at the talking points for Bank-Qualified Debt and the talking points for preserving the tax exemption, and feel free to add in as many district-specific descriptive details as possible.

Please let Emily Brock, director of the Federal Liaison Center, know if you need any additional information, when your op-ed goes to print, and if you do have a discussion with your member of Congress. We look forward to working with you during the August Recess.

GOVERNMENT FINANCE OFFICERS OF AMERICA

Wednesday, August 3, 2016

What Municipal Analysts Need to Know about Governmental Accounting.

September 14, 2016
SIFMA Conference Center
New York, NY

This session will provide in-depth instruction on the rules that state and local governments follow when accounting for and reporting their finances in audited financial reports. It will cover the basics from the perspective of the financial statement analyst – focusing on how the accounting standards affect the information that analysts receive. The speaker will also highlight significant new changes to government financial reports that analysts have seen or will soon see, such as deferrals, pension information, and fair value disclosures.

The session is ideal both for relatively new analysts and for experienced analysts looking for a refresher or to learn about the latest accounting requirements. Registration includes a copy of "An Analyst's Guide to Government Financial Statements", 2nd Edition, which will serve as the text for the session.

Click here to learn more and to register.

Louisiana Amends P3 Legislation Granting Authority to DOTD.

The State of Louisiana has passed a public-private partnership (P3) law to help alleviate a $12.7 billion backlog in highway and bridge maintenance and construction needs across the state. The law authorizes the Louisiana Department of Transportation and Development (DOTD) to utilize P3s to finance projects for qualifying transportation facilities.

While a similar law exists for the Louisiana Transportation Authority (LTA), a public corporation placed within the DOTD, the enactment of the P3 law streamlines the process by eliminating the need for the DOTD to seek LTA authorization prior to solicitation of proposals for P3 projects.

In addition to the P3 law, Governor John Bel Edwards recently created a transportation infrastructure investment task force, an 18-member panel charged with identifying and making specific actionable recommendations to address transportation issues. In addition to P3 projects, the State is also considering a hike in the gas tax and tolls, and permitting local communities to finance transportation projects in their respective jurisdictions.

The P3 law, along with the creation of the task force, demonstrates the State's desire to develop a comprehensive funding program that will allow Louisiana to finance transportation infrastructure projects which have long been in demand and under-funded.

With the approval of the State's House and Senate, the P3 law permits the DOTD transportation, highways, and public works committees to solicit proposals for P3 projects for highway, limited access facility, ferry, airport, mass transit, rail or port facility, or similar facilities within the State. All proposals and contracts executed in connection therewith are subject to State law governing the solicitation and approval process of P3 projects by the LTA. In an effort to expedite the procurement process, proposals are exempt from public bidding laws and projects may be constructed utilizing design-build or other innovative project delivery methods.

Unsolicited proposals are specifically prohibited for DOTD P3 projects although they are allowed for the LTA, and at least 25 percent of the P3 projects must be located outside the boundaries of a metropolitan planning area.

Attorneys in Ballard Spahr's P3/Infrastructure and Public Finance Groups will continue to monitor and report on new developments in public-private partnerships in Louisiana and other states. The Groups are recognized leaders in representing government and private sector developers, investors, and lenders in innovative public-private projects.

by the Ballard Spahr P3/Infrastructure Group

August 5, 2016

www.ballardspahr.com

Why MSRB Is Giving a $5.5M Rebate to Dealers.

WASHINGTON – The Municipal Securities Rulemaking Board plans to rebate $5.5 million proportionally among dealers, file a proposal with the Securities and Exchange Commission on markup disclosure, and scrap the idea of requiring municipal advisors to disclose information about their issuer client's bank loans or privately placed municipal securities.

The board approved these actions at a wide-ranging meeting late last week.

The rebate will go to dealers that paid underwriting, transaction, or technology fees in the first nine months of the MSRB's fiscal year 2016, which started on Oct. 1, 2015. The decision was part of the board's discussions about the MSRB's budget and operating plan, both of which received approval.

MSRB executive director Lynnette Kelly said the rebate is a result of, among other things, the self-regulator consistently coming in under budget, which pushed the reserve funds above the board's set target. The last time the MSRB gave a rebate was in 2014.

The markup proposal the MSRB board approved for filing with the SEC would require dealers acting as principals to disclose on retail customer confirmations the markups and markdowns on same-day muni transactions, a departure from an earlier proposal to only incorporate trades within two hours of the transaction. The filing would also include guidance on how to calculate the prevailing market price, previous versions of which dealers and issuers have criticized as unworkable and overly burdensome to dealers. The markup disclosure proposal is a “top priority of the board right now,” Kelly said. “I would expect [the filing] would be within the next couple of months.”

The MSRB’s most recent proposed changes to its Rule G-30 on prices and commissions to facilitate prevailing market price calculations is similar to a process the Financial Industry Regulatory Authority already uses. The process would require dealers to base their determination on a “waterfall” of factors, such as contemporaneous trades of the same or similar munis.

The MSRB plans to make some changes to the prevailing market price calculations in light of market participants’ comments but the changes are still in progress, Kelly said. She added the board will continue coordinating with FINRA on markups.

Many market participants had also criticized the MSRB’s now abandoned bank loan concept release, saying it would, among other things, threaten MAs’ fiduciary duty to their clients under MSRB Rule G-42, which lays out municipal advisors’ core duties. Many of the groups instead said the best way to ensure bank loan disclosure would be to amend SEC Rule 15c2-12 on disclosure, under which the SEC regulates, among other things, the actions of broker-dealers in primary offerings of munis.

Kelly said the MSRB board still believes that disclosure of alternative financings is important for assessing a municipal entity’s creditworthiness but added the commenters brought up good points, such as the possible unintended consequence of an issuer foregoing an MA to avoid having to disclose bank loans.

“The MSRB will continue to raise awareness of the need for bank loan disclosure among regulators and market participants,” she said. “We also plan to encourage industry-led initiatives that support voluntary disclosure best practices.”

Kelly said the MSRB plans to enhance its EMMA system both on the submission side and search side in response to criticisms from issuers and others about the difficulty they have had filing and finding bank loans on EMMA. Issuer officials who sit on the Government Finance Officers Association’s debt committee expressed their frustrations about EMMA’s bank loan system to MSRB chair Nat Singer in May during a meeting at the GFOA’s annual conference.

In addition, the MSRB may soon get information such as yield curves from third parties which will it provide on EMMA. Board members agreed during their meeting that such information would benefit investors and issuers. Kelly said the information will be added “in the not too distant future.”

The board plans to discuss an update to the MSRB’s 2012 Long-Range Plan for Market Transparency Products, which includes EMMA improvements, but will wait until it has its strategic planning session in January 2017, Kelly said.

The board plans to file with the SEC amendments to Rules G-8 and G-9 on record-keeping as well as to G-10 on delivery of the investor brochure to both modernize requirements for dealers’ handling of complaints by customers as well as to establish such requirements and processes for municipal advisors. The MSRB has not created a complaint system for MAs yet because of the self-regulator’s relatively recent regulatory authority over advisors.

Additionally, the MSRB plans to file two interpretations with the SEC for immediate effectiveness related to Achieving a Better Life Experience (ABLE) programs, which allow individuals to open tax-advantaged savings accounts to help support individuals with disabilities. The MSRB is treating the ABLE accounts similarly to 529 college savings plans. The proposed interpretation for MSRB Rule G-42 on core duties of municipal advisors will explicitly provide that current 529 plan and local government investment pool guidance is equally applicable to ABLE programs. It will also clarify in its Rule G-44 on MA supervisory and compliance obligations that MA sponsors or trustees of 529 or ABLE plans are subject to the rule's supervision requirements.

The board will also file a change with the SEC for immediate effectiveness to Rule G-45 on reporting of information on muni fund securities. The change will delay the date that submissions are due from underwriters of ABLE plans to the reporting period ending June 30, 2018.

An additional and separate rule amendment the board approved would change Rule G-34, which details when underwriters and financial advisors must apply for a CUSIP number assignment for a new municipal issuance. The amendment would harmonize the definition of underwriter in Rule G-34 with that listed in Rule G-32. Rule G-32 takes its definition from that provided in SEC Rule 15c2-12(f)(8), which includes but is not limited to "a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering."

Kelly said the MSRB historically has included placement agents and dealers that purchase securities from an issuer as principal in Rule G-34's definition of underwriter, but that the change would codify that interpretation.

The Bond Buyer

By Jack Casey

August 1, 2016

[PAB Issuance Up For Second Straight Year.]

WASHINGTON Issuance of private activity bonds subject to state volume caps rose for the second consecutive year, according to an annual survey conducted by the Council of Development Finance Agencies.

States and the District of Columbia reported cap-subject PAB issuance of $12.95 billion in 2015, which was $1.34 billion or 11.54% more than the $11.61 billion issued in 2014. The gain marked the upward trend of PAB issuance to a five-year high after the market declined for the previous three years.

"This may be a trend that will continue, and a beginning of a revival of the private activity bond market," CDFA wrote in its report, released Friday. "Increased tax-exempt bond issuance may be a sign that businesses are investing in more projects, or at least larger projects, than have been initiated in recent years. Certainly a variety of indicators suggest that the economy has been improving, and private activity bond issuance may be another sign of recovery."

Public entities issue private activity bonds and loan the proceeds to nonprofit organizations or companies to finance projects that serve a public purpose. Most PABs are subject to state volume caps that are determined annually by the Internal Revenue Service based on state population estimates from the U.S. Census Bureau.

In 2015, state volume caps for PAB issuance were the greater of $100 per capita or $301.52 million, according to the IRS. It was a slight rise for low-population states from the 2014 state volume caps, which were the greater of $100 per capita or $296.83 million.

Bonds subject to volume caps include exempt-facility bonds, multifamily housing bonds, mortgage revenue bonds, industrial development bonds, student loan bonds and agricultural bonds. PABs not subject to the state volume caps, including 501(c)(3) bonds and veterans' mortgage revenue bonds, were not included in the CDFA report.

Under IRS guidelines, states may carry forward unused cap for up to three years before it must be abandoned.

In 2015, the 50 states and the D.C. received $34.88 billion of new volume cap allocation and carried forward $54.48 billion from 2012 to 2014. As a result, they could issue a total of $90.04 billion of cap-subject PABs in 2015, about $2.04 billion less than the prior year.

States abandoned $10.46 billion in unused volume cap allocation in 2015, which was $1.53 billion, or nearly 13% less than the $11.99 billion abandoned the previous year.

The total new cap of $34.88 billion in 2015 represented an increase of $346.52 million, or 1%, from the previous year. However, the new cap plus the carry-forward amounts, which equal total PAB capacity, decreased in 2015 to $90.04 billion, about $2.04 billion or 2.21% from the previous year.

According to the report, issuance of exempt facility bonds, multifamily housing bonds and mortgage revenue bonds rose in 2015, while issuance of industrial development bonds (IDBs) and student loan bonds were down.

The states that reported the most cap-subject PAB issuance in 2015 were: California with $3.13 billion; New York with $1.78 billion; Massachusetts with $982.1 million; Minnesota with $775.3 million; and Texas with $740.2 million.

CDFA compiles its annual survey based on voluntary data reported by state and D.C. authorities or offices that allocate PABs. Four states – Colorado, North Carolina, Tennessee, Virginia and D.C. did not report any data for 2015. CDFA said it would continue to seek data from them.

Housing Bonds

Issuance of multifamily housing bonds was $6.61 billion in 2015, an increase of $130.35 million or 2.01% from the $6.48 billion issued in 2014. Issuance of tax-exempt single-family mortgage revenue bonds (MRBs) showed the largest percentage increase among PAB categories in 2015, according to CFDA. Issuance of MRBs was $4.57 billion in 2015, an increase of $1.73 billion or 60.74% from $2.84 billion in 2014.

Barbara Thompson, executive director of the National Council of State Housing Agencies (NCSHA), said the increase in housing bonds could mark the start of a turnaround after the bond market "froze" following the financial and housing crisis from 2007 through 2009.

She attributed the increase in part to the 4% low income housing tax credit program, which incentivizes private involvement in providing affordable housing.

“It’s reassuring that it has confirmed what we’ve been hearing from our agency members,” Thompson said. “A lot of discussion took place during our meetings about how we’ve been seeing an uptick in usage of private activity bond cap.”

More housing bonds have been used by state and local governments in recent years, she added.

Multifamily housing bonds are used to finance rental housing for low-to-moderate income families. MRBs are used to finance below-market interest rate mortgages for first-time qualifying homebuyers.

Garth Rieman, director of Housing Advocacy and Strategic Initiatives for NCSHA, said that multifamily housing bonds have also seen an uptick in issuance because of the recent increased demand for rentals over home ownership.

“This is causing an increase in rent but incomes are not as much, which increases the need for affordable housing,” Rieman said. “As the need grows and demand grows, people turn to multifamily housing bonds. I think all these trends will continue.”

Officials with the National Association of Local Housing Finance Agencies declined to comment on the survey.

Student Loan Bonds/IDBs

Unlike mortgage revenue and multifamily housing bonds, state-issued student loan bond issuance dropped in 2015 to $688.06 million from $754.26 million 2014. This was a decrease of $66.20 million or 8.78%.

Only eight states reported issuance of student loan PABs during the year: Arizona, Connecticut, Iowa, Massachusetts, Minnesota, New Jersey, Texas and Vermont. Massachusetts, with $200 million, issued the greatest dollar amount of student loan bonds in 2015.

Debra Chromy, president of the Education Finance Council, said that because there have been no Federal Family Education Loan Program (FFELP) loans originated since 2010, there has been a steady decrease in the overall value of state-issued student loan bonds. However, supplemental student loan bond issues have risen, exceeding $500 million last year, she said.

“In 2014 we saw some of the last big FFELP restructuring bond deals, resulting in a decrease in the dollar volume of bond deals from 2014 to 2015,” Chromy said. “Concerns by rating agencies of the impact of FFELP loans in forbearance and with income contingent repayment plans basically put a stop to any FFELP bond deals for the second half of 2015.”

Issuance of IDBs also fell in 2015: states issued $244.25 million last year compared to $269.50 million in 2014, a drop of $25.25 million or 9.37%. This marked the second straight year of decline of IDBs, which are used to provide financing to small manufacturers.

A total of 14 states reported IDB issuances in 2015, eight less than in 2014. Wisconsin, at $43.0 million, had the largest IDB issuance, followed by California at $35.9 million and Massachusetts at $27.6 million.

In its report, CDFA officials said anecdotal reports at the start of 2015 suggested a rebound in IDB issuance, but the end-of-year figures proved otherwise.

Bolstering Issuance

CDFA, which represents IDB issuers and borrowers, suggested methods to increase PAB issuance going forward, including standardizing issuing documents or establishing a PAB bank program, which it said could reduce issuance costs for borrowers. The group also called for better marketing of bond programs to increase accessibility to borrowers as well as new programs to increase facilitate PAB issuance while collateral values remain low and credit enhancement is difficult to attain.

CDFA urged Congress to bolster specific categories of PABs, including suggesting basic modifications that it said could "significantly improve" the use of these bonds and provide cost-effective capital to fund public purpose projects.

Leveraging additional funds would allow authorities to establish their own credit enhancement program, the group added.

The group was instrumental in getting Rep. Randy Hultgren, RIll., to propose a reform package for IDBs. The Modernizing American Manufacturing Bonds Act (H.R, 2890), which Hultgren introduced in June 2015, would increase the IDB issuance limit to $30 million from $10 million and would allow small-to-mid-sized manufacturers access to low-cost capital to grow and create jobs.

CDFA said one its goals is to work toward getting this legislation passed this year.

"To the extent that state and municipal authorities are interested in being proactive about private activity bond issuance, such options should be pursued," CDFA officials wrote in their report.

The Bond Buyer

By Evan Fallor

August 5, 2016

Why a Federal Judge Gave a Red Light to Purple Line P3.

DALLAS Maryland's proposed Purple Line P3 transit project could be in jeopardy after a federal judge ordered a delay until state and federal transportation agencies revise their ridership estimates for the $5.6 billion project.

Judge Richard Leon of the U.S. District Court for the District of Columbia voided the state and federal approvals of the environmental impact statements for the rail project, halting it until a supplemental statement can be prepared and accepted.

Leon's decision will be appealed, said Maryland Transportation Secretary Pete Rahn.

"We are deeply disappointed that this puts the Purple Line in jeopardy," Rahn said. "We will work closely with the attorney general to seek a quick decision from the court of appeals."

Maryland Attorney General Brian Frosh said in a court filing in late June that the six-month delay sought by the plaintiffs "would be profoundly disruptive and could jeopardize" the Purple Line project. The delay "could have cascading consequences on the project schedule and financing arrangements," Frosh said in a supplemental memorandum filed June 29.

Linda S. DeVuono, an attorney for the Maryland Transit Administration, said during a hearing that the proposed delay could halt the project entirely.

“I do know a sixmonth stop of work would allow investors to pull out,” she said.

Leon’s ruling is the result of a lawsuit filed in 2014 by Friends of the Capital Crescent Trail seeking to stop the Purple Line on environmental grounds.

The plaintiffs asked in June for a six-month delay to allow a review of their contentions that ridership on the system would be lowered by the recent maintenance woes and safety surge project of the Washington Metropolitan Area Rapid Transit’s Metrorail system.

Leon cited the threat to ridership of Metrorail’s extensive safety and maintenance efforts that require frequent shutdowns and delays as the main cause for ordering further reviews of the Purple Line.

The Maryland Transit Administration and the Federal Transit Administration were “arbitrary and capricious” in not evaluating the longterm ridership projections for the project’s environmental impact statement after the WMATA woes became apparent, he said.

“Defendants wholly failed to evaluate the significance of the documented safety issues and decline in WMATA ridership, skirting the issue entirely on the basis that the Purple Line is not part of WMATA,” Leon said. “Nor can I turn a blind eye to the recent extraordinary events involving seemingly endless Metrorail breakdowns and safety issues.”

Ridership on the Purple Line had been projected to average 58,000 trips per day in the first few years of operation, rising to 70,000 riders per day by 2040, but Leon said those estimates now look too rosy.

“At a minimum, WMATA and FTA’s cavalier attitude toward these recent developments raises troubling concerns about their competence of stewards of nearly a billion dollars of the federal taxpayers’ funds,” he said.

Maryland officials had scheduled a signing ceremony on Monday to celebrate a Full Funding Grant Agreement with the FTA for a $900 million construction grant for the Purple Line but that will be delayed.

The construction financing also includes $313 million of private activity bonds issued in June by the Maryland Economic Development Corp. and an $873 million federal low-interest loan under the Transportation Infrastructure Finance and Innovation Act. Both received a BBB-plus from Fitch Ratings and S&P Global Ratings.

Maryland signed a contract in April with Purple Line Transit Partners, an international consortium of Fluor Enterprises, Meridiam Infrastructure Purple Line, and Star America Fund, to finance, build, and operate the Purple Line and operate it for 30 years with annual availability payments.

The 16.2-mile rail line across the Maryland suburbs of Washington would connect New Carrollton in Prince George’s County with Bethesda in Montgomery County.

The Bond Buyer

By Jim Watts

August 4, 2016

State GOP Parties: SEC Was Legally Required to Reject Rule G-37 Changes.

WASHINGTON — The Securities and Exchange Commission was legally required by fiscal 2016 appropriation act provisions to reject changes to Rule G-37 that extended political contribution restrictions to municipal advisors, three state Republican groups told federal appeals court judges.

Lawyers for the three groups, which have sued the SEC for approving the rule changes, made their arguments in a response to an SEC motion to dismiss the suit that was filed in the Sixth Circuit Court of Appeals in Cincinnati. The parties are asking the court to throw the SEC's motion out. The court has halted proceedings in the case until it issues an order on the SEC's motion.

The SEC contends that it could not take any action on changes to the Municipal Securities Rulemaking Board's Rule G-37 because fiscal 2016 appropriations act provisions prohibit it from using funds to "finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions."

Under the Dodd-Frank Act, the commission has 45 days after it publishes an MSRB rule to approve it, disapprove it, or decide to take more time to consider it. The rule is considered approved if the SEC hasn't taken any action at the end of the 45 days.

The commission's inaction led to the rule's ultimate approval under that provision. It is scheduled to take effect on Aug. 17.

The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee claim that because the SEC opted to do nothing, and allowed the rule to be considered approved after the 45 days, it violated the appropriations act provisions by effectively finalizing the rule.

"The appropriations act required the SEC to disapprove the MSRB's proposed rule [and] not allow it take effect," the state GOP groups told the judges.

"Had the SEC disapproved the MSRB's rule, it would not have 'finalized, issued, or implemented' the rule; it would have prevented those very outcomes," wrote Christopher Bartolomucci, a partner with the law firm Bancroft in D.C. and the lead author of the parties' response to the SEC's motion to dismiss. "Thus, both the language and purpose of the act refute the SEC's perverse contention that, because it could not act to finalize or issue the MSRB's rule, the SEC had to sit back until the rule was finalized and issued."

The state parties' suit against the SEC and MSRB claims the revised Rule G-37 unconstitutionally forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, will be barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional or a municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The state parties are disputing the SEC's argument that because of the circumstances under which the revised rule was approved, the approval doesn't constitute a "final order" by the commission, as defined in the Securities Exchange Act of 1934 or "agency action" as defined in the Administrative Procedure Act (APA). The absence of both standards means there are no grounds for the parties to challenge the rule in court, the SEC is arguing.

Lawyers for the state parties claim that the Exchange Act makes clear that when the MSRB proposes or revises a rule, the SEC is required to either approve or disapprove it. There is only one way for the SEC to carry out that duty under the Exchange Act, they argue: "by order."

"Thus, whether the SEC explicitly approves a proposed rule or simply declines to disapprove one, the result is the same — the proposed rule is 'approved by the commission' and becomes law," Bartolomucci and the parties' other lawyers wrote.

They also cited the 1986 Supreme Court case, Bowen v. Mich. Acad. Of Family Physicians, that held there is a "strong presumption that Congress intends judicial review of administrative action."

"The Supreme Court has repeatedly recognized that a court must find 'clear and convincing evidence of [congressional] intent' before precluding judicial review," the lawyers added, citing Bowen. "Here we have just the opposite. The entire statutory scheme is designed to force SEC orders of approval or disapproval on proposed rules, which ensures that, before any proposal from an [self-regulatory organization] becomes binding law, it is approved by the SEC and made subject to judicial review."

The APA also backs up the argument that the SEC approval is a reviewable "order," the parties' lawyers argue. The act defines "order" as "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking," according to the parties' lawyers. Under that definition, the revised G-37 approval constitutes an "affirmative" and "final disposition," they say.

The MSRB has maintained that Rule G-37 is a "vital measure promoting the integrity" of the muni market and has said it intends to "vigorously defend" its policies.

The Bond Buyer

By Jack Casey

July 28, 2016

New Jersey's Pension Funding Push Is Collapsing.

The push to fully fund New Jersey government workers' pensions is in jeopardy amid a contentious clash between state employee unions and lawmakers that is leaving investors wondering what's next.

Lawmakers face a Monday deadline to authorize a ballot measure, which if approved by voters in November would require the state to pay what it owes to pension plans that have less than half of what's needed to cover obligations. Senate President Steve Sweeney, a Democrat and union official who sponsored the bill, said Thursday he won't put it up for a vote until he wins an agreement on transportation funding. He accused two unions of trying to illegally coerce the vote.

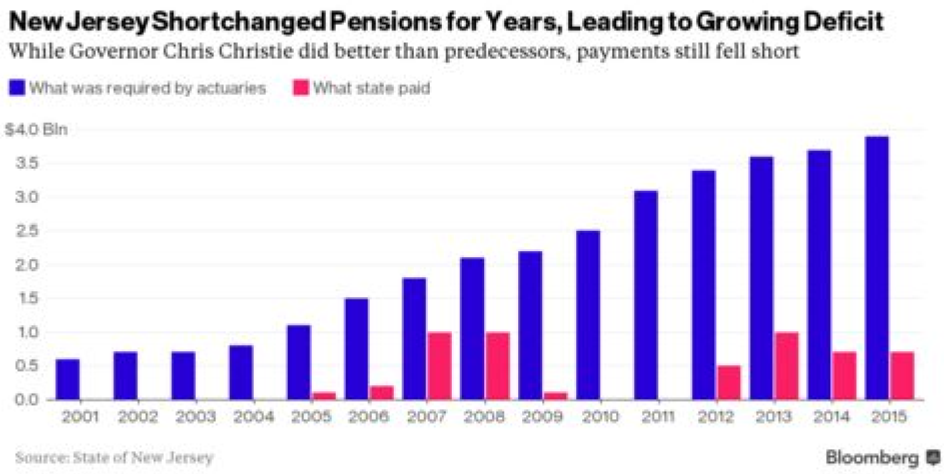
The constitutional amendment would put the state on track to make full actuarially required contributions by 2022 and cut the unfunded liability by $4.9 billion over three decades. The quarterly payments would strain the state's cash flow, Moody's Investors Service and S&P Global Ratings said. Republican Governor Chris Christie, whose signature isn't required, has called the measure a "road to ruin" that would mandate massive tax increases.

"Getting the funding up is going to be painful," said Tamara Lowin, director of research at Rye Brook, New York-based Belle Haven Investments, which oversees $5.3 billion of municipal debt. "Making it a forced, fixed expense and making it senior to appropriation debt is a credit weakness, despite the fact that it will eventually bring the state to fiscal stability."

New Jersey's borrowing costs, no matter the outcome on the pension measure by Monday, are likely to stay elevated. The Garden State pays the second-highest yield premium on 10-year bonds among 20 states surveyed by Bloomberg.

The state's mounting pension liabilities have pressured its borrowing costs and ratings, second lowest among U.S. states after Illinois. Over the past decade, New Jersey paid about $24 billion less than it should have into the funds, freeing up cash to close budget shortfalls, spend or ease taxes, according to data compiled by Bloomberg.

S&P in March changed its outlook on New Jersey's credit grade to negative from stable because of the pension tab and said that the ballot measure could result in limiting the state's flexibility during economic downturns.



The ballot measure had appeared on track to go before voters in November. But lawmakers and Christie failed to agree on a package to finance transportation projects through increasing the gas tax. Passing the measure to fully fund pensions could be risky depending on how the roadwork issue is resolved, Sweeney said.

That's raised the ire of public-employee unions. The New Jersey Education Association ran online ads Thursday featuring pictures of Sweeney that said "New Jersey Doesn't Need Another Politician Who Lies" and urged members to tell him not to break his promise.

On Wednesday, Sweeney called threats from the NJEA and the Fraternal Order of Police to withhold campaign contributions unless the Senate passes the pension legislation as clear-cut examples of extortion. He sent letters to the U.S. attorney and state attorney general asking for investigations of the NJEA warning as a violation of state and federal bribery laws.

Christie, who usually receives the brunt of the criticism from the public unions because of his push to restructure benefits, wants to cut the sales tax in exchange for the gas tax move. “Combining that with passage of the constitutional amendment to require quarterly pension payments would be a devastating blow to future budgets that would cripple the state’s ability to fund much needed programs and services,” Sweeney said in a statement Thursday.

The impasse from transportation to pensions is “frustrating” but par for the course for investors in New Jersey, said Dan Solender, head of municipals in Jersey City, New Jersey, for Lord Abbett & Co., which manages $20 billion of the debt.

“There’s low expectation for major progress right now,” he said.

Bloomberg Business

by Romy Varghese

August 5, 2016 — 2:00 AM PDT Updated on August 5, 2016 — 7:10 AM PDT

Muni Money Market Funds Decimated by Rules Intended to Save Them.

Municipal money market funds are hemorrhaging cash in advance of rules aimed at reducing the risk of runs on the pools.

Assets have plunged $64 billion since the beginning of the year to the lowest levels since 1999 as investors pulled money from tax-exempt funds in 25 of the last 30 weeks and shifted into ones that buy only government debt. These government-only funds are exempt from Securities and Exchange Commission rules effective in October that require floating net-asset values and impose liquidity fees and redemption suspensions under certain conditions.

The new regulations are adding more pain to funds that have been plagued by seven years of the Federal Reserve’s zero interest-rate policy.

“They’re in danger of going extinct, especially if you don’t get a rate hike anytime in the next couple of years,” said Peter Crane, president of Westborough, Massachusetts-based Crane Data LLC. “Municipal money market funds lobbied hard to get an exemption from the SEC’s rules, but the SEC threw them under the bus.”

Ryan White, a spokesman for the SEC, declined to comment.

In 2014, the SEC adopted new money-market rules after a four-year debate between the fund industry and regulators. The rules were aimed at preventing a repeat of the run on one money fund during the 2008 credit crisis. The $62.5 billion taxable Reserve Primary fund "broke the buck" because of losses on Lehman Brothers Holdings Inc. debt it held. The fund's move to reprice shares below $1 sowed panic among investors, who pulled $310 billion from money funds in a single week, helping freeze credit markets.

Under SEC rules taking effect Oct. 14, municipal-money funds whose investors are institutions, including municipalities such as Los Angeles, must abandon their $1 per-share value and allow their prices to float. Retail tax-exempt funds can keep a stable $1 per-share fixed price.

In addition, both institutional and retail funds may impose liquidity fees and suspend redemptions if weekly liquid assets fall below 30 percent of total assets. If weekly liquidity falls below 10 percent, money market funds must impose a 1 percent liquidity fee, unless the board decides it's not in the fund's best interest.

The changes don't apply to Treasury and government-only funds.

Liquidity Situation

The rules shocked muni money fund managers. The historical average for seven-day liquidity has been between 70 percent and 80 percent for decades, said Mary Jo Ochson, who oversees $14.7 billion in tax-exempt money funds at Pittsburgh-based Federated Investors Inc. The funds, which invest in highly rated short-term debt, remained liquid during the financial crisis, she said.

"You don't have a liquidity situation in these funds, they're extremely high quality," Ochson said. In the financial crisis "they did exactly what a cash vehicle should do, but are being hit very hard."

The SEC said tax-exempt money market funds have greater credit and liquidity risks than government funds.
Municipal money market funds managed $179.4 billion as of July 27, a 26 percent decline since the beginning of the year, according to Lipper U.S. Fund Flows data. In 2008 they had more than $500 billion.

Colleen Meehan, who manages about $6 billion of muni money market funds at Dreyfus Corp., said investors are balking at the prospect of liquidity fees and redemption gates. In June, UBS Asset Management said it would transfer money in its tax-exempt sweep funds to a government money fund.

Rate Environment

"It's a lot easier for people to just move out of these other products into government-only funds until they address what their concerns are" from both a compliance and systems standpoint, Meehan said. The Fed's zero-interest rate policy hasn't helped.

Between Oct. 21, 2015, and March 2, 2016, the yield on short-term municipal bonds was 0.01 percent. The average yield over the past seven years is 0.15 percent.

"Tax exemptions don't help you if there's no income to tax," said Crane.

In March, yields shot to 0.40 percentage points as investors sold shares to pay income tax bills, and new money didn't flow back. It currently stands at 0.44 percentage points, the highest in more than seven years and 90 percent of 1-month Libor, the taxable-rate.

As a result, it costs more for states, cities, hospitals and other non-profits to borrow in the short-term market.

While fund outflows in the first quarter could be attributed to the rate environment, the money investors pulled since March has been a result of coming money market changes, said Ochson.

"We're cheap as can be now," she said. "Rates are attractive, liquidity is high, the funds couldn't look any better if you tried, however you have money market regulations that have certain features that clients don't like."

Tax-exempt money funds won't go the way of the dodo, an extinct flightless bird native to the island of Mauritius, but the industry will be much smaller, both Ochson and Meehan said. It will take time for investors to get more comfortable with floating net asset values and realize the probability that the funds having weekly liquid assets fall below 30 percent is very small.

"We're going to be attractive to similar taxable products," said Meehan. "And maybe someday we'll be in a normal rate environment when it will really make sense."

Bloomberg Business

by Martin Z Braun

August 3, 2016 — 2:00 AM PDT Updated on August 3, 2016 — 7:18 AM PDT

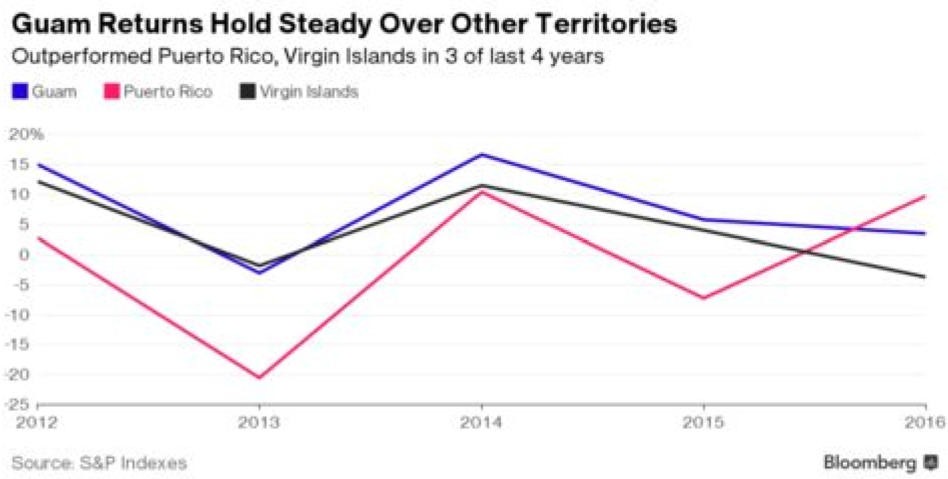
Guam Downplays Puerto Rico Risk Amid Return to Muni Market.

Guam, the U.S. territory in the Pacific more than 9,000 miles (14,480 kilometers) from Puerto Rico, is giving municipal bond investors stung by the Caribbean island's record default a reason to pause.

The 30-mile-long tropical island sold $237.9 million of limited-obligation bonds Thursday to refinance older, higher-yielding debt and to help fund improvements at the territory's public hospital. The securities, which are backed by revenue derived from federal income taxes collected on the island, carry an investment grade rating of BBB+ from S&P Global Ratings, five steps above the junk rating of BB- on Guam's general-obligations.

The limited-obligation debt, referred to as Section 30 bonds, stands to benefit from U.S. plans to expand its military operations on the island of about 165,000, which is the closest U.S. territory to potential hot spots in Asia. The U.S. is looking to double the size of its presence as it seeks to diminish its footprint on the Japanese island of Okinawa.

S&P kept its outlook on Guam unchanged following the passage of what's known as Promesa, the law enacted by President Barack Obama on June 30 to help Puerto Rico restructure its debt through a federal oversight board. The same approach could be extended to other territories beyond Puerto Rico based on the law, an idea that both Guam and the U.S. Virgin Islands have repeatedly rejected.



"It's the credit fundamentals that speak to the ability of a government to pay its debt in full and on time, not lingering or potential legislation," said S&P analyst Paul Dyson. "Relative to Puerto Rico, they're doing a lot better."

With an active military presence of about six thousand personnel already stationed on the island, Guam's financial resume reads a bit differently than its Caribbean territory counterparts of Puerto Rico and the U.S. Virgin Islands, both of which have been plagued with debt amid population declines and chronic budget deficits. Guam's $1.1 billion of debt, issued by various arms of the government, amounts to some $6,000 per person; far less than Puerto Rico's $20,000 and the Virgin Islands' $23,000. Guam has posted eight consecutive years of economic growth through 2014, according to the Bureau of Economic Analysis, as well as an expanding population, which could increase even more as military personnel and their families spill over from Japan.

Guam's bonds maturing in 2039 have rallied over the past year, coming off of a peak yield of 4.15 percent in September. The 10-year maturity of the issue sold Thursday was priced to yield 2.43 percent, or 0.93 percentage point above benchmark debt, data compiled by Bloomberg show.

Territory officials met with investors in the U.S. ahead of the sale to quell concerns. Jay Rojas, administrator of the Guam Economic Development Authority, said that they were delivering the message that Guam's economic outlook is strong and just because Promesa passed, the Pacific territory shouldn't be viewed negatively.

"Guam's story is good," Rojas said. "We are unique, we are different, we are alive."

Talks of the military relocation started back in 2006, when territory officials estimated that the move could bring in as much as some 19,000 people between the Marines, their dependents, and other government workers. That projection has since been scaled back several times, with Rojas now estimating an increase of 7,000 to 9,000 by 2028 once the 13-year, $8.7 billion project is complete.

“We’re not speculating,” said Ted Chapman, another analyst for S&P. “The final impact and deadline is just potentially a moving target.”

Bloomberg Business

by Molly Smith

August 4, 2016 — 2:00 AM PDT Updated on August 4, 2016 — 11:52 AM PDT

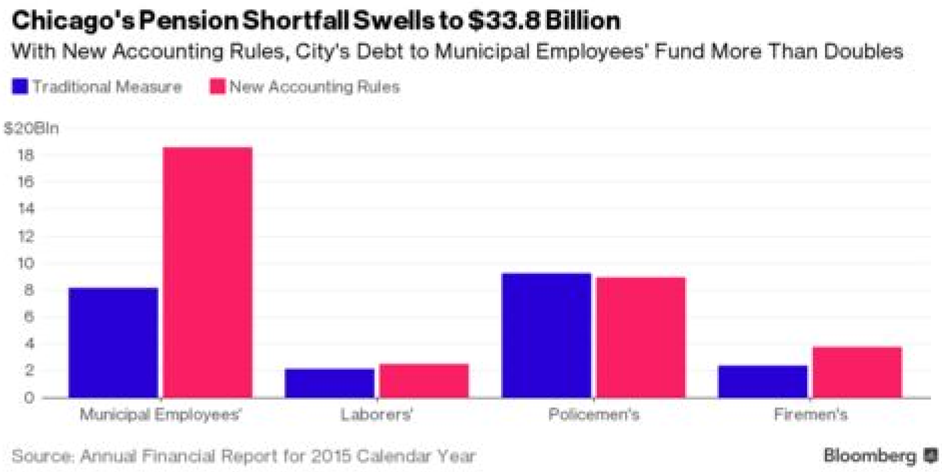
[Chicago Bonds Gain as City Plans Tax Hike to Fix Biggest Pension.]

Chicago debt rallied after Mayor Rahm Emanuel released his plan to increase water and sewer levies to shore up the retirement plan for municipal workers, a move to avert insolvency for the city’s largest pension fund.

Without the fix, the fund that serves more than 70,000 workers and retirees is on track to run out of money within a decade. Less than a day after Emanuel laid out the plan at Chicago’s investor conference, the municipal market applauded the proposal. The city’s most-actively traded debt traded at 87.98 cents on the dollar Thursday, the highest average price since April 2015, according to data compiled by Bloomberg. The taxable debt that matures in 2042 yields 6.4 percent.

“This is exactly the type of plan we were looking for,” said Ty Schoback, a senior analyst at Columbia Threadneedle Investments, which holds Chicago debt among its $26 billion of municipal securities. “If the tax is successfully ratified by City Council, it will be the last heavy political lift to get all the city’s pensions on track to full funding over the long run.”

Chicago hasn’t paid enough to pensions for years. Over the last decade alone, the city shorted the municipal fund by more than $4 billion, according to an annual actuarial report. The fund has to liquidate assets to pay out benefits. Combined, the police, fire, municipal and laborers’ pensions face $34 billion of unfunded liabilities. The strain is weighing on Chicago’s ability to offer services to residents. More than 35 cents of every dollar of the budget goes to pay debt and pensions, according to Moody’s Investors Service, which slashed Chicago’s rating to junk last year because of the pension crisis.



To rebound to investment grade, Moody's wants Chicago to reverse the trajectory of its pension problem. The city would need to raise about $1 billion a year to see a reduction in retirement costs the following year, according to the credit rater. Moody's is reviewing the municipal plan, David Jacobson, a spokesman, said in an e-mail on Wednesday.

In October, Emanuel pushed through a record property tax hike to fund the police and fire retirement funds. In May, he released a plan, that's still subject to state approval, to get the laborers' pension to 90 percent funded by 2057.

Under Emanuel's proposal to investors on Wednesday, the city would increase its contributions to the municipal fund by no less than 30 percent over five years. New employees would have to pay 3 percent more to their retirement fund, and employees hired after January 2011 would have the option to retire earlier, but would pay more to their pensions.

While this is a very positive action, there's still work that needs to be done, said Paul Mansour, head of municipal research at Conning, which oversees $11 billion of state and local debt, including Chicago securities.

"It's a very dynamic challenge that needs to be adjusted or looked at annually based on investment returns, longevity risks, and any other plan changes," Mansour said. "It's encouraging that they're stepping up and raising revenue and addressing it. Will it be enough? Probably not. Until you meaningfully reduce the rate of growth in benefits, this is going to be a material credit concern for many years to come."

The City Council needs to approve the tax hike, and the state needs to authorize the change in city and employee contributions, but Emanuel expressed confidence that the plan will succeed.

"It's good to see some action taken," said Dan Solender, head of municipals in Jersey City, New Jersey, for Lord Abbett & Co., which manages $20 billion of the debt. "It's been a long wait."

Bloomberg Business

by Elizabeth Campbell

August 4, 2016 — 10:30 AM PDT

[Bloomberg Brief Weekly Video - 08/04]

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

[Watch the video.]

August 4, 2016

Municipal Securities Rulemaking Board Names Woodell Chair.

The Municipal Securities Rulemaking Board named former S&P Global Inc. executive Colleen Woodell as chair, effective Oct. 1.

Woodell, who served as chief credit officer of global corporate and government ratings succeeds Nat Singer, the senior managing director at Swap Financial Group. Arthur Miller, managing director at Goldman Sachs Group Inc., will serve as vice chair, the $3.7 trillion municipal market's self-regulator said in a statement. The terms of the chair and vice chair are one year.

New board members include J. Anthony Beard, the chief financial officer of Atlanta; Robert Clarke Brown, treasurer of Case Western Reserve University; Julia H. Cooper, director of finance for San Jose; Jerry W. Ford, president of Ford & Associates Inc.; Kemp J. Lewis, a managing director of Raymond James & Associates and Edward J. Sisk, a managing director of Bank of America Corp.'s Merrill Lynch unit.

The board positions have been extended to four years from three, an action approved by the Securities and Exchange Commission — which oversees the MSRB — earlier this year in an attempt to smooth transitions between members.

The board, comprised of 11 independent public members and 10 members from firms regulated by the MSRB, sets policies and oversees the operations of the organization.

Bloomberg Business

by Molly Smith

August 2, 2016 — 10:19 AM PDT

Preston Hollow Hires Municipal-Bond Team From Mesirow Financial.

Preston Hollow Capital, a Dallas-based boutique firm specializing in economic development and affordable housing projects, hired three employees from Mesirow Financial Inc. to open a capital-markets group in San Francisco.

Preston Hollow, formed in 2014, hired Curtis Erickson, Peter Bianchini and Richard Akulich. Erickson, Mesirow's former head of high-yield municipal trading, will handle loan structuring, pricing and secondary-market trading. Bianchini and Akulich will manage credit research.

"Curtis is one of the most respected professionals in the municipal capital markets, and he brings an accomplished and well-known team in Peter and Richard," Jim Thompson, Preston Hollow's chairman and chief executive officer, said in a news release. "When coupled with PHC's recent increase in its permanent equity capital to $625 million, our new capital markets group will enable us to provide more efficient pricing and execution for the benefit of borrowers."

Preston Hollow has invested $30 million in a residential and commercial project developed by Related Cos. in Tuxedo, New York, about 40 miles northwest of New York City, according to its website. The firm also purchased $55 million in bonds issued by a San Antonio, Texas-based agency to redevelop a former Air Force base into a mixed-use community.

Before Mesirow, Erickson, 46, traded municipal bonds at JPMorgan Chase & Co. and Bear Stearns Cos. Bianchini, 53, served as Mesirow's senior municipal strategist, and before that was XL Capital Assurance's head of West Coast origination. He also worked as a credit analyst at S&P Global Inc. for 14 years.

Akulich, 35, a specialist in the tobacco-bond sector, served as managing director at Mesirow, and before that spent five years at JPMorgan.

Bloomberg Business

by Martin Z Braun

August 3, 2016 — 11:20 AM PDT

Split Coupons Make Municipalities Pay Up in Low-Rate Environment.

State and local issuers are resorting to betting on the future direction of interest rates to lure municipal-bond investors balking at tax-exempt yields not far from record lows.

When Aurora, Colorado, sold $437 million of water debt last month, its longest bond came with four different interest coupons — and four different yields, one of which exceeded the market level on similar securities that day. That means the city will pay four different interest rates on the debt issued for 30 years.

"What we're hearing from our investment bankers is that with rates so low, some investors are starting to balk," said Mike Shannon, who oversees Aurora's debt and investments. "We were willing to meet the needs of the investors to get these bonds sold, but if you look out at the long end, it gets pretty pricey."

Though it may be the best time in a generation to refinance, it doesn't come without costs. In some cases, despite a perceived shortage of munis, market rates are so low investors don't want bonds, forcing issuers to increase yields that can add millions of dollars in debt service. In a recent report, Samuel A. Ramirez & Co. advised investors they could earn more with split coupons, where lower coupons yield more than higher coupons.

''It's like a hidden yield," said Joy Howard, a financial adviser in St. Louis. "It's great for the investor, but terrible for the issuer."

The flat yield curve gives investors less incentive to buy bigger coupons because they don't get enough compensation for extra risk. Since the first of the year, the slope — or spread between yields of short and long maturities — has flattened from 214 basis points to as little as 164 basis points, or half a percentage point, the lowest since early 2008. In early 2014, it was nearly four percentage points.

With interest rates about as low as they can go, investors realize they may wind up holding longer bonds to maturity after rates increase. Bill Gross, who built Pacific Investment Management Co. into the world's largest manager of bond funds and is now at Janus Capital Group Inc., warned this week that any reversal of the rally could be painful.

"You're not getting paid to go out long," said Peter Block, managing director of credit strategy with

Ramirez. “Why buy a 30-year bond when you can get paid nearly as much for a 12-year bond?”

The higher price for bonds with larger coupons is driving out individual investors, making it harder to sell some securities, Matt Posner, principal with the Court Street Group, a New York research firm, said in a report last month. New York’s Metropolitan Transportation Authority split coupons in July.

“We’re seeing municipal-bond yields lower then they’ve ever been before, so most issuers are locking in to take advantage,” Posner said in an interview. “If they need to split some coupons and spend more, they’re willing to do that.”

Patrick McCoy, the authority’s finance director, said the agency adjusts coupons in response to market conditions to get the lowest cost.

“We are seeing investors articulate frustration with the lower absolute yields,” said McCoy.

In February, the Los Angles Unified School District split its 2040 maturity into two coupons, with one paying 4 percent and the other 5 percent, when it borrowed about $1.2 billion. The bond with the 4 percent coupon yielded 3.25 percent, more than a third of percentage point more than the higher-coupon security.

Splitting the coupons “was an effective technique that the district took advantage of to maximize” demand, district spokesman Gayle Pollard-Terry said in an e-mail. That let the district cut costs that would have come with only a single coupon. The actual yield that will be paid will depend on how long bonds are outstanding and whether they’re refinanced.

“A bond with a higher coupon is more likely to be called than a bond with a lower coupon,” the district said. “The reverse is true for a lower-coupon bond.”

Aurora will monitor rates as its bonds mature and refinance the more expensive ones first, said Shannon. The cost of some of its bonds will rise after the 10-year call date, while the cost of others will fall. He said the unusual structure with four coupons, including one that steps up over time, was dictated by banks led by Morgan Stanley in handling the debt sale, who he said told him four coupons were necessary to sell the bonds. Morgan Stanley declined to comment through spokesman Mark Lake.

One coupon increases in steps from 2 percent in early years to 5 percent by the end of its 30-year term. One investor was willing to buy big chunks of the bonds in two maturities if the coupons were lowered. The 2.95 percent yield on the 3 percent bond maturating in 2046 was more than half a percent more than the yield on the 5 percent coupon.

“We had to increase the rates to bring in the investor,” said Shannon. “But we think we will be able to take advantage of this structure and pay some of it off early. The question is whether the bond is going to stay out 10 years, 20 years or 30 years?”

Bloomberg Business

by Darrell Preston

August 4, 2016 — 2:00 AM PDT Updated on August 4, 2016 — 7:31 AM PDT

BDA Submits Comment Letter to the SEC on FINRA's TRACE Academic Data Set Proposed Rule.

BDA submitted a comment letter to the SEC on FINRA's rule proposal to create a new TRACE data set for institutions of higher education.

BDA's letter opposes the creation of the new data set because it would create unnecessary business risks for broker-dealers. BDA requests that FINRA re-propose the rule proposal and have dealers grouped anonymously by size as opposed to individually.

New Academic Data Set: FINRA filed an updated proposal to create a TRACE Academic Data set exclusively available for research purposes and available only to institutions of higher education.

The proposal still includes an anonymous dealer identifier that will allow academics to research TRACE-reported transactions per dealer. However, based on BDA's comment letter and other industry comment letters the proposal has been amended to include the following features designed to protect dealer identities:

- **36 Month Delay:** FINRA's 2015 proposal included transaction data that was aged by 24 months. The updated proposal includes a 36-month delay.
- **Unique Dealer Identifiers per Data Request:** Based on a BDA request, each institution that requests data will receive different dealer identifiers for each data set.

BDA's August 2015 letter to FINRA (available here) expresses BDA's opposition to the 2015 version of the academic data set because it would include a dealer specific identifier.

BDA Submits Comment Letter to the SEC on FINRA's CMO Reporting and Dissemination Proposed Rule.

Today, BDA submitted a comment letter to the SEC on FINRA's rule proposal to require a new reporting and dissemination regime for CMOs.

BDA's letter expresses appreciation for the amendments that FINRA has proposed to its February 2015 request for comment. However, BDA argues that FINRA's proposed $1 million threshold for real-time dissemination will create a bifurcated market in which small-to-medium sized dealers and retail customers will be disadvantaged. Therefore, BDA urges FINRA to file an amendment to eliminate the $1 million threshold.

Proposed TRACE Reporting and Dissemination for CMOs:

- **60-Minute Trade Reporting Requirement:** FINRA proposes a 60-minute reporting requirement for CMO transactions.
- **Weekly or Monthly Dissemination for Trades Greater than $1 million:** CMO trades greater than $1 million in principal size for securities that are traded at least five times by at least 2 MPIDs over a given week or month would be subject to weekly and/or monthly reporting.
- **Real-time Dissemination for Trades less than $1 million:** CMO trades of less than $1 million would be required to be reported to TRACE within 60 minutes for immediate dissemination.
- **Pre-issuance CMO Transactions:** FINRA proposes to require TRACE reporting for transactions

that occur prior to issuance to occur no later than the first settlement date for the security.

BDA's April 2015 comment letter to FINRA on TRACE reporting and dissemination for securitized products, including CMOs can be read here.

IRS FY2017 Update: Effect of Sequestration on State & Local Government Filers of Form 8038-CP.

Pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, refund payments to certain state and local government filers claiming refundable credits under section 6431 of the Internal Revenue Code applicable to certain qualified bonds are subject to sequestration. This means that refund payments processed on or after October 1, 2016 and on or before September 30, 2017 will be reduced by the fiscal year 2017 sequestration rate of 6.9 percent, irrespective of when the amounts claimed by an issuer on any Form 8038-CP was filed with the IRS. The sequestration reduction rate will be applied unless and until a law is enacted that cancels or otherwise impacts the sequester, at which time the sequestration reduction rate is subject to change.

These reductions apply to Build America Bonds, Qualified School Construction Bonds, Qualified Zone Academy Bonds, New Clean Renewable Energy Bonds, and Qualified Energy Conservation Bonds for which the issuer elected to receive a direct credit subsidy pursuant to section 6431. Issuers should complete Form 8038-CP in the manner provided by the Form 8038-CP Instructions, and affected issuers will be notified through correspondence that a portion of their requested payment was subject to the sequester reduction. Issuers should use this correspondence to identify the portion(s) of amounts requested that were subject to the sequester reduction.

Issuers with any questions about the status of refunds claimed on Form 8038-CP, including any sequester reduction, should contact IRS Customer Account Services at 1-877-829-5500.

Click here to see the FY2013 article.
Click here to see the FY2014 article.
Click here to see the FY2015 article.
Click here to see the FY2016 article.

The New Thorn in the Sides of Big Banks.

Lawyer Joel Liberson is leading the charge in Miami's lawsuit against Bank of America and Wells Fargo, blaming them for the city's economic troubles

Joel Liberson's mortgage lawsuits against Bank of America Corp. and Wells Fargo & Co. follow a now-familiar template: accuse big banks of targeting minority borrowers with unfair loans that fed a housing crisis.

What is unusual is his client. Mr. Liberson, a 52-year-old lawyer who has devoted much of his career to defending apartment dwellers from eviction, is suing on behalf of the city of Miami. In the lawsuits, Miami blames the banks for widespread declines in property values and tax revenue, and increased expenses for police, fire and other services, due to the burdens of mass foreclosures.

The banks, which already shelled out tens of billions of dollars for mortgage-related settlements with federal and state governments since the financial crisis, have challenged whether the city has the right to sue. The Supreme Court in June agreed to take up the question and is likely to hear oral arguments in the fall and will decide by July 2017.

The court's decision potentially could reshape the breadth and use of the Fair Housing Act, a landmark civil-rights statute that forbids discrimination in real-estate lending, rental property and other areas of the housing industry.

The banks said Miami is stretching the bounds of a law meant to integrate neighborhoods, not fill tax coffers. They also dispute that Miami has proved its economic woes are a direct result of the banks' actions.

In a legal filing, Wells Fargo said its lending practices "did not cause the City's financial difficulties any more than they caused the City to thrive in the years leading up to the financial crisis." Bank of America expressed a similar sentiment in its filings.

The banks believe a Supreme Court decision siding with Miami will leave them vulnerable to a torrent of mortgage litigation from anyone who said they were harmed by the housing bubble. Lobbyists warn that banks might curtail lending in urban neighborhoods because of the legal risk.

The city and its attorney disagree. The Supreme Court has traditionally been lenient in interpreting the Fair Housing Act, according to academics who study the issue. Last year, for example, it ruled such lawsuits can be brought without proof of intentional bias.

In Mr. Liberson's view, a ruling in the banks' favor would limit an important weapon borrowers have wielded in housing lawsuits for decades, leaving them more vulnerable to questionable loans.

"What happens to a city when houses go vacant?" Mr. Liberson said. "Everybody suffers."

Mr. Liberson has spent the past several years encouraging cash-strapped cities to sue the banks under the Fair Housing Act. He has enlisted help from bigger plaintiffs' firms and big-name legal talent, including Erwin Chemerinsky, dean of the law school at the University of California, Irvine, and author of a popular textbook on constitutional law. But Mr. Liberson often works alone, hunched over a smudged Lenovo ThinkPad laptop at coffee shops and public libraries, manning the firm he named Trial & Appellate Resources.

Mr. Liberson, who lives in New York, is overseeing similar lawsuits on behalf of Los Angeles, Oakland, Calif., and Miami Gardens, Fla.

A ruling in Miami's favor could recharge those suits, which are pending. It could do the same for similar lawsuits by Atlanta-area counties and Cook County in Illinois, both spearheaded by a small firm in Georgia. Some municipal officials believe their cities could be in line for tens of millions of dollars or more, with a cut for Mr. Liberson, if they eventually win. A ruling against Mr. Liberson could cripple those claims.

"If the Supreme Court finds standing for the city, then you'll see a lot more of these lawsuits," said George Rutherglen, a professor at the University of Virginia School of Law. "And if not, then the court is retrenching on a very broad approach to litigation under the Fair Housing Act."

The legal process has taken longer than Mr. Liberson expected, but he said the strategy has worked before. Wells Fargo in 2012 resolved charges of race-based housing discrimination brought by the city of Baltimore. That agreement was wrapped into a larger settlement by the Justice Department.

It was while that case was pending that Mr. Liberson started approaching other cities to see if they were interested in doing the same. The sooner you file, the sooner you can get your money, he told them, with reassurances that the banks tended to settle such lawsuits and resolve them quickly.

Francis Suarez, a Miami city commissioner, remembers when Mr. Liberson came to him around early 2013 with an offer to work on a contingency basis. “It was kind of a no-brainer,” Mr. Suarez said. “We have the opportunity to vindicate the city for its residents, and we don’t have to front the money.”

Mr. Liberson declined to say how the cases were being financed.

Miami also is suing Citigroup Inc. and J.P. Morgan Chase & Co., although those cases aren’t before the Supreme Court. Citigroup and J.P. Morgan have denied Miami’s accusations.

Mr. Suarez, a real-estate lawyer who is running for mayor, said that if the lawsuits are successful, he would like to use the money to pay for police, fire, park and library services, and affordable housing, among others.

Even if Miami wins in the Supreme Court, a payout isn’t guaranteed. The banks have previously argued they didn’t make racially discriminatory loans, and that the statute of limitations for filing such claims has expired. Those arguments likely would come up again in district court.

And banks are fighting back more against housing-crisis cases. Bank of America recently won an appeal to overturn Justice Department accusations and a jury finding of mortgage-securities fraud.

THE WALL STREET JOURNAL

By CHRISTINA REXRODE

Aug. 2, 2016 5:25 p.m. ET

Write to Christina Rexrode at christina.rexrode@wsj.com

Puerto Rico Bondholders Devastated, but See Hope in U.S. Plan.

SAN JUAN, Puerto Rico — Attorney Santiago Mari sighed as he punched numbers into his calculator and saw the result.

The value of his retirement account has dropped 75 percent due to the collapse in Puerto Rican bonds that make up much of his personal portfolio, he said. He’s long abandoned plans for an early retirement. And he’s far from alone.

“You have a whole lot of Puerto Ricans who invested millions of dollars in bonds that they’re unable to sell,” said Puerto Rico financial adviser Jose Ivan Acosta.

While hedge funds hold much of Puerto Rico’s troubled debt, individual investors own an estimated $15 billion in bonds — 22 percent of the island’s overall $68 billion public debt. Many eagerly bought Puerto Rico bonds because they are exempt from state, local and federal taxes and were widely considered safe.

“They made it sound like it was the last remaining Coca Cola in a desert, that it was safe because it was backed by the government," Mari said.

That changed as the U.S. territory's government and its public utilities piled on debt to cover deficits during a 10-year economic slump. New taxes and higher utility rates pushed businesses to close and the tax base dwindled as more than 200,000 Puerto Ricans left for the U.S. mainland. With falling revenue, the government this year imposed a debt moratorium after a series of defaults on bond payments that began last year.

Prices for Puerto Rican bonds have plummeted, devastating many investors in Puerto Rico and on the mainland. Some have had to delay retirement, find alternative sources for their children's college funds or rejoin the workforce.

"My dream was to retire at 55 years old, and I worked hard for that," said 57-year-old Eduardo Rodriguez, a former maintenance worker who now works in a supermarket. "What can I do? They say men don't cry, but we do."

Many hold out hope that a new federal aid package signed by President Barack Obama in June will at least limit their losses. The measure creates a federal control board to oversee Puerto Rico's finances, supervise some debt restructuring and negotiate with creditors. Puerto Rico bonds rallied by some 20 percent that day and remained at that level even after the governor announced a moratorium on general obligation debt, Acosta said.

The news has encouraged Mari who, unlike some of his friends, has retained his bonds.

"I still have hope within my despair," Mari said. "The solution has to come from the outside. If it's left in local hands, they will plunder what little remains."

While it's too early to know what changes the control board will implement, a restructuring process of any kind would be positive, Acosta said.

"Honestly, anything is better than what we have right now," he said.

Some analysts cautioned about reading too much into the bond price rally, however.

"It was a momentary, reflex reaction as opposed to a market-moving event," said Jim Colby, who runs the $2.2 billion VanEck Vectors High Yield Municipal Index, an exchange-traded fund in New York.

He said Puerto Rico general obligation bonds, which many consider Puerto Rico's safest, are trading at around 65 cents on the dollar, and that future prices might be close to that. But "there's really no telling right now what kind of haircut, what kind of valuation is going to be given to any of the bonds of any of the series that are currently outstanding but not paying their interest.

"It's going to be a long time before we really have a clear picture," he added.

Of the estimated $15 billion debt held by Puerto Rico investors, $3.8 billion of the original $7 billion issued belongs to the Government Development Bank, which is operating under a state of emergency, and another $1 billion to the Public Finance Corporation, which was the first government agency to default. Only a small portion represents general obligation debt that is expected to receive top priority once the anticipated restructuring begins.

Raymond Watson, a former director of Puerto Rico's Highway Transportation Authority, bought general obligation debt because he believed it was the most secure. The 80-year-old said he was aghast when the governor last month declared a moratorium on that debt even though it is supposedly backed by the island's constitution.

"That is almost as sacred as the Bible," he said, adding that he and his wife face high medical bills and worry about being forced to declare bankruptcy. "We are not indulging in any kind of luxuries. We have cut back greatly on eating out, even if it's at Burger King. We used to take a cruise almost yearly. None of that. We are now prisoners in our own home."

Watson holds out hope that the federal aid measures will help.

At a minimum, they could repair Puerto Rico's credibility by stabilizing the island's finances and providing long-overdue transparency, which in turn could help it re-enter the market and allow people to recuperate some of their investment, Acosta said.

That's an encouraging prospect for Mari, who said some bonds he bought at $10 are now worth $1 or $2.

"I am holding on until the end," he said. "The uncertainty is killing me."

By THE ASSOCIATED PRESS

AUG. 1, 2016, 11:22 A.M. E.D.T.

[Chicago Mayor's Plan to Fix Municipal Pension Fund Seeks Water, Sewer Tax.]

CHICAGO — Chicago Mayor Rahm Emanuel unveiled a plan on Wednesday that he called "an honest approach" to save the city's biggest retirement system from insolvency with a water and sewer tax to be phased in over five years starting in 2017.

The municipal retirement system, which covers about 71,000 current and former city workers, is projected to run out of money within 10 years as it sinks under an unfunded liability of $18.6 billion.

The new tax would generate $56 million in its first year and increase to $239 million annually by 2020, the mayor's office said.

"Today, one of the big question marks that hung around the city because of past decisions – or past decisions that were not made – we have addressed," Emanuel told an investor conference in Chicago, adding that the city has now identified specific revenue streams to support each of its four retirement systems.

The plan requires city council approval, which Emanuel said he intends to seek in September. Chicago then needs the Illinois state legislature to approve a five-year phase-in of the city's contribution to the pension system to boost the funded level to 90 percent by 2057 from the current 32.9 percent.

The tax would follow an increase in water and sewer rates between 2012 and 2015 to generate money to repair and replace aging infrastructure. Revenue rose from $644.1 million in 2011 to $1.125 billion in 2015.

Pension contributions by new municipal workers would increase and not all affected unions have signed on to the plan. Anders Lindall, a spokesman for the American Federation of State, County and

Municipal Employees Council 31, said the plan is under review.

The rescue plan for the municipal system follows previous action by the city to boost funding for police and fire pensions through a phased-in $543 million property tax increase, and its laborers' system through a hike in a telephone surcharge.

Chicago's big pension burden was a driving factor in the downgrade of the city's credit rating last year to the "junk" level of 'Ba1′ by Moody's Investors Service.

But in March, the task of fixing the city's pensions became harder after the Illinois Supreme Court threw out a 2014 state law that reduced benefits and increased city and worker contributions to the municipal and laborers' funds.

By REUTERS

AUG. 3, 2016, 4:03 P.M. E.D.T.

(Editing by Chris Reese, G Crosse)

GASB Video: Certain Asset Retirement Obligations Project.

July 2016 — GASB Project Manager Jialan Su talks about the certain asset retirement obligations project, what the Board heard during due process, and what's coming up.

Watch the video.

MSRB Releases Muni Market Stats for 2016, Q2.

View the stats.

- A Summary of the Final Regulations on Non-Issue Price Arbitrage Restrictions: Squire Patton Boggs
- U.S. Muni Regulator Scraps Pursuit of Bank Loan Disclosure Rule.
- Social Finance Publishes New Report: Social Impact Bonds: The Early Years.
- Why the SEC Says it Can't Fight a Challenge to a Pay-To-Play Rule.
- Why the MSRB is Shortening its Dealer Closeout Timeframes.
- S&P: U.S. State And Local Government Credit Conditions Outlook: Economic Growth Outlook Dims Amid Rising Global Uncertainty.
- Think Tank Warns of Downsides to P3 Noncompete Clauses.
- The Municipal Bond Industry Responds to Tax Foundation's Recent Paper.
- NCPPP Launches Fall Schedule for P3 Bootcamp.
- Manufacturing Finance: Bonds & Tax Increment Supporting the Industrial Renaissance.
- And finally, BCB's Department of Pyrrhic Victories is proud to bring you *Bay Point Properties, Inc. v. Mississippi Transp. Com'n*, in which landowners were awarded the encumbered value of their

property burdened by an MTC easement. Nice win. The value of that easement? $500. Cool. Landowner's legal costs? $680,000. We certainly don't claim to be economists. Nor mathematicians. Heck, I wouldn't trust us to do basic arithmetic. That being said, anyone else picking up a vague sense that there may be something – I don't know – just a little bit off with those numbers?

EMINENT DOMAIN - CALIFORNIA

Property Reserve, Inc. v. Superior Court

Supreme Court of California - July 21, 2016 - P.3d - 2016 WL 3924221 - 16 Cal. Daily Op. Serv. 7780

State petitioned for orders to enter private properties and conduct environmental and geological studies of their suitability for construction of water tunnel.

The Superior Court granted the petition as to the environmental studies but denied it as to the geological studies.

State and landowners appealed, and landowners petitioned for writs of mandate, prohibition, or other appropriate relief. The Court of Appeal denied the petitions, but the Supreme Court granted review and directed the Court of Appeal to issue an order to show cause.

The Court of Appeal affirmed in part, reversed in part, and granted petitions. State petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Precondemnation entry and testing statutes authorized the Department of Water Resources to petition to enter privately owned land to conduct environmental studies and geological activities such as drilling test holes;
- Procedure established by the precondemnation entry and testing statutes is reasonable, certain, and adequate under the federal takings clause;
- Environmental studies pursuant to precondemnation entry and testing procedure would not violate California takings clause;
- Supreme Court would reform precondemnation entry and testing scheme so as to afford a jury trial on damages;
- Geological activities such as drilling test holes pursuant to precondemnation entry and testing procedure would not violate California takings clause; and
- Geological activities such as drilling test holes would not violate federal takings clause.

The precondemnation entry and testing statutes authorized the Department of Water Resources to petition to enter privately owned land to conduct both environmental studies and geological activities such as drilling test holes, for a project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, even if the Department's activities would amount to more than "innocuous" entries and "superficial" examinations.

Most typically, although damage to property adjacent to a public improvement caused by the construction or operation of the improvement constitutes a compensable taking or damaging of property for purposes of the state takings clause, a public entity is not considered to have violated the state takings clause simply because the public entity has not commenced a judicial proceeding under the Eminent Domain Law or paid or deposited in court just compensation as ascertained by a jury before inflicting such damage.

Assuming that environmental studies requiring entry onto landowners' property, for a Department of Water Resources project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, amounted to a taking or damaging of property requiring compensation under the California takings clause, the procedure established by the precondemnation entry and testing statutes satisfied the requirements of the California takings clause when the procedure was reformed to comply with the jury trial requirement of that clause, where the environmental order did not grant the Department exclusive possession of any portion of a landowner's property for a significant period of time.

The state takings clause does not preclude the Legislature, in the precondemnation entry and testing context, from authorizing a public entity to proceed pursuant to an expedited precondemnation procedure rather than through a more elaborate classic condemnation proceeding.

The precondemnation entry and testing statutes do not violate the state takings clause in authorizing a public entity to enter private property to conduct substantial precondemnation activities without the owner's consent or the commencement of a classic condemnation action, so long as (1) the public entity obtains a court order specifying the activities that may be conducted on the property and first deposits in court an amount that the trial court determines is sufficient to cover the probable compensation to which the property owner may be entitled for losses sustained as a result of the entry and testing activities, and (2) the property owner is entitled to recover damages for any injury to the property and any substantial interference with its possession or use of the property resulting from the public entity's activities.

The statute providing that no public entity "shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property" is not directed at precondemnation entry and testing activities, and that statute cannot reasonably be interpreted as intended to limit or displace the precondemnation entry and testing statutes.

The statutory damages that a property owner is entitled to obtain under the precondemnation entry and testing statute are a constitutionally adequate measure of just compensation under the state takings clause for the precondemnation activities authorized by the statutory scheme.

The compensation provision of the precondemnation entry and testing statutory scheme, as written, violates the state takings clause by failing to afford a property owner the right to have a jury determine the amount of compensation within the precondemnation proceeding itself.

Supreme Court would reform the precondemnation entry and testing statutory scheme so as to afford the property owner the option of obtaining a jury trial on damages at the proceeding prescribed by precondemnation compensation statute, as a remedy for the violation of the state takings clause in the statutory scheme's failure to afford the right to have a jury determine the amount of compensation within the precondemnation proceeding itself, since it was possible to reform the statute in a manner that closely effectuated policy judgments clearly articulated by the Legislature, and the Legislature would prefer such reformation to invalidation of the statute.

Assuming that geological activities such as drilling test holes, for a Department of Water Resources project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, amounted to a taking or damaging of property requiring compensation under the California takings clause, the procedure established by the precondemnation entry and testing statutes satisfied the requirements of the California takings clause when the procedure was reformed to comply with the jury trial requirement of that clause, since the Department would retain no continuing interest in the grout that it used to refill the test holes, the trial court would be authorized to limit the geological activities to protect the landowners, and landowners would be authorized to recover damages for any actual injury or substantial interference with their possession or use of the property.

Assuming that geological activities such as drilling test holes, for a Department of Water Resources project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, amounted to a permanent physical occupation and thus a per se taking of property requiring compensation under the federal takings clause, the procedure established by the precondemnation entry and testing statutes satisfied the requirements of the takings clause, since the landowners could recover damages for any actual injury or substantial interference with their possession or use of the property caused by the continued presence of grout in the test holes.

ANNEXATION - CALIFORNIA

City of Selma v. Fresno County Local Agency Formation Commission

Court of Appeal, Fifth District, California - July 14, 2016 - Cal.Rptr.3d - 2016 WL 3885027 - 16 Cal. Daily Op. Serv. 7562

Neighboring city filed writ of mandate challenging decision of local agency formation commission (LAFCo) to approve annexing city's annexation project.

The Superior Court denied writ. Neighboring city appealed.

The Court of Appeal held that statutory 70-day time limitation for a LAFCo to hold a continued public hearing on a reorganization proposal under the Cortese–Knox–Hertzberg Local Government Reorganization Act of 2000 is directory, not mandatory, such that a continuance beyond the 70-day limitation does not result in invalidation of the LAFCo's determinations.

A local agency formation commission (LAFCo) violates the Cortese–Knox–Hertzberg Local Government Reorganization Act of 2000 when it continues a hearing in excess of 70 days from the date specified in the original notice. However, while the Legislature requires a LAFCo to hold continued hearings within a particular time frame, a failure to comply with that time frame requirement does not result in invalidation of the LAFCo's determinations.

FIRE SERVICE FEES - FLORIDA

Discount Sleep of Ocala, LLC v. City of Ocala

District Court of Appeal of Florida, Fifth District - June 17, 2016 - So.3d - 2016 WL 3364655 (Mem) - 41 Fla. L. Weekly D1437

The City of Ocala enacted several ordinances that established, repealed, and later reenacted certain fire service fees. The City began assessing the fees in 2006, but on October 6, 2009, the City enacted Ordinance 6015, which repealed the fees. Ordinance 6015 provided that it took effect "upon approval by the mayor, or upon becoming law without such approval on October 1, 2010." The mayor signed and approved the ordinance on October 8, 2009. Subsequently, on May 4, 2010, the City repealed Ordinance 6015 and reinstated the fees by enacting Ordinance 2010–43.

Discount Sleep filed its complaint challenging the validity of the fees on February 20, 2014. The trial court found that Ordinance 6015 never took effect because it was repealed before its effective date of October 1, 2010. Consequently, the court held that the fire service fees had been continuously in effect since 2006, and Appellants failed to timely file their complaint within the four-year statute of limitations period.

The appeals court reversed, holding that the plain language of Ordinance 6015 dictated that it became effective both (1) when it was signed and approved by the mayor, or (2) without such approval on October 1, 2010. Thus, Ordinance 6015 became effective on October 8, 2009, and it repealed the fire service fees.

Moreover, without express revival, Ordinance 2010–43 could not reinstate prior ordinances governing the imposition of the fire service fees. Therefore, while Ordinance 2010–43 repealed Ordinance 6015, it also triggered a new four-year limitations period beginning on May 4, 2010.

Accordingly, Appellant's complaint was timely and the trial court erred in granting the motion to dismiss on statute of limitations grounds.

EMINENT DOMAIN - KANSAS

Water District No. 1 of Johnson County v. Prairie Center Development, L.L.C.

Supreme Court of Kansas - June 10, 2016 - P.3d - 2016 WL 3344661

Owners of roadway easement appealed condemnation award of water main easement to county water district and filed motion to void condemnation based on district's failure to name owners in petition against landowners and to give notice.

The District Court denied motion. Owners appealed.

The Supreme Court of Kansas held that:

- Trial court had subject matter jurisdiction to consider roadway easement owners' argument of statutory defect;
- Petition was valid on its face without including roadway easement and its owners; and
- Owners invited alleged error in consideration of parol evidence.

Supreme Court could consider county water district's argument that district court lacked jurisdiction to consider claim of statutory defect in eminent domain petition that did not include or notify easement owners, even though district did not cross-appeal judgment against owners. District presented question of subject matter jurisdiction which could be raised at any time.

District court had subject matter jurisdiction to consider roadway easement owners' argument of statutory defect in county water district's eminent domain petition that sought water main and construction easements and did not include or notify roadway easement owners, even though they were not parties to proceeding and characterized their motion specifically as a motion to void. District court had to determine whether district took the owners' property interest in order to determine whether its petition was statutorily defective for failing to name the owners.

County water district's petition to condemn property for temporary construction easements and permanent water main easements subject to existing easements of record was valid on its face without including roadway easement and its owners. District never sought to take roadway easement, and owners could not prove statutory defect based on assertion that district would necessarily, at some point, interfere with their easement.

Alleged error by district court in considering parol evidence of county water district's project plan when denying motion by roadway easement owners to void condemnation was invited by owners' argument based on the plan that district would need to dig up road to install water main, and, thus, Supreme Court would not consider the error. Just as district could not use its plans to show how it would avoid interfering with the roadway easement, owners could not go outside petition's language to argue district would interfere with roadway easement.

SCHOOL FINANCE - LOUISIANA

St. John the Baptist Parish School Bd. v. State

Court of Appeal of Louisiana, First Circuit - July 12, 2016 - Not Reported in So.3d - 2016 WL 3689899 - 2015-0264 (La.App. 1 Cir. 7/12/16)

School board, individually and on behalf of all similarly situated public parish and city school boards operating public elementary and secondary schools, several teacher unions and seven individuals, filed petition for declaratory judgment against state, Board of Elementary and Secondary Education (BESE), and Department of Education, alleging that state, BESE, and Department unconstitutionally diverted minimum foundation program (MFP) funds that were constitutionally mandated to be allocated to plaintiffs' school systems.

Following hearing, the District Court sustained defendants' exception of no right of action as to all original plaintiffs with the exception of school board, and after additional public parish and city school boards filed petition to intervene, found that plaintiffs' claims did not present justiciable controversy, granted defendants' motion for summary judgment, and denied plaintiffs' motion for summary judgment. After cross-motions for new trial were denied, plaintiffs sought devolutive appeal, which was granted.

The Court of Appeal held that:

- Plaintiffs' claims did not present justiciable controversy, and
- Even if claims presented justiciable controversy, granting declaratory relief would have been inappropriate.

School boards' claims that state, Board of Elementary and Secondary Education (BESE), and Department of Education unconstitutionally diverted minimum foundation program (MFP) funds that were constitutionally mandated to be allocated to school boards' school systems did not present justiciable controversy for which declaratory relief was able to be granted. Legislatively appropriated MFP funds were allocated in accordance with resolutions and were spent in appropriate fiscal years, and there was no law or jurisprudence to allow court to force legislature to re-allocate and fund from current fiscal year budget for payments that might have been improperly allocated or unconstitutionally deficient in prior fiscal years.

Even if school boards' claims that state, Board of Elementary and Secondary Education (BESE), and Department of Education unconstitutionally diverted minimum foundation program (MFP) funds that were constitutionally mandated to be allocated to school boards' school systems presented justiciable controversy, granting school boards declaratory relief would have been inappropriate. Declaratory judgment on validity and enforceability of MFP formulas for prior fiscal years did not serve purpose of terminating any immediate, existing controversy between parties, and judgment declaring validity of MFP formulas for purposes of possible cause of action for damages would have amounted to impermissible advisory opinion.

EMINENT DOMAIN - MISSISSIPPI

Bay Point Properties, Inc. v. Mississippi Transp. Com'n

Supreme Court of Mississippi - July 21, 2016 - So.3d - 2016 WL 3941068

Landowner filed inverse condemnation proceedings against the Mississippi Transportation Commission (MTC), claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property.

The Circuit Court entered judgment on jury verdict finding that the easement — for which MTC had paid $50,000 — continued to encumber the property, but that the use by MTC was not a highway purpose and awarding landowner the encumbered value of $500. Landowner appealed.

The Supreme Court of Mississippi held that:

- Evidence of abandonment would be limited to what the highway statute required, namely MTC minute entries;
- Evidence supported jury's verdict awarding $500 to landowner; and
- Trial court's failure to award any attorney fees to landowner was manifestly wrong.

Highway easement could not have been abandoned by nonuse pursuant to statute, providing that in no instance shall any part of any property acquired by the Mississippi Transportation Commission (MTC), or any interest acquired in such property, including, but not limited to, easements, be construed as abandoned by nonuse. Instead, release (i.e., termination or abandonment) of easement requires a determination on the minutes.

Evidence of abandonment would be limited to what the highway statute required, namely Mississippi Transportation Commission (MTC) minute entries, in inverse condemnation proceeding brought against MTC by landowner, claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property. Statute provided that all easements for highway purposes shall be released when they are determined on the minutes of the MTC as no longer needed for such purposes, and statute itself provided the sole process by which an easement for highway purposes terminated.

Trial court did not abuse its discretion by excluding evidence of appraised value of the five-foot buffer around bayou reserved to landowner in inverse condemnation action brought against Mississippi Transportation Commission (MTC) by landowner's successor-in-interest, claiming the easement MTC had across the property had terminated and that MTC was required to pay landowner the unencumbered value of the property. Five-foot buffer was reserved to landowner, and thus, he retained rights in that property that he did not retain in the property subject to MTC's easement, and appraisal evidence would be irrelevant and would serve only to confuse the jury, as the value of the buffer was not related to the value of the property.

If easement, acquired by Mississippi Transportation Commission (MTC) for all highway purposes, remained in existence and MTC was using it for a highway purpose, there was no taking, but if the easement remained in existence, but MTC was using the property for a purpose other than a highway purpose, then MTC took landowner's property, and the compensation owed would be the value of the property, subject to the easement, and could not exceed a sum evidenced by the proof offered. However, if the easement had been abandoned, and MTC was using the property for a purpose other than a highway purpose, then MTC took landowner's property, for which landowner was owed the value of the property, unencumbered by the easement.

Evidence supported jury's verdict awarding $500 to landowner in his inverse condemnation action against Mississippi Transportation Commission (MTC), claiming the easement MTC had across landowner's property had terminated and that MTC was required to pay landowner the unencumbered value of the property. Appraiser-witnesses agreed that the unencumbered value of the property was $26 per square foot, landowner's appraiser refused to give an encumbered value, MTC's appraisers testified that, according to appraisal methodology and procedures, along with their personal knowledge of practice, the encumbered value of the property would be a nominal sum of around $100–$500, and this was the only encumbered value presented to the jury.

Evidence was insufficient to constitute a release of Mississippi Transportation Commission's (MTC) easement for highway purposes. Statute provided that easements for highway purposes could be released only when MTC determined on its minutes that it no longer needed the property for highway purposes, and while MTC's agreement with county was executed on the minutes, the agreement provided that the county would provide, at no cost to the MTC, any right or interest in any property owned by the county which might be necessary to complete construction of the park, agreement further provided that MTC retained its interest in the property, and that, if the county determined it would no longer operate the park, the county would inform MTC, which would have the option of closing the park and removing all improvements.

It was within the trial court's discretion not to grant landowner's attorney fee request for $680,000 in full, but trial court's failure to award any reimbursement at all was manifestly wrong and in direct violation of statute providing that, where an inverse condemnation proceeding is instituted by the owner of any right, title or interest in real property because of use of his property in any program or project in which federal and/or federal-aid funds are used, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, shall determine and award plaintiff such sum as will, in the opinion of the court, reimburse such plaintiff for his reasonable costs. Mississippi Transportation Commission (MTC) used federal funds to finance construction of the park, landowner was the plaintiff in this inverse-condemnation proceeding, and jury rendered a verdict for landowner in the amount of $500.

EMINENT DOMAIN - NEW YORK

In re South Richmond Bluebelt, Phase 3.

Supreme Court, Appellate Term, New York, Second Department - July 20, 2016 - N.Y.S.3d - 2016 WL 3910492 - 2016 N.Y. Slip Op. 05577

In eminent domain proceeding, the Supreme Court, Richmond County, granted condemnor's motion to strike claimant's appraisal report and adhered to its original determination. Claimant appealed.

The Supreme Court, Appellate Division, held that claimant's de facto taking claim was untimely.

Just compensation for property taken in condemnation proceeding is determined by property's market value at time of taking, which is ordinarily date that title vests in condemnor, but if owner can establish that de facto taking preceded formal one, he or she is entitled to compensation based on deprivation of his or her beneficial use of property from earlier date.

De facto taking claim is governed by three-year statute of limitations applicable to claims to recover damages for injury to property.

De facto taking claim accrues at time of taking or, at latest, when taking becomes apparent, regardless of time of discovery.

Property owner's de facto taking claim against city, based on city's construction of certain stormwater control devices that affected property, accrued, and statute of limitation commenced, when devices were constructed, rather than when owner discovered them.

EMINENT DOMAIN - OHIO

Vary v. City of Cleveland

United States District Court, N.D. Ohio - June 28, 2016 - F.Supp.3d - 2016 WL 3580769

Property owner brought action against city, alleging that water main break damaged her property, and seeking writ of mandamus to compel city to engage in proper appropriation proceedings for involuntary taking of owner's property.

City moved to dismiss for failure to state claim.

The District Court held that district court would abstain from issuing writ of mandamus.

District court, sitting in diversity, would abstain from issuing writ of mandamus in name of state of Ohio to compel city to engage in appropriation proceedings with property owner related to alleged taking that occurred when water main break damaged property. It was unclear under Ohio law whether other remedies, such as action for trespass or nuisance, provided adequate remedy such that property owner would not be entitled to writ of mandamus, court would have to address complex questions of fact and law to determine whether city's activity with respect to water main break amounted to an appropriation, and ordering city to institute state proceedings would be intimately involved with state's sovereign prerogative.

PUBLIC UTILITIES - OHIO

Link v. FirstEnergy Corp.

Supreme Court of Ohio - July 26, 2016 - N.E.3d - 2016 WL 4010020 - 2016 -Ohio- 5083

Motorcyclist injured when he struck utility pole after being hit by deer filed action against utility companies for qualified nuisance, negligence, and other claims.

The Court of Common Pleas entered judgment on jury verdict in favor of motorcyclist. Utility companies appealed and motorcyclist cross-appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. The Supreme Court accepted utility companies' appeal.

The Supreme Court of Ohio held that:

- Companies complied with all applicable law governing placement of utility pole, and thus were not liable for motorcyclist's injuries, and
- Evidence was insufficient to demonstrate that utility pole interfered with usual and ordinary course of travel, and thus companies were not liable for motorcyclist's injuries.

Public utility companies complied with all applicable law governing placement of utility pole located in clear zone in right-of-way following road-widening project, and thus companies were not liable for motorcyclist's injuries from accident involving pole, though county engineer sent letter to utility company expressing disapproval of company's plan not to relocate pole out of clear-zone and chairman of township board of trustees sent letter requesting relocation of disputed poles. Highway-use manual did not require permit for pole installation or relocation, letters, without more, did not carry force of law requiring company to move utility poles, and board reopened road after completion of construction instead of initiating legal proceedings requiring companies to move poles.

Evidence was insufficient to demonstrate that utility pole located in clear zone in right-of-way following road-widening project interfered with usual and ordinary course of travel on road, and thus utility companies were not liable for motorcyclist's injuries from accident involving pole, though pole did not meet 17-foot clear-zone standards in Department of Transportation's location and design manual. After completion of road-improvement project, pole was approximately six feet from edge of pavement, had motorcyclist stayed within marked lanes, or even on improved portion of roadway, his motorcycle would not have come in contact with pole, and noncompliance with manual's guidelines, without more, did not establish unsafe condition.

BALLOT INITIATIVE - OKLAHOMA

OCPA Impact, Inc. v. Sheehan

Supreme Court of Oklahoma - July 18, 2016 - P.3d - 2016 WL 3946912 - 2016 OK 84

Challengers filed petition, post-circulation, to determine sufficiency of gist proposed ballot initiative to add article to Oklahoma Constitution to provide for one-cent increase in sales and use tax in order to improve funding for public school education.

The Supreme Court assumed original jurisdiction and determined that initiative did not violate one general subject and was sufficient to submit to voters.

Following signature-gathering period, Secretary of State certified signature count and votes, and was ordered to publish Attorney General's rewritten ballot title. Challengers then filed application with Supreme Court to assume original jurisdiction, objecting to both gist of measure and Attorney General's rewritten ballot title.

The Supreme Court of Oklahoma held that:

- Post-circulation challenge to gist of proposed ballot initiative was untimely, and
- Proposed ballot title for addition of article to Constitution designed to improve funding for public school education was misleading.

Post-circulation challenge to gist of proposed ballot initiative to add article to Oklahoma Constitution to provide for one-cent increase of sales and use tax for purposes of improving funding for public school education was untimely. Rather, under Oklahoma law, objection to sufficiency of proposed initiative had to be filed within ten days of publication, and post-circulation objections were limited to validity or number of signatures or to ballot title.

Proposed ballot title for addition of article to Oklahoma Constitution which would provide for one-cent increase of sales and use tax for purposes of "improving" funding for public school education was misleading to extent did not mention Board of Equalization's role in limiting appropriations of such funds, did not refrain from partiality, and did not identify amount of sales and use tax and its allocations.

EMINENT DOMAIN - PENNSYLVANIA

Township of Millcreek v. Angela Cres Trust of June 25, 1998

Commonwealth Court of Pennsylvania - June 22, 2016 - A.3d - 2016 WL 3419109

Trust that held real property filed petition seeking $3,359,900.33 in attorney fees, costs, and expenses nearly four years after prevailing in township's condemnation action.

The Court of Common Pleas awarded trust $517,868 in fees, costs, and expenses. Trust appealed, and township cross-appealed.

The Commonwealth Court held that:

- Trial court had jurisdiction over fee petition;
- Trust was not entitled to costs incurred in separate environmental proceeding;
- Trust was not entitled to costs and expenses attributable to separate litigation;
- Trial court used proper methodology to arrive at amount of fee award;
- Trial court applied appropriate factors for evaluating reasonableness of engineering and geology fees;
- Reduction of paralegal's billing rate was not against clear weight of evidence; and
- Trial court did not abuse discretion in not accepting block billing.

Trial court had jurisdiction over trust's fee petition, which was filed nearly four years after entry of order sustaining trust's preliminary objections in township's condemnation action. Eminent Domain Code provided that it was the "complete and exclusive procedure and law" to be followed in condemnation proceedings, section of Judicial Code setting out 30-day time limit applied "except as otherwise provided or prescribed by law," and Eminent Domain Code did otherwise provide by placing no specific time limit upon condemnee's request for fees incurred in defeating condemnation.

Trust, which sought fees and costs incurred in successfully defending township's condemnation action, was not entitled to award of costs incurred in environmental proceeding that challenged project permit sought by township in connection with its attempted condemnation of property. Environmental proceeding was separate from condemnation action, as grant of permit would not have necessarily resulted in condemnation of trust's property.

Trust, which sought fees and costs incurred in successfully defending township's condemnation action, was not entitled to award of costs and expenses attributable to litigation separate from condemnation action, even though such litigation might have been ancillary to or motivated by the condemnation action. Eminent Domain Code permitted reimbursement of costs "actually incurred because of the condemnation proceedings."

Trial court properly determined amount of reasonable attorney fees award to trust, in township's condemnation action in which trust prevailed, by considering amount of township's attorney fees and doubling that amount to arrive at trust's award, where the trust failed to prove the reasonableness of the fees, costs, and expenses it paid to its attorneys.

Trial court provided sufficiently clarity as to how it arrived at award of attorney fees, costs, and expenses to trust, which prevailed in township's condemnation action, where court made numerous findings about excessiveness of trust's request for fees and costs, and court explained that no analysis was provided as to question whether services of engineers were required given nature of the litigation.

Trial court's reduction of paralegal's billing rate was not against the clear weight of the evidence in township's condemnation action in which trust prevailed and sought fees and costs. Trust provided testimony that paralegal performed at level of experienced associate attorney and that paralegal's rate was within range of paralegal rates in particular region of state, while township provided testimony and affidavit that hourly rates charged for paralegal was outside normative rates charged in region.

Trial court did not abuse its discretion in not accepting block billing used by trust's attorneys, in township's condemnation action in which trust prevailed and sought fees and costs, where no explanatory testimony was provided, so as to preclude objectively accurate determination of reasonableness of time expended on particular tasks.

JURISDICTION - PENNSYLVANIA

2003 L. and F. Becker Family Trust v. BOKF, NA

United States District Court, E.D. Pennsylvania - June 13, 2016 - Slip Copy - 2016 WL 3227647

Holders of revenue bonds issued in May 2009 for the benefit of the City of Parsons, Kansas, Multi-Family Revenue Bonds Series A 2009 filed suit against BOKF, NA d/b/a Bank of Kansas City in its capacity as trustee, alleging breach of fiduciary duty and negligence.

The suit was initiated after BOKF engaged in significant changes to the project underlying the bonds without disclosing those changes to the bondholders.

The District Court held that:

- The District Court for the E.D. of Pennsylvania did not have a sufficient basis for an exercise of specific jurisdiction over BOKF, as the bond offering closed in Kansas and BOKF carried out its trustee work from its Tulsa, Oklahoma offices; and
- There was not a sufficient basis for an exercise of general jurisdiction over BOKF Pennsylvania, as BOKF was not incorporated in Pennsylvania, had no principal place of business there, and did not consent to personal jurisdiction there.

MUNICIPAL ORDINANCE - WASHINGTON

City v. Willis

Supreme Court of Washington, En Banc - July 21, 2016 - P.3d - 2016 WL 3960848

Defendant was convicted in the Municipal Court of begging. Defendant appealed.

The Superior Court affirmed. Defendant filed motion for discretionary review, which was granted. The Court of Appeals affirmed. Defendant filed petition for review, which was granted.

The Supreme Court of Washington held that provisions of ordinance prohibiting begging at freeway ramps and major intersections were facially overbroad.

Provisions of municipal ordinance prohibiting begging at on and off freeway ramps and prohibiting begging at major intersections were facially overbroad. Provisions applied to locations likely to have sidewalks, which were traditional public forums, and provisions imposed content-based speech restriction in substantial number of public forums in violation of First Amendment.

EMINENT DOMAIN - WEST VIRGINIA

Gomez v. Kanawha County Commission

Supreme Court of Appeals of West Virginia - June 3, 2016 - S.E.2d - 2016 WL 3207683

County commission brought condemnation action to take ten-acre tract of land on farm to deposit material removed from high hill.

The Circuit Court granted summary judgment for commission after it paid $33,335 into court and took immediate possession of farm. Owner with one-third interest in farm appealed.

The Supreme Court of Appeals held that:

- Question of whether property has been taken for public use is question of law for court;
- Project influence rule prohibited inclusion of commission's use of farm in valuing owner's interest in farm;
- Trial court did not abuse its discretion by striking owner's appraisal expert;
- Trial court abused its discretion in striking owner's "claims" as sanction for failure to appear for her deposition;
- Trial court did not have authority to take judicial notice of condemnation commissioners' reported value of owner's interest; and
- Issue of just compensation due to owner precluded summary judgment.

The question of whether property has been taken for a public use in a condemnation proceeding is a question of law for the court, and not a question of fact for a jury.

Project influence rule, under which any enhancement or depreciation in value caused by public project for which land was condemned and taken had to be disregarded in determining the market value of the land, prohibited inclusion of county commission's use of farm as dump site in valuing owner's one-third interest in farm in county commission's condemnation action. While owner claimed that highest and best use of farm was same use for which commission was acquiring property, to use as dump site, commission could not be required to pay enhanced price for property which its demand alone had created, and owner's proposed method for valuing property did not reflect what willing buyer would have paid in cash to willing seller in fair market, but reflected value created solely by commission's need for property.

Trial court did not abuse its discretion by striking appraisal expert of owner of one-third interest in farm and refusing to give expert additional time to inspect farm and formulate opinion about value in county commission's condemnation action. After eight months of discovery, expert failed to offer any opinion as to fair market value of farm at time of commission's taking, owner had asked expert to develop opinion that violated project influence rule, under which any enhancement or depreciation in value caused by public project for which land was condemned and taken had to be disregarded in determining the market value of the land, as she asserted that expert needed additional time to assess enhanced value of property, after date of taking, caused by commission's project, and commission would have been surprised and prejudiced by expert's testimony in trial.

Trial court abused its discretion in striking "claims" of one-third owner of farm as sanction for failure to appear for her deposition in county commission's condemnation action. Court made no finding that owner's failure to attend her deposition was willful or in bad faith, court never weighed actual prejudice to commission, effective of less drastic sanctions, or made any analysis of parties' situation, and court's order, in which it agreed to "strike the claims" of owner, was meaningless, as it was unclear what word "claim" meant in context of condemnation case.

Trial court did not have authority to take judicial notice of condemnation commissioners' reported value of owner's one-third interest in farm in county commission's condemnation action, Owner filed objection to commissioners' report within ten days, and, once objection was filed, parties were entitled to have just compensation ascertained by jury.

Genuine issue of material fact as to just compensation due to owner for her one-third interest in farm precluded summary judgment for county commission in its condemnation action.

Junk-Rated U.S. Municipalities Shine Brighter With Record Low Rates.

NEW YORK/CHICAGO — Record low interest rates so far have failed to spur a wave of new borrowing in the $3.7 trillion U.S. municipal debt market, with one exception: its weakest borrowers are seizing the opportunity to prop up their finances at costs they can afford.

As of July 19 total municipal debt issuance this year fell 1.6 percent to $227 billion from the same period last year. However, new borrowing rather than refinancing of existing debt is up 12.5 percent at $88.8 billion, with lower-rated debt rising the most, according to Thomson Reuters data.

An analysis of the data shows the total amount of municipal junk bonds rated by S&P Global Ratings at BB-plus or below issued this year rose 170 percent to $1.2 billion over the same period in 2015. (Graphic: http://tmsnrt.rs/29Zs6oO)

Many higher-rated issuers are using the rock-bottom rates to refinance old debt, but have been slow in boosting borrowing for new projects because of a lengthy approval process and many communities' reluctance to take on new burdens.

Those that struggle financially face similar problems, but some simply need to borrow to keep going and many are able to issue revenue bonds, which do not require voter approval.

Some cash-strapped areas, including Illinois and low-rated Chicago, can also issue bonds for new spending without taxpayer approval at the ballot box.

Some struggling cities, states or individual projects "have to borrow to keep going," said Matt Posner, principal of public finance research firm Court Street Group.

With muni bond rates at record lows, junk and low investment-grade rated issuers are trying to exploit what could be a rare window of opportunity before any market reversal makes borrowing costs prohibitive again.

"Issuers with lower ratings are taking advantage of the very tight spreads and nearly insatiable demand for any paper that has any hint of additional yield," said James Dearborn, head of muni investing at Columbia Threadneedle.

One example is California's Loma Linda University Medical Center, which planned to double its outstanding debt to pay for renovations to meet state seismic safety requirements.

In September 2015, Fitch Ratings cut the center's rating to junk at BB-plus, and by April it sold $948 million of debt. The biggest tranche maturing in 2056, carried a 5.25 percent coupon and sold at a premium to yield 4.70 percent. Today those bonds trade much higher, driving the yield down to 3.24 percent.

Similarly, in February, Chicago's Board of Education sold bonds rated B-plus for capital improvements and refinancing. The 7 percent, 28-year bonds were sold at a big discount but have since risen above par value.

More borrowing is under consideration, district CEO Forrest Claypool said.

Public-private projects – including an upgrade of New York's LaGuardia Airport – have also contributed to the uptick, Posner said. Many such projects contain a municipal bond portion rated in the triple-B range, the lowest-investment category, which also grew as rated by Moody's Investors Service, the data show.

Lower-rated borrowers are also refinancing old debt faster than investment-grade issuers.

The value of junk-rated refunding bonds grew 248 percent to $1.9 billion, Thomson Reuters data show, while the total slipped 9 percent to $138 billion.

More deals are in the works. In the junk category, Detroit will issue about $615.5 million of refunding bonds in the next couple of weeks to save an estimated $37 million in its first general obligation offering since exiting the largest ever U.S. municipal bankruptcy in December 2014.

Chicago, downgraded to "junk" last year by Moody's, plans to sell up to $1.25 billion of general obligation bonds this quarter. Illinois, the lowest rated U.S. state, could refund up to $2 billion of bonds.

By REUTERS

JULY 26, 2016, 1:24 A.M. E.D.T.

(Reporting by Hilary Russ in New York and Karen Pierog in Chicago; Additional reporting by Robin Respaut in San Francisco; Editing by Daniel Bases and Tomasz Janowski)

Fitch: Rating Changes May Be On the Horizon for Some U.S. Ports.

Fitch Ratings-New York-25 July 2016: Increased rating activity is possible for stand-alone U.S. ports over the next 12 months, according to Fitch Ratings in its latest U.S. Ports Peer Review.

During the past 12 months, Fitch revised Outlooks on three ports among the 16 it rated publicly during the period. Ratings adjustments may follow during the next review cycle as Fitch considers resolution for these credits with either a Positive or Negative Rating Outlook. That said, Fitch maintains Stable Outlooks on roughly 75% of its port sector and does not envision movement of any great magnitude in the coming months. Credit risk is still relatively low among U.S. ports thanks in part to their cash flow resiliency amid volume fluctuations during economic downturns. As such, ratings for most ports continue to fall in the 'A' rating category.

Since its last U.S. Ports Peer Review, Fitch revised the Rating Outlook for the Alabama State Port

Authority to Negative from Stable; the North Carolina State Ports Authority to Positive from Stable; and the Port of Palm Beach to Positive from Stable. Fitch also maintained the Positive Outlook on the Hillsborough County Port District.

Ports with the highest Fitch ratings are typically those with a strong underlying market or franchise driving demand, overall stability of cash flow through contractual agreements, or tariff policy and healthy financial metrics. Conversely, Fitch's weakest rated ports include those serving weaker markets with competition for cargo, less contractual protection for revenues or thinner financial metrics.

Fitch's latest 'Peer Review of U.S. Ports' is available at 'www.fitchratings.com'

Contact:

Emma Griffith
Director
+1-212-908-9124
Fitch Ratings, Inc., 33 Whitehall Street, New York, NY, 10004

Seth Lehman
Senior Director
+1-212-908-0755

Stacey Mawson
Director
+1-212-908-0678

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com.

Additional information is available at 'www.fitchratings.com'.

[Moody's: Investment Risk Grows as U.S. Public Pensions Continue Pursuing High Returns.]

New York, July 25, 2016 — The ability of US state and local governments to absorb adverse market performance by their pension funds has been constrained by rising costs associated with past unfunded liabilities, Moody's Investors Service says. At the same time, high return seeking by public pension funds increases risk of investment losses in any given year.

Over the long term, most public pension portfolios are designed to attain annual returns over 7% to offset rising employee retirement costs. To achieve these targets, state and local government pension funds must invest in potentially volatile assets. For example, public pension funds generally allocate close to 50% of assets to public equities, although allocations can vary substantially by plan.

"US public pension assets declined in six separate years from 2000-2015, and even governments with comparatively well-funded pensions can face budget risk if returns do not match expectations" Thomas Aaron, a Moody's Vice President — Senior Analyst says in "State and Local Governments — US: Even Comparatively Well-Funded Public Pensions Carry Risk of Volatile Investments."

Moody’s says this was illustrated when the largest US public pension fund, the California Public Employees’ Retirement System (CalPERS, Aa2 stable), experienced investment losses in four separate fiscal years from 2000 to 2015, with a 24% loss in 2009 representing its most dramatic single-year drop.

“Exposure to pension investment volatility is a credit risk because governments must be able to withstand the downside when short-term asset risk materializes, while still delivering public services and repaying debt. Government budgets are already under increasing strain because of the unfunded liabilities that have materialized over roughly the last 15 years,” Aaron says.

While governments can shift pension asset allocations to lower investment risk, this translates to higher government pension contribution requirements, because discount rates are linked to assumed asset performance. It also translates to higher reported liabilities under GASB rules. CalPERS notably opted to begin de-risking its pension portfolio last year, but at a very gradual rate in order to avoid cost spikes.

The report is available to Moody’s subscribers at

https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBM_1028742.

****

NOTE TO JOURNALISTS ONLY: For more information, please call one of our global press information hotlines: New York +1-212-553-0376, London +44-20-7772-5456, Tokyo +813-540--4110, Hong Kong +852-3758-1350, Sydney +61-2-9270-8141, Mexico City 001-888-779-5833, São Paulo 0800-891-2518, or Buenos Aires 0800-666-3506. You can also email us at mediarelations@moodys.com or visit our web site at www.moodys.com.

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

Thomas Aaron
Vice President – Senior Analyst
Public Finance Group
Moody’s Investors Service, Inc.
100 N Riverside Plaza
Suite 2220
Chicago, IL 60606
U.S.A.
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Timothy Blake
MD – Public Finance
Structured Finance Group
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Releasing Office:
Moody’s Investors Service, Inc.
250 Greenwich Street

New York, NY 10007
U.S.A.
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Bloomberg Brief Weekly Video - 07/28

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

Watch the video.

July 28, 2016

Cincinnati's Worst Stadium Deal Ever Seeks Lower Borrowing Costs.

The near record-low borrowing costs in the municipal-bond market may buy Cincinnati relief from what was labeled one of the worst stadium deals for taxpayers.

Hamilton County, Ohio, plans to borrow $322 million next week to refinance debt taken on more than a decade ago to build new home fields for the Bengals National Football League team and the Reds Major League Baseball team. It's projected to save about $65 million — freeing up money for promised property-tax cuts that were scaled-back as the cost of the project soared.

"We're going to restore as much of the tax cuts as we can," said Chris Monzel, president of the board of county commissioners.

Tumbling municipal bond yields are providing a financial perk to local governments, allowing them to cut the left-over bills from even long finished projects. Oakland, California-area officials last year refinanced debt for the home of the National Basketball Association's Golden State Warriors, which the team is planning to leave. Last month, El Paso, Texas, refinanced almost a third of the debt it issued for a minor league stadium three years ago, when the interest rates it had to pay prompted a political outcry.

The savings in Cincinnati are still just a fraction of the stadiums' costs, which more than doubled to over $1 billion. Most of the expense was covered by county taxpayers, who approved a half-percentage point sales-tax increase 20 years ago in return for a promise that real estate levies would eventually be cut. The Taxpayers Protection Alliance, a Washington group that opposes subsidies for professional sports arenas, said the Bengals's Paul Brown Stadium is among the most costly for taxpayers, given how much of the county budget it consumed.

"They're taking baby steps in trying to cut the cost to taxpayers," said David Williams, the alliance's president. "They've spent hundreds of millions of dollars on these stadiums and seen no economic benefits."

In recent years, the Cincinnati stadiums have cost the county some $70 million a year, or about 8 percent of its spending, according to financial statements. That includes debt service, costs for the teams, property-tax cuts and payments to schools in lieu of taxes.

Hamilton County voters approved the sales-tax increase in March 1996, with the stadiums promoted as a way to revive the area along the Ohio River. The county borrowed $623 million beginning in 1998 with municipal bonds, some of which was refinanced in 2006 and 2011. Some more will be refinanced next week.

Public Costs

The football stadium opened in 2000 and Great American Ball Park opened for the Reds in 2003. Stung by two recessions, sales-tax collections grew at about half the annual pace initially projected from 1999 to 2008, county documents show, while the population declined. To cope, the county fired workers, reduced the size of the property-tax cut and sold its hospital. Voters refused to approve more spending for a needed jail.

Public costs for the Cincinnati stadiums now exceed $1 billion in 2010 dollars, according to Judith Long, an associate professor of sports management at the University of Michigan, who who tabulated expenses for stadiums for a book titled "Public Private Partnerships for Major League Sports Facilities."

The stadiums are about a half-mile apart near a riverfront development called The Banks. The $2.5 billion development has grown more slowly than expected, but has revived the riverfront with restaurants, bars and residential space, spurred in part by subsidies paid for with the sales tax for the stadiums.

The question now for county officials is whether the savings on lower debt service is enough to restore any services after cutting taxes, said John Bruggen, county budget director. The decisions will be up to the county commission.

"They probably won't make any decisions immediately," he said. "This is a small piece of a big equation."

Bloomberg Business

by Darrell Preston

July 28, 2016 — 2:00 AM PDT

Muni Bonds Poised for First Loss in 13 Months After Brexit Rally.

The municipal-bond market's one-year winning streak is taking a breather.

State and local-government debt has lost 0.25 percent in July, headed for the first monthly decline since June 2015, Bank of America Merrill Lynch data show. The drop marks a pullback after the securities rallied in June by the most in 17 months as investors rushed into the safest assets amid concern about the impacts of the U.K.'s vote to exit the European Union.

"It's just a give back from Brexit," said Adam Buchanan, senior vice president of sales and trading at Ziegler, a broker-dealer in Chicago. "The reason the month is down is because Brexit drove the market artificially high for a short period of time."

The bull run in tax-exempt securities had sent prices to record highs as investors plowed money into municipal mutual funds, with the Federal Reserve holding off on raising interest rates since the quarter-point increase in December. While state and local debt returns are still up 4.2 percent this year, on track for the third straight annual gain, some investors are locking in profits, speculating future returns may be muted.

Municipal yields, which move in the opposite direction as price, climbed to the highest in more than a month this week. By the start of this week, benchmark 10-year yields were 1.48 percent, the highest since June 23, according to data compiled by Bloomberg. The yield for the Bond Buyer 20 Index last week edged up to 2.87 percent after slipping to as little as 2.8 percent earlier this month, the lowest since at least 1961.

A retreat is normal after this "stellar" run, said Phil Fischer, the head of municipal research at Bank of America Merrill Lynch.

"This is not Armageddon," Fischer said. "It's not a bad idea for people to pause and take a look at their portfolios."

With borrowing costs low, state and local governments have increased sales of debt before the Fed boosts rates again. The increase in the supply of new securities has been a drag on the market during the second half of July, said Dan Solender, head of municipals at in Jersey City, New Jersey for Lord Abbett & Co., which manages $20 billion of the debt.

U.S. policy makers left rates unchanged during Wednesday's Fed meeting while noting that the risks to the economy have subsided. Investors project a 26 percent chance that policy makers will hike rates at the next meeting in September, according to pricing interest-rate futures markets.

There are about $12 billion of bond sales scheduled over the next 30 days, the most in three weeks, according to data compiled by Bloomberg. The actual amount might be higher as some deals are made public only days ahead of time.

Still, there's been plenty of cash flooding into the market. Investors have added money to municipal-bond mutual funds for 42 straight weeks, according to Lipper US Fund Flows data. Inflows reached $1 billion in the week ended July 20, following $1.22 billion the previous week.

"Our demand is so strong, and we still have some good relative value versus other markets," said Solender. "For now, that's definitely still drawing interest to our market."

Bloomberg Business

by Elizabeth Campbell

July 27, 2016 — 2:00 AM PDT Updated on July 27, 2016 — 11:41 AM PDT

States, Cities Mount U.S. Election-Year Push for Infrastructure.

The nation's mayors and governors are hoping the next president will do what even record-low interest rates haven't: jumpstart investment in America's roads, water works and mass-transit systems.

On the sidelines of the Democratic National Convention in Philadelphia, where Hillary Clinton Thursday night accepted the party's nomination, state and local government officials said they need more federal support to finance work on infrastructure. Even with borrowing costs in the municipal-bond market holding near the lowest ever, governments squeezed by the recession have been leery of running up debt or persuading voters to support tax increases necessary to pay it back.

"We need to sell the American people on the value of investing in infrastructure," Terry O'Sullivan, general president of the Laborers' International Union of North America, said. He spoke at a meeting sponsored by Bloomberg Politics and Building America's Future, a coalition of elected officials that's co-chaired by Michael Bloomberg, founder and majority owner of Bloomberg LP, the parent company of Bloomberg News.

U.S. spending is projected to fall about $1.4 trillion short of the $3.3 trillion needed through 2025 for airports, highways and other infrastructure, according to the American Society of Civil Engineers. While President Barack Obama spurred spending on public works by helping cover the interest on about $188 billion of state and local debt, the program lapsed in 2010. Democrats have been unable to revive it because of Republican opposition in Congress.

Both presidential candidates have said the country needs to do more. Clinton pledged to spend $275 billion over five years and set up a national infrastructure bank to help fund large-scale projects, a proposal Obama advanced only to see it stall for lack of Republican support. Donald Trump, the Republican nominee, in his July 21 acceptance speech said "our roads and bridges are falling apart," though he's offered few details for how he'd fix them.

New York Mayor Bill de Blasio, a Democrat, said "there's a chance to get at least a core few things on the first run of the agenda" that would boost federal involvement in local public works. He said both parties find "tremendous commonality" over the issue.

The slide in interest rates has prodded state and local governments to increase their borrowing, though the pace of bond sales remains below the peak reached in 2010 and most are being issued to refinance higher-cost debt. There have been about $97.5 billion of municipal bonds issued this year for new projects, up from $87 billion in the same period a year earlier, according to Bank of America Merrill Lynch.

The municipal bond market has the capacity to finance far more, said Sean McCarthy, co-founder of Build America Mutual, which insures local-government debt, during a panel discussion in Philadelphia. Investors have added money to municipal-bond mutual funds for nearly a full straight year, according to Lipper US Fund Flows data, with $783 million coming in during the week ended

July 27.

“Capital is waiting to be put to work on those new projects,” said McCarthy.

Some of the needed investment has been delayed because of the economic and political pressure to cut spending, which governments nationwide have faced since the onset of the recession. While the economy began growing again in June 2009, states and cities continued to be dogged by budget shortfalls for years because of the toll it took on their tax revenue. When governors released spending plans this year, 15 proposed cutting taxes while 13 sought to increase them, according to the National Association of State Budget Officers.

“There is a distrust that the government’s not going to do a good job spending money, particularly with roads and bridges,” said Rhode Island Governor Gina Raimondo, a Democrat who successfully pushed through a $1.1 billion infrastructure plan after taking office last year. “They see what they think of as waste– projects taking too long, projects being done inefficiently.”

Bloomberg Business

by Romy Varghese

July 29, 2016 — 2:00 AM PDT Updated on July 29, 2016 — 8:14 AM PDT

More Defaults Likely to Come: What Puerto Rico Owes on Aug. 1.

It’s that time again for Puerto Rico bondholders.

The commonwealth and its agencies owe about $346 million in bond payments on Aug. 1, most of which goes toward repaying sales-tax supported debt. The deadline follows the island’s July 1 default on nearly $1 billion of principal and interest, the largest such payment failure in the history of the $3.7 trillion municipal bond market.

While sales-tax investors are set to be repaid with funds already in the bond trustee’s account, the Government Development Bank, which defaulted in May, faces another payment deadline. Some Puerto Rico entities started skipping payments a year ago, leading up to the commonwealth missing $780 million due on general obligations at the start of the month.

Puerto Rico and its agencies racked up $70 billion of debt after years of borrowing to paper over budget shortfalls. President Barack Obama on June 30 enacted a law to create a federal control board that will oversee any debt restructuring and monitor the island’s budgets. It also prohibits creditors from suing the commonwealth for repayment of debt.

A breakdown of what’s coming due:

Puerto Rico Sales Tax Financing Corp.: About $256 million of principal and interest. The bonds, called Cofinas because of their Spanish acronym, are repaid from the island’s sales tax. When the commonwealth’s fiscal year begins on July 1, the first collections are directed toward repaying the debt before flowing into the island’s general fund. The bond trustee already has the funds to make the Aug. 1 payment, according to S&P Global Ratings. Cofina has $15.2 billion of debt outstanding.

Government Development Bank for Puerto Rico: $28.5 million of interest. The bank, which used to serve as the island's fiscal agent before its liquidity dwindled, defaulted May 1 on nearly $400 million that was due. The GDB is under an emergency period where withdrawals are limited to programs that provide essential services. It has $5.1 billion of debt outstanding.

Puerto Rico Pension-Obligation Bonds: $13.9 million of interest due each month. The taxable debt was sold to bolster the island's nearly depleted pension fund. The bonds are repaid from contributions that the commonwealth and municipalities make to the retirement system. Puerto Rico has yet to default on the $13.9 million monthly interest payment. It has $2.9 billion of bonds outstanding.

Puerto Rico Aqueduct and Sewer Authority: $2.5 million of interest. The island's main water provider, called Prasa, is looking to issue debt through a new agency to raise $900 million for capital projects and to repay contractors. Prasa may also restructure as much as $1.1 billion of existing bonds. It paid $135 million to investors on July 1 and negotiated with creditors to delay another $12.7 million due on commonwealth-guaranteed Prasa bonds. It has $4 billion of bonds outstanding.

General-obligations: $1.3 million of interest. Puerto Rico defaulted on its general obligations on July 1, the first time a state-level borrower skipped payment on its direct debt since the 1930s. The island's constitution stipulates that the government must repay general obligations before other expenses. Governor Alejandro Garcia Padilla has said the island must preserve funds to cover essential services. The commonwealth has $13 billion of general obligations.

Puerto Rico Infrastructure Financing Authority: $700,000 of interest. Called Prifa, the agency has sold the island's rum-tax bonds. Prifa defaulted on a Jan. 1 interest payment and $77.1 million of principal and interest on July 1. It has $1.9 billion of bonds outstanding.

Puerto Rico Highways & Transportation Authority: $600,000 of interest. The highway agency repays its debt with gas-tax receipts and toll revenue. The authority paid almost all principal and interest due on July 1 from reserve funds already held by the bond trustee. Future payment are uncertain because Puerto Rico has redirected a portion of the agency's revenue to the general fund, according to S&P. HTA has $6.4 billion of bonds and notes outstanding.

Bloomberg Business

by Michelle Kaske and Sowjana Sivaloganathan

July 29, 2016 — 11:22 AM PDT

U.S. Mayors Hope for a 'Golden Moment' for Infrastructure.

PHILADELPHIA — After the presidential election, the United States may see a "golden moment" to push for increased federal and state spending to fix America's crumbling infrastructure, according to Democratic mayors speaking a policy meeting at Philadelphia on Tuesday.

The briefing, sponsored by the National League of Cities and Build America Mutual, was held at City Hall in the shadow of the Democratic National Convention.

Former Pennsylvania Gov. and Philadelphia Mayor Ed Rendell, New York City Mayor Bill DeBlasio, Atlanta Mayor Kasim Reed, Tampa Mayor Bob Buckhorn, and Pittsburgh Mayor Bill Peduto all talked about the importance of renewed and increased infrastructure spending and the benefits it holds for both the economy and for the American people.

Also on a panel discussion were Franklin Templeton's Sheila Amoroso and New York City Transportation Commissioner Polly Trottenberg. The group also heard from NLC President Melodee Colbert Kean, NLC CEO Clarence Anthony and BAM CEO Sean McCarthy.

McCarthy laid out the scope of the problem, saying that the American Society of Civil Engineers recently estimated that there is a $1.4 trillion gap between the nation's infrastructure funding needs over the next 10 years and the current resources being made available to pay for them.

But he was optimistic that this will change.

“Don't let the scale of the numbers that we are talking about scare you,” he said, “This is a problem that can be solved.”

Rendell said that “we need to start spending money soon,” recommending a plan of $2 trillion over 10 years, which includes state, federal and private funds. “We can do this,” he said, adding that the best method for financing infrastructure was through the sale of municipal bonds.

Rendell also touted Build America Bonds, saying the BABs program created by the federal government as part of the fiscal stimulus package during the Great Recession was “very successful.”

De Blasio stressed the urgency of moving forward in 2017, during the first year of a new presidential administration and a new Congress.

“I think we have an extraordinary opportunity ahead of us,” he said. “I can say there's a combination of factors that could come into play that might be a ‘golden moment’ for a new level of infrastructure development. There are outcomes that could open the door for a reconsideration of a federal role in infrastructure.”

De Blasio said there's a chance to get at least a core few things on the federal agenda that might be acted upon during this “golden moment.”

Mayors of both parties are banding together to push the message to state and federal officials that the nation must greatly increase its infrastructure spending or it won't be able to compete economically, de Blasio added.

“What we need we need right now is will and ability,” Reed said. “You need the political will to decide that we really aren't going to wait on the federal conversation, we are going to do both at the same time. And I think that you need the ability because we're going to need a partnership between the public and private sector.”

Reed said the federal government has “an amazing role to play, but we need to be more focused, from our own standpoint, on these public-private partnerships.”

Buckhorn said “infrastructure matters” and that the United States will be economically weaker if it doesn't invest in fixing and maintaining its roads and bridges, sewers, tunnels, ports and airports. He said infrastructure means employment, citing the Port of Tampa, which directly or indirectly supports 80,000 jobs.

Peduto said the changing nature of technology was an important component in infrastructure planning. Advances such as the rise of driverless cars, will change infrastructure needs of cities in the future.

Amoroso said that "infrastructure financing in the United States is vitally important."

She said that "two thirds of the infrastructure in the United States is built using municipal bonds and it is a market that is heavily retail driven, that is unlike any another market where they're primarily institutional investors."

She also stressed importance of Congress preserving the tax-exemption for municipal bonds for these investors. She described the tax-exemption as a circle of life, which "encourages individuals to invest in their communities where they earn a return that helps keep financings costs low. So it's a win-win situation for the state and local governments."

The Bond Buyer

By Chip Barnett

July 27, 2016

TAX - OHIO
Innkeeper Ministries, Inc. v. Testa
Supreme Court of Ohio - July 27, 2016 - N.E.3d - 2016 WL 4009986 - 2016 -Ohio- 5104

Nonprofit corporation filed an application for a charitable-use exemption for property the corporation owned.

The Tax Commissioner denied a charitable-use exemption to property. Corporation appealed. The Board of Tax Appeals reversed. The Tax Commissioner appealed.

The Supreme Court of Ohio held that:

- Corporation's use of property as a free retreat for religious leaders did not qualify the property as a church retreat, and
- Property caretakers personal and permanent residential use of property militated against a finding of charitable use.

Nonprofit corporation's use of property as a free retreat for religious leaders did not qualify the property as a church retreat, for the purpose of application for a charitable-use exemption for property. The property was not owned by a church, and the property contained the residence of caretakers.

Property caretakers personal and permanent residential use of property militated against a finding of charitable use, in action seeking a charitable-use exemption for property owned by nonprofit corporation that was used as a retreat for religious leaders.

The Board of Tax Appeals should have required proof that the primary purpose of the property was charitable hospitality, after evidence established the residential use of the property by property caretakers, before it could determine whether to a grant a charitable-use exemption for property. While there was evidence that the property was offered as a retreat for religious leaders, there was no information as to how many individuals stayed at the property, how many individuals the property could accommodate, and whether individuals were turned away from the property.

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting July 27-28, 2016 where it advanced several substantive rulemaking proposals and engaged in corporate and financial oversight matters in preparation for the start of the MSRB's upcoming fiscal year.

Operating Plan and Budget
The Board discussed and approved the organization's operating plan and budget for the fiscal year that begins October 1, 2016. The plan includes numerous objectives consistent with the MSRB's strategic goals and its mission to protect investors, state and local government issuers, other municipal entities, obligated persons and the public interest. The Board's discussion of the MSRB's budget included an extensive analysis of the MSRB's organizational reserves, resulting in the approval of a $5.5 million rebate distribution of excess reserves to brokers and dealers who paid any underwriting, transaction or technology fees during the first nine months of FY 2016. The excess reserves result from underwriting and trading volumes exceeding budgeted levels as well as careful management of expenses. The rebate will be distributed proportionately in September, relative to the fees paid. Details of the MSRB's operating plan will be announced at the start of its fiscal year.

Mark-Up Disclosure
At its meeting, the Board acted on multiple initiatives related to improving transparency in the municipal bond market and the activities of dealers and municipal advisors. It voted to file with the Securities and Exchange Commission (SEC) a rule proposal that would require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of same-day principal transactions. The proposal is also to include related guidance on the establishment of the prevailing market price used to calculate mark-ups. The mark-up disclosure proposal, which has been under development for several years, seeks to enhance the transparency of investor transaction costs and dealer compensation in the municipal securities market. The MSRB will continue to coordinate with the Financial Industry Regulatory Authority (FINRA) on its parallel confirmation disclosure initiative for transactions in corporate bonds.

"Providing investors with information about how much it costs to transact in municipal bonds has been a goal of this Board for several years," said MSRB Chair Nat Singer. "Transparency around dealer compensation will allow investors to assess their transaction costs and use that information in their decision-making."

Bank Loan Disclosure
In another transparency-related issue, the Board discussed comments received on a concept release to improve disclosure to investors of direct purchases and bank loans by municipal securities issuers. The Board continues to believe that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness and evaluating the impact of these financings on existing and potential investors. However, in light of comments received in response to the concept proposal, the Board will not pursue rulemaking at this time but will continue to raise awareness about the issue among regulators and market participants, and encourage industry-led initiatives that support voluntary disclosure best practices. In order to facilitate the filing of bank loan disclosures on EMMA, the MSRB has been working with issuer representatives to enhance the submission process. The MSRB will soon release changes to the website that improve this process by issuers and also enhances the ability of investors to locate available bank loan disclosures.

"Our concerns about the need for improved disclosure of bank loans and other financings by municipal entities and obligated persons has not diminished whatsoever," Singer said. "While we acknowledge that MSRB rulemaking is not the best approach at this time, we continue to urge market participants to consider this shortcoming in our market."

Customer and Client Complaints
As part of its effort to update certain MSRB rules, the Board agreed to file with the SEC amendments to MSRB Rules G-8 and G-9, on recordkeeping and retention, and to MSRB Rule G-10, on delivery of the investor brochure. The changes modernize requirements for dealers' handling of complaints by customers and simplify the process by which dealers provide customers with regulatory information. The amendments also establish requirements for municipal advisors' handling of client complaints and establish a process for municipal advisors to provide municipal entity and obligated person clients with regulatory information. Separately, the Board agreed to extend, as relevant, to municipal advisors existing guidance for dealers under MSRB Rule G-32, on the use of electronic media to deliver to and receive information from customers.

ABLE Programs
In other municipal advisor rulemaking, the Board agreed to file with the SEC for immediate effectiveness two rule interpretations related to municipal advisors that provide advisory services to sponsors or trustees of Achieving a Better Life Experience (ABLE) programs. The proposed interpretation to MSRB Rule G-42, on duties of non-solicitor municipal advisors, will explicitly provide that current guidance applicable to 529 college savings plans and local government investment pools is equally applicable to interests in ABLE programs. The interpretation to MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors, will clarify that municipal advisors to sponsors or trustees of 529 plans or ABLE programs and other municipal fund securities are subject to Rule G-44's supervision requirements. The Board also agreed to file with the SEC for immediate effectiveness a proposed change to MSRB Rule G-45, on reporting of information on municipal fund securities, to delay until the reporting period ending June 30, 2018 the date submissions are due from underwriters of ABLE programs.

Definition of Underwriter
In its final regulatory action, the Board agreed to file an amendment to MSRB Rule G-34, which details when underwriters and financial advisors must apply for the assignment of a CUSIP number for a new issue of municipal securities. If approved by the SEC, the amendment would harmonize the definition of underwriter in Rule G-34 with that of MSRB Rule G-32, which defines underwriter as "a broker, dealer or municipal securities dealer that is an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8), including but not limited to a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering." The MSRB has historically interpreted the underwriter definition in Rule G-34 to include placement agents and dealers that purchase securities from an issuer as principal, and the proposed amendment codifies the rule's original intent.

EMMA and Market Transparency
The Board discussed an update to its 2012 Long-Range Plan for Market Transparency Products and agreed to defer until its strategic planning session in January 2017 action on an updated plan. The Board did address the potential addition of third-party market indicators, including yield curves, to the MSRB's Electronic Municipal Market Access (EMMA®) website and agreed that the associated benefits for investors and issuers warrant adding such yield curves to EMMA.

Date: August 1, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500

jgalloway@msrb.org

Muni Volume Hit by 'Whip-Sawing' Yields.

After two months of increased year-over-year volume, long-term municipal bond issuance plunged 27% in July.

Total monthly volume shrank to $26.07 billion in 880 transactions from $35.62 billion in 1,091 transactions in July of last year, according to data from Thomson Reuters. It was the lowest total for the month of July since 2011, when it was $24.91 billion.

Refundings, which have been strong for the majority of the year due to persistent low interest rates, declined 27.7% to $9.39 billion in 324 deals from $12.99 billion in 395 deals.

“Issuance was down almost across the board, and I think it would be incorrect to extrapolate a trend using just one month’s data,” said Vikram Rai, CFA and head of municipal strategy at Citi. “It is true that typically issuance in July can be down anywhere from 5% to 15% versus the monthly average for the year, though this is not always true.

“This time around I think issuers, like most of us, were distracted by the extreme market volatility following the Brexit event and were leery of coming to market when yields were whip-sawing,” Rai said, referring to the financial market’s reaction to Great Britain’s June 23 vote to leave the European Union.

New-money deals fell 17.4% in July to $12.38 billion in 504 deals from $14.98 billion in 586 deals during the same period last year.

“There was the timing of the fourth of July that had some impact but the main issue is that issuers continue to be not aggressive with the market despite low yields, as they did not want to take on additional debt,” said Dan Heckman, senior fixed income strategist at U.S. Bank Wealth Management. “The reality is that we are still reminiscent of the finical crisis, and for tax payers and municipalities, it still continues to be difficult environment. There is also lack of infrastructure spending, and it continues to be difficult in general for new issues to gain a lot of traction.”

Heckman also cited summer doldrums and a slowdown ahead of a presidential election as reasons for the reduced muni volume.

“I think going forward we will see more and more refundings and I am hopefully that by the end of 2016, beginning of 2017, you will see issuers getting more aggressive in terms of taking on new debt,” he said. “We thought this month would be light, but it took us by surprise just how light it was.”

Combined new-money and refunding issuance dropped by 43.8% in to $4.29 billion from $7.64 billion.

Issuance of revenue bonds decreased 23.1% to $16.87 billion, while general obligation bond sales dropped 32.7% to $9.20 billion.

Negotiated deals were lower by 30.1% to $19.04 billion, while competitive sales increased by 6.2% to $6.81 billion.

Taxable bond volume was 52.3% lower at $1.51 billion, while tax-exempt issuance declined by 23.8% to $24.02 billion.

Minimum tax bonds issuance slipped to $544 million from $948 million.

Private placements sank to $227 million from $1.96 billion.

Zero coupon bonds increased to $118 million from $26 million.

"The spike in zero coupon issuance is surprising and it seems like issuers are tapping into the demand for longer duration bonds," said Rai.

Bond insurance declined 22.4% for the month, as the volume of deals wrapped with insurance dipped to $1.33 billion in 100 deals from $1.71 billion in 118 deals.

Variable-rate short put bonds dropped 54.7% to $455 million from $1.00 billion. Variable-rate long or no put bonds rose to $417 million from $298 million.

Bank qualified bonds decreased 5.6% to $1.63 billion from $1.72 billion.

Among sectors, only health care and public facilities posted year-over-year gains, despite fewer deals this month. Public facilities gained 32.7% to $933 million in 38 transactions from $700 million in 39 transactions and health care improved 54.8% to $3.69 billion in 33 deals from $2.38 billion in 52 deals.

All of the other sectors had a decrease of at least 18.6%, except for housing which slipped 2.5%.

As for the different types of entities that issue bonds, only three saw positive year over year changes. State governments improved 63.6% to $1.48 billion from $908 million, counties and parishes gained 93.6% to $2.54 billion from $1.31 and direct issuers inched up to $130 million from $105 million.

All other entities saw a decline by at least 10%, with the largest decline coming from cities and towns, which dropped 57.6% to $3.88 billion from $9.15 billion.

California is the top issuer among states for the year to date, followed by Texas, New York, Florida and Pennsylvania.

The Golden State so far this year has issued $34.61 billion, with the Lone Star State right at its heels with $32.41 billion. The Empire State follows with $26.44 billion. The Sunshine State is in third with $11.29 billion and the Keystone State rounds out the top five with $10.35 billion.

"We do not expect issuance to pick-up materially; this is true for new money issuance and refunding issuance. But, we do expect at least refundings to remain robust for the remainder of the year," Rai said. "Our estimate for gross issuance for 2016 remains unchanged at $413 billion, split almost evenly between new money and refundings. Net issuance is likely to be $45 billion."

The Bond Buyer

By Aaron Weitzman

July 29, 2016

U.S. Muni Regulator Scraps Pursuit of Bank Loan Disclosure Rule.

The Municipal Securities Rulemaking Board (MSRB) said on Monday the U.S. muni market's self-regulating group would not pursue "at this time" a rule to facilitate disclosure of bank loans taken out by states, cities, schools and other bond issuers.

The board, which regulates muni dealers, bond underwriters and financial advisors, but not state and local government issuers, has been trying to devise a way to boost disclosure of such private loans because they add to an issuer's overall debt burden and could include terms impairing the rights of bondholders.

The MSRB's decision likely means that most investors would be deprived of this information. The regulator said in March that only a small number of issuers had disclosed the loans and other private debt sales on its Electronic Municipal Market Access or EMMA website.

"The board continues to believe that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness," MSRB Executive Director Lynnette Kelly told reporters on a conference call.

But feedback from market participants indicated a rule would not necessarily capture all bank loan activity by muni bond issuers, according to Kelly. She said the board would instead continue to push for voluntary disclosure, while making it easier for issuers to submit bank loan information on EMMA.

"We preserve our ability in the future to do rule-making, but we wanted to give it a little more time," Kelly said.

At its meeting last week, the MSRB voted to send a proposed rule to the U.S. Securities and Exchange Commission aimed at enhancing transparency of transaction costs charged to muni bond investors by dealers, Kelly said. While the board is self-regulating, its rules are subject to approval by the SEC.

"Providing investors with information about how much it costs to transact in municipal bonds has been a goal of this board for several years," MSRB Chair Nat Singer said in a statement. "Transparency around dealer compensation will allow investors to assess their transaction costs and use that information in their decision-making."

Kelly said the MSRB was also considering adding market indicators to its EMMA website, including yield curves that would be provided for free by private-sector vendors.

Reuters

(Reporting by Karen Pierog; Editing by Richard Chang)

Mon Aug 1, 2016 3:05pm EDT

Bias in the Municipal Bond Market.

Does a sullied past haunt a bond issuer's future?

In April, something remarkable happened in the otherwise sleepy world of public money. Orange County, Calif., long considered a problem child in local public finance, announced a plan to return to the municipal bond market.

At the start of the 1990s, the county made some big bets on an early form of financial derivatives — not unlike those at the heart of the 2008 financial market crisis — and it lost. It suffered major financial damage and eventually declared bankruptcy. But now the county is looking to borrow once again, and investors are primed to snatch up its new bonds at eye-poppingly high prices.

Financially speaking, Orange County is back in a big way.

The Orange County story illustrates one of the great debates in finance. Municipal bond investors are willing to look past the county's sordid past and focus instead on its financial future, namely its strong balance sheet, solid credit rating and growing tax base. This suggests that investors only care about future cash flows. But don't forget that the county waited 20 years to test the market. Somebody clearly believed it needed a long time to shake its problem-child reputation.

So is the financial past prologue, or not? Some recent evidence suggests that in the municipal bond market — unlike most other capital markets — past perceptions have big financial consequences.

True believers say financial markets are fair because they're forward-looking. If investors focus too much on the past, they'll miss moneymaking opportunities. For instance, if a city lands a big economic development project or renegotiates its pension obligations, then any new bonds it issues should be met with higher demand and sell at higher prices. An investor who fixates on that city's past bond prices will miss out on a surefire investment. So in theory, at least, past prices shouldn't matter.

How does this theory play out in the municipal bond market? In a recent paper I examined how the interest rates on a local government's past bond issues affect the interest rates on its future bond issues. I analyzed data on more than 35,000 "full faith and credit" bonds over the past decade. The results were striking. I found that all else being equal, for every 1 percent increase in a government's past interest rates, the interest rate on its new bonds will be about 10 basis points (or .10 percent) higher. Put differently, past investor perceptions alone account for about 10 percent of current investor perceptions. Behavioral economists call this particular type of bias "anchoring" on past information.

There's bad news and good news here. The bad news is that anchoring is expensive for issuers. On a 25-year, $100 million bond, for example, 10 additional basis points can mean about $4 million in additional interest payments. Consider also that municipal bond interest rates have generally declined over the past decade. This means that many local governments' borrowing costs have been tethered to higher interest rates in the recent past.

This bias is also disconcerting because it's hard to explain. A cynic might argue that anchoring happens because bond investors are lazy. Instead of carefully evaluating a government's financial future, they just crib off of past prices. Of course, it's not that simple. More than 50,000 governments have municipal bonds outstanding, and most of those sell new bonds every few years at most. At the moment there are no federal rules about the timing and content of local governments' financial reports. In that environment it can be difficult to find recent financial information and even more difficult to find fresh prices on a government's bonds. Municipal bond investors aren't lazy. When information is hard to find, they're just humans subject to bias.

The good news is that finance professionals can take steps to correct that bias. This is yet another reason for local governments to invest in a robust, comprehensive program of public disclosure. As Orange County shows us, it's important for investors to know where a jurisdiction is, not where it was.

GOVERNING.COM

BY JUSTIN MARLOWE | AUGUST 2016

California Treasurer Cracks Down on Pay to Play.

PHOENIX – California State Treasurer John Chiang announced policies Wednesday designed to limit what he calls questionable municipal bond industry bankrolling of local bond election campaigns.

Chiang announced that municipal finance firms seeking state business will be required to certify that they will make no contributions to local bond election campaigns.

California officials are concerned with "pay to play" tactics in which bond counsel, underwriters, and financial advisors are offering to fund or provide campaign services in exchange for contracts to issue the bonds once they are approved by voters. Chiang's move was backed by a coalition of county treasurers and tax collectors.

Those campaign payments or services, often made in connection with local school bond ballot measures, could violate state laws governing the use of bond proceeds and public funds, according to a recent California Attorney General's opinion. That opinion, which was not legally binding on courts, rested on a 1976 California Supreme Court case, Stanson v. Mott, in which the court ruled that public money could be used only to provide "a fair presentation of relevant information" related to a bond question.

"There are unscrupulous Wall Street firms offering to fund local bond campaigns in exchange for lucrative contracts," Chiang said in a statement. "Not only are these pay-to-play arrangements unlawful, they rip-off taxpayers and endanger the integrity of school bonds, which are vital tools for building classrooms and meeting the educational needs of our communities."

The new policy on bond campaign contributions applies to firms and their employees, and includes both cash and-in kind service contributions made either directly or through third parties. Firms that fail to make the pledge will be removed from the state's official list of acceptable vendors and barred from participating in state-issued bonds.

The California Association of County Treasurers and Tax Collectors expressed "solidarity" with Chiang, and California Forward, a nonpartisan group that works for government efficiency, also praised the move.

"Public trust should not be compromised in an effort to secure voter support for local bond projects," said James Meyer, the group's president.

Robert Doty, the president and proprietor of AGFS, a municipal securities litigation consulting firm in Annapolis, Md. who previously worked in California, said a few prominent California underwriter firms might be affected, but believes most have stopped making such contributions.

Doty said such ballot campaign contributions are "a particularly sleazy activity that makes most market participants uncomfortable."

Common Cause, another advocacy group, blasted pay-to-play as undemocratic.

"Pay-to-play government contracts have no place in a democracy," the group said in a statement. "School bond underwriting contracts should go to the most qualified firm, not the one that agrees to make the biggest ballot measure campaign contribution."

A past Bond Buyer data review found a nearly perfect correlation between broker-dealer contributions to California school bond measure campaigns in 2010 and their underwriting of subsequent bond sales, and financial advisors have similarly been accused of using "pay-to-play" tactics.

In 2013 twelve dealer firms asked the Municipal Securities Rulemaking Board to crack down on the behavior, which registrants are required to report to the board.

California currently has 66 underwriters, 26 law firms, and 13 advisory firms in the Treasurer's muni bond business pool.

The Bond Buyer

By Kyle Glazier

July 27, 2016

Calif. Treasurer to Boot Bond Counsel That Back Campaigns.

SACRAMENTO — California Treasurer John Chiang announced Wednesday that he will bar municipal finance professionals—including attorneys—from working on state-issued bond sales if they and their firms continue bankrolling local bond election campaigns.

The move is an attempt to curb so-called pay-to-play politics in the industry, which has been plagued for years by accusations that law firms, advisors and underwriters make generous campaign contributions—mostly to school bond committees—with expectations of securing work preparing and selling the debt approved by voters. Such arrangements can inflate fees and create conflicts of interest for finance firms, the treasurer said.

"There are unscrupulous Wall Street firms offering to fund local bond campaigns in exchange for lucrative contracts," Chiang said in a prepared statement. "Not only are these pay-to-play arrangements unlawful, they rip-off taxpayers and endanger the integrity of school bonds."

In a letter sent to firms on Wednesday, Chiang asked them to submit by Aug. 31 "affirmative statements" that neither they nor their partners or employees will contribute to fundraising, polling, get-out-the-vote efforts or any other type of advocacy work on behalf of a general obligation bond campaign. Those that don't could be tossed out of the treasurer's public finance pool, Chiang said. That pool currently includes 26 law firms authorized to serve as bond counsel.

It's difficult to calculate how much money a firm could lose by leaving the state pool. The amount of work an underwriter or legal group receives fluctuates greatly depending on the size and number of offerings in the works in any given year as well as the intricacies of the debt vehicles, Deputy

Treasurer Tim Schaefer said.

But being a firm qualified by the treasurer's office carries a sort of stamp of approval that's valuable in securing other work.

"That's our hammer," Schaefer said.

Public finance leaders with Orrick, Herrington & Sutcliffe, historically one of the biggest players in bond counsel work in California, declined through a spokesman to comment on Chiang's letter. Messages left with three other law firms that are members of the treasurer's pool—and have also contributed in recent years to local school bond campaigns—were not returned.

The treasurer's directive has the backing of the association representing county tax collectors and treasurers. In most counties, treasurers by law or custom serve as the agent for school bond sales, Schaefer said. Good government groups Common Cause and California Forward also endorsed the new rules.

"Our hope is by cobbling together this coalition that we can persuade our local governments, especially school districts, to be more discerning," Schaefer said.

In the past, leaders of firms that provide bond counsel services have said that they make political contributions based on long-standing working relationships, not in expectation of some financial windfall.

"We are building a relationship," then-Orrick chairman Ralph Baxter told the Recorder. "How would an elected official feel if we don't make a contribution? Of course we think about that."

In January, Attorney General Kamala Harris issued an opinion concluding that it's illegal for a school district to contract with a municipal finance firm for election services in exchange for guaranteeing that firm post-election bond sales work. Most arrangements aren't so black and white, said Schaefer, who founded a public finance consulting firm in Orange County and has spent decades in the industry.

"It lives in the shadows and it's circumstantial evidence," he said. "But there is enough anecdotal evidence that we think it's a problem and it needs to be addressed."

Cheryl Miller, The Recorder

July 27, 2016

[IRS Updates Section 118 Safe Harbor For Transfers To Public Utilities: Grant Thornton]

The IRS has issued guidance (Notice 2016-36) broadening and modifying the safe harbor election under Section 118(a) that provides that certain transfers of property from energy generators to public utilities are contributions to capital instead of income.

Section 61 generally states that gross income includes all income from all sources, but Section 118(a) provides an exception for contributions to the capital of a corporation. However, Section 118(b) excludes any contributions in aid of construction (CIAC), so CIAC is considered income under

Section 61.

To encourage the development of the national power grid and markets for the generation, transmission and distribution of power, the IRS created a safe harbor so that qualified facilities and power generators could transfer property to a public utility to tie into the grid without the transfer's creating income for the public utility. The original guidance and its subsequent modifications (Notices 88-129, 90-60 and 2001-82) focused on traditional energy sources.

Notice 2016-36 broadens the scope of the prior notices to be more accessible for wind and solar generators to tie into the grid without transfers of property creating gross income for the public utility.

Article by David Auclair

Last Updated: July 25 2016

Grant Thornton LLP

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

Why the SEC Says it Can't Fight a Challenge to a Pay-To-Play Rule.

WASHINGTON — The Securities and Exchange Commission is arguing it can't fight a lawsuit challenging a revised rule to curb municipal securities pay-to-play activity because the fiscal 2016 appropriations act prohibits it from spending money on any rules governing political contributions.

The Sixth Circuit Court of Appeals in Cincinnati, where the suit is pending, has responded by halting proceedings until it can issue an order on the SEC's motion for dismissal of the suit. The SEC is arguing that the restrictions, along with federal statutes, prevent the three state Republican parties from challenging it over the latest revisions of the Municipal Securities Rulemaking Board Rule's G-37 on political contributions.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, will be barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional (MFP) or a municipal advisor professional (MAP) to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee claim Rule G-37 is unconstitutional because its political contribution language forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates. The state parties also argue that Congress did not empower the SEC or MSRB to regulate political contributions and instead made such regulation the exclusive jurisdiction of Congress and the Federal Election Commission.

In bringing their suit against the SEC and MSRB, the three state GOP groups relied on a provision of the Securities Exchange Act of 1934 that allows for appeals court review of a “final order” of the commission, according to the SEC lawyers. The parties also cited sections of the Administrative Procedure Act (APA) that would allow for court review of the MSRB rule if it can be proved that an SEC “agency action” took place.

The SEC’s motion to dismiss the suit argues that there was neither a “final order” from the commission nor any “agency action” leading up to the rule’s approval.

The Dodd-Frank Act states the SEC has 45 days after the date a proposed MSRB rule is published to approve, disapprove, or decide to take more time to decide on the rule. If the commission does none of those, the rule is deemed approved at the end of the 45-day period.

SEC lawyers said the commission, after publishing the proposed changes, did not take further action on the rule because of the restrictions in the fiscal 2016 appropriations act. The act prohibited the SEC from using any funds to “finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations.”

But under Dodd-Frank, the SEC’s inaction meant the revised rule was subsequently deemed approved 45 days after the commission published it. It is scheduled to take effect on Aug. 17.

“The commission did not approve or disapprove the proposed rule change, nor did it institute proceedings to determine whether to disapprove it, within the relevant time frame,” said the SEC lawyers. “The commission did not issue an order regarding the amendments to Rule G-37 and it did not publish any further notice regarding the rule.”

The commission never met the definition of “agency action” as laid out in the APA, according to the commission’s lawyers. The act defines agency action to include “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent denial thereof, or failure to act.”

“Except for ‘a failure to act’ … each ‘agency action’ requires an affirmative and discrete act ‘of an agency,'” the SEC lawyers argue, something that did not happen during the course of approval.

The lawyers defended against the possible applicability of the “failure to act” portion by pointing to three Supreme Court cases that determined a failure to act means the agency did not take an action it was required to do and could be compelled to do by a court.

The definition does not apply to the SEC in this case because the state Republican groups are not asking the court to force the commission to take an action and even if they were, the court could not do so because of the appropriations act, the SEC’s lawyers wrote.

A lawyer for the three Republican state groups said they plan to file a response within the next few days and do not believe the court will grant the SEC’s motion.

The MSRB has maintained that Rule G-37 is a “vital measure promoting the integrity” of the muni market and has said it intends to “vigorously defend the policies it believes should be in place to address quid pro quo corruption and the appearance of this type of corruption.”

Rule G-37 was previously challenged after the SEC first approved it for dealers in 1994. Alabama bond dealer William Blount filed suit against the MSRB and SEC, arguing the rule violated his constitutional right to free speech. The D.C. Circuit Court rejected that argument in a 1995 ruling, saying the rule was “narrowly tailored to serve a compelling government interest.” The Supreme

Court declined to take up Blount's appeal after the ruling.

The Republican groups from New York and Tennessee that are currently opposing G-37 also unsuccessfully challenged an SEC-approved pay-to-play rule covering investment advisors. The U.S. Court of Appeals for the District of Columbia dismissed that lawsuit in August 2015 on a technicality, finding the two groups missed the 60-day deadline to challenge the rule after it went into effect.

The Bond Buyer

By Jack Casey

July 27, 2016

The Brownfield Gold Rush: Municipalities Give Contaminated Properties New Life.

Innovative local government leaders throughout the country are taking advantage of state and federal incentives to transform former landfills and contaminated industrial properties and waste sites into energy-producing wind and solar projects. Two examples of municipalities giving such contaminated properties new life are discussed in this article – redeveloping once polluted properties into solar installations in New Bedford, Massachusetts and revitalizing a former Bethlehem Steel plant into renewable energy projects in Lackawanna, New York.

Turning Environmental Liabilities into Environmental Assets

Brownfields are a challenge for municipalities. In many cases, these properties have been idle and under-utilized for decades due to the environmental stigma that has hindered their redevelopment for productive use. At first glance, these sites may not appear to be suitable candidates for siting commercial and utility-scale renewable energy facilities. But many of these properties have development potential that finally can be realized, thanks to a favorable regulatory and financial environment.

Many state and federal programs, such as the Environmental Protection Agency's "Re-Powering America's Land Initiative," are spurring redevelopment through streamlined regulatory approvals, expedited permitting, reduced land acquisition costs, and financing and tax incentives. In fact, according to EPA, as of 2014, more than 135 renewable energy projects have been installed on 128 contaminated properties with a total capacity of more than 773 megawatts (MW).

The location of these properties in urban and industrial neighborhoods also plays a vital role in their redevelopment. Brownfields, including former industrial sites and municipal and hazardous waste landfills, are frequently located close to crucial infrastructure, such as electric transmission lines and substations, roads and water supply. Often, they comprise large land areas suitable for renewable energy development, and they already may be zoned and permitted to accommodate such redevelopment.

In addition to financial incentives, EPA offers liability protection to those who meet requirements under federal statutes like the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act. Many states offer similar programs. Protections of this nature can help overcome environmental stigma that may attach to contaminated properties and prevent their redevelopment for productive use.

New Bedford’s Whale of a Transformation

In the past several years, New Bedford, Massachusetts, once America’s whaling capital, has tapped both state and federal incentives to reinvent itself as a major generator of solar power. New Bedford is just one of several Massachusetts communities developing renewable energy projects on contaminated lands in partnership with local utilities, private investors, and solar energy companies. The state’s Solar Renewable Energy Credit program has certainly helped, requiring utilities to buy electricity from solar installations, and providing specific incentives for renewable energy on landfills and brownfields.

The coastal southeastern Massachusetts city now has more than 16 MW of solar capacity installed or under construction, and is ranked second only to Honolulu, Hawaii for the most solar installed per capita. The city obtains 50 percent of its energy from solar, and is on track to buy two-thirds of all its energy from solar projects.

Several of the solar installations are on once-polluted properties, including a 500 kilowatt facility on a two-acre revitalized brownfield site at New Bedford High School. The city’s latest effort – a 1.8 MW installation on a 10-acre former toxic waste site – opened last fall and is expected to save the city $2.7 million in energy costs over its 20-year projected lifetime. The city still has one remaining project under construction – a 3.7 MW system in the New Bedford Business Park.

Since taking office in 2012, Mayor Jon Mitchell has spearheaded the city’s green strategy. The city’s solar projects are aimed not only at cutting local government’s utility bills and saving taxpayer dollars, but are part of a comprehensive environmental program to both clean up contaminated properties and reduce fossil fuel consumption. When complete, the combined solar energy projects will save the city government millions of dollars over the next 20 years through the availability of less expensive means of energy.

Former Bethlehem Steel Plant Gets New Life

Last fall in Lackawanna, New York, the City Council approved the installation of 13,000 solar panels on a portion of a former Bethlehem Steel plant site. When the steel mill shut down in the 1980s, the badly polluted 1,600-acre property sat dormant for two decades, before returning to productive use under the New York Department of Environmental Conservation’s Brownfield Cleanup Program. Now, the facility, which is operated by Apex Energy, will be one of the largest solar photovoltaic (PV) installations in New York State upon completion.

And, it will be the neighbor of one of the largest urban wind energy projects in the world – a 30-acre site also reclaimed from the sprawling, contaminated steel mill site. The two-phase Steel Winds project operated by Sun Energy and Apex Energy boasts 14 wind turbines with a capacity of 35 MW – enough clean electricity to power about 9,000 homes. The project has added hundreds of thousands of dollars in annual tax revenue to surrounding communities and school districts.

Risk Factors Must be Addressed

While brownfields may provide property owners and renewable energy developers with significant opportunities, such investments also carry risks. Therefore, project risk assessments and mitigation strategies must be addressed.

As with many other real estate opportunities, success depends on location, location, location. It is essential to identify the right brownfields property. Site studies are needed to determine the required level and cost of remediation to satisfy the environmental regulators, as well as the appropriate conditions for redevelopment, such as proximity to infrastructure, and the amount of available acreage on which to place the energy generation facilities. For example, solar projects often require more than 20 acres to be financially viable.

Another risk factor is liability. Risks must be addressed and managed. EPA and state environmental authorities have developed incentive programs with a variety of discretionary enforcement policies and property-specific documents to encourage site cleanups and facilitate contaminated property transactions and revitalization. Also, it may be more prudent to choose a property where remediation has been completed and the owner has received a "no further action letter" from the state regulatory agency. Further, the liability risk can be managed or mitigated, for example, through indemnity clauses in purchase and sale agreements or leases that allocate liability to the owner or responsible parties, as well as through environmental insurance policies to cover future unknown risks.

Before proceeding with a renewable energy project, it is important to determine whether a site is or may be subject to institutional or engineering controls that require approvals from appropriate regulatory agencies. And, a renewable energy project likely will need financing. Many traditional banks and equity providers may be reluctant to finance a project on a brownfield property. It is critical to identify financing partners who both understand the liability protections available to project lenders, and who are willing to support such projects.

If undertaken with the right combination of due diligence, creativity, incentives, and liability protections, the redevelopment of a brownfield into a renewable energy facility can provide a significant win-win proposition for many local communities.

Clean Technica

By Jeffrey M. Karp, Jerome C. Muys Jr., and Van P. Hilderbrand Jr.

July 21st, 2016

Jeffrey M. Karp, Jerome C. Muys Jr. and Van P. Hilderbrand Jr. are environmental law attorneys with Sullivan & Worcester. Email: jkarp@sandw.com; jmuys@sandw.com; vhilderbrand@sandw.com.

Newport to Draft Ballot Measure Seeking Tighter Restrictions on Tax Increases and Bond Issues.

Newport Beach leaders took a step forward Tuesday on a charter amendment proposed for November's ballot that aims to tighten controls over tax increases and debt issuance.

The measure would ask local voters to consider whether the city charter should require at least five of the seven City Council members to vote in favor of a general tax increase before an increase could be placed on the ballot for voter consideration. Currently, four council members' votes are required.

Voters also would be asked whether they want to require voter approval before the city can use a certificate of participation, a financial instrument for issuing bonds to fund capital improvements. A COP was used in funding part of the Civic Center project.

The City Council voted 4-3 on Tuesday night to direct staff to craft the proposed charter amendment, known as the Newport Beach Taxpayer Protection Act, for placement on the Nov. 8 ballot. Council members Ed Selich, Tony Petros and Keith Curry dissented.

The council signed off last year on one aspect of the measure, requiring a supermajority council vote to approve tax increases, which Curry spearheaded.

However, on Tuesday, Mayor Pro Tem Kevin Muldoon asked his colleagues to also consider adding the restriction on capital improvement bonds.

"In this case, hypothetically, the Civic Center would not exist unless a majority of the people of Newport Beach said they wanted to do a certificate of participation," Muldoon said. "It is meant to put the power back in the hands of our voters."

Councilman Scott Peotter, who in June floated a similar proposal to restrict bond debt, supported Muldoon's idea.

Certificates of participation are a common way that municipalities finance the acquisition of land and public infrastructure. COPs are paid for from a government's existing revenue stream, unlike general obligation bonds, which result in tax increases and therefore require a public vote, according to city Finance Director Dan Matusiewicz.

Curry strongly opposed adding Muldoon's proposal to the Taxpayer Protection Act.

"Three out of four cities in California have the provision that I proposed as law already; not a single California jurisdiction has the proposal that Mr. Muldoon has as part of their law," Curry said.

Matusiewicz cautioned against Muldoon's proposal during the council meeting, saying it would be an extremely bad idea to cut off that avenue of funding.

Muldoon said he wasn't proposing to remove COPs altogether, and he accused Matusiewicz of being biased.

"I'm going to cut it there, because I see your bias and I understand," Muldoon said. "The opposition does not want the voters to decide."

Matusiewicz said Wednesday that requiring all COP plans to become ballot initiatives would add uncertainty to financial planning, as well as time and costs associated with ballot measures.

"Managing finances by ballot initiative … can hinder objectivity in financial decisions," Matusiewicz said. "Ballot initiatives all too often become politically charged and unpredictable.

"We have a highly educated constituency, but they generally don't have the time or interest to get into the minutia of mundane public infrastructure projects. Instead, people tend to rely too heavily on less-objective fliers on a given subject."

The draft measure will go before the City Council on Aug. 9 for final consideration in an effort to make the Aug. 12 deadline to place it on the ballot.

The Los Angeles Times

by Hannah Fry

July 31, 2016

Bondholders of the Lost Ark: Squire Patton Boggs

When most bond advisors think of the types of projects that bond proceeds may be used for, they think of roads, bridges, hospital or university buildings, etc. I think it is safe to say that very few bond advisors visualize an ark, let alone a replica of Noah's Ark. However, the City Council of Williamstown, Kentucky did just that. I guess that makes them visionary.

On December 23, 2013, the City of Williamstown issued $62,000,000 of Taxable Industrial Building Revenue Bonds (the "Bonds") to finance in part a "biblically-themed educational and entertainment complex, to include a replica of the Ark of Noah and related facilities". Per the Official Statement of the Bonds, which is available on EMMA-MSRB, the Bonds were issued under §§103.200 to 103.285 of the Kentucky Revised Statutes. In general, these provisions of Kentucky law permit cities and counties in Kentucky to issue industrial development bonds for projects that will promote economic development within the Commonwealth. So far so good, because successful theme parks most likely promote economic development in their surrounding communities.

When you delve into the details, however, it becomes a little less clear how the owner of the biblical theme park qualified under Kentucky law as a proper conduit borrower of the proceeds of these types of bonds. For example, the relevant provisions of the Kentucky Revised Statutes provide that a city or county may issue industrial development bonds in order to decrease the cost of purchasing or constructing "any industrial building or pollution control facility". The definition of "industrial building", interestingly, includes both facilities used by a nonprofit educational institution and a recreation or amusement park, which I assume is how the owner of a biblical theme park qualified to borrow the proceeds of the Bonds.

The biblical theme park is called Ark Encounters. Unlike the lost Ark of the Covenant in the well-known movie, "Raiders of the Lost Ark", this ark will not be hard to locate (it's also unlikely to melt the faces of those who peer inside). According to the website of Ark Encounters, the replica of Noah's Ark was built according to the dimensions given in the Bible, making it 510 feet long, 85 feet wide, and 51 feet high. This means it is about five stories high and almost as long as one-and-a-half football fields. According to the website, the ark is the largest timber-framed structure in the world. The ark apparently is full of exhibits, including displays of Noah's family and many cages containing animal replicas. Interestingly, at some point, Ark Encounters must have considered housing live animals in the ark, because one of the risk factors listed in the Official Statement for the Bonds is that the "animals that will be in the borrower's care will be important to the Project, and these animals could be exposed to infectious diseases". This is probably not a risk factor that shows up in too many Official Statements.

One obstacle that the owner of Ark Encounters encountered in building its theme park was uncertain financing. For example, the owner had received approval in May of 2011 for a tourism tax credit from the Kentucky Tourism Sales Tax Credit Program. The Official Statement for the Bonds, however, notes that this decision may be challenged as a violation of the Establishment Clause in the U.S. Constitution. (Although the interest on the Bonds is taxable from a federal income tax standpoint, the interest is exempt from Kentucky income tax.) The owner's concern in this regard was warranted, and on December 10, 2014, the owner's qualification for the tourism tax credit was revoked at a cost of approximately $18 million. Apparently, the Kentucky officials were concerned that Ark Encounters had evolved from a tourism attraction to an extension of the owner's ministry, and had reason to believe that the owner intended to discriminate in hiring based upon religion.

Despite the financial uncertainty that the owner of Ark Encounters encountered, the biblical theme park opened a few weeks ago. That is good news for the bondholders of the lost ark, because the debt service on the Bonds will be paid from park revenues.

Squire Patton Boggs

by Cynthia C. Mog

USA July 27 2016

Federal TIGER Grants Provide $500 Million for Local Projects.

DALLAS – Road, rail, and transit projects in 32 states and two U.S. territories will receive $500 million from the eighth round of a stimulus-era competitive federal grant program.

The 44 projects to be funded by the Transportation Investment Generating Economic Recovery (TIGER) grants were selected from 585 applications totaling more than $9.3 billion, Transportation Secretary Anthony Foxx told reporters in a conference call on Friday.

The highly competitive TIGER grants support projects that are often difficult to fund through conventional transportation programs, including road and bridge projects that span several jurisdictions, Foxx said.

"For the eighth year running, TIGER will inject critical infrastructure dollars into communities across the country," he said. "This unique program rewards innovative thinking and collaborative solutions to difficult and sometimes dangerous transportation problems."

The fiscal 2016 grants include $193 million for road projects, $97 million for transit, $87 million for passenger and freight rail, and $54 million for ports and maritime improvements, Foxx said.

"A great TIGER program doesn't just improve transportation," he said. "It expands economic opportunity and transforms a community."

The $500 million of TIGER grants will support $1.73 billion of transportation infrastructure improvements because each $1.00 of a TIGER grant can leverage up to $3.50 in other public and private investments, Foxx said.

The first seven rounds of the TIGER program provided $5.1 billion of grants to 421 projects in all 50 states, the District of Columbia, and Puerto Rico. The latest round includes projects in Guam and the U.S. Virgin Islands.

More than 7,300 applications seeking a total of $143 billion have been submitted since the TIGER program began in 2009, the Transportation Department said.

TIGER is not included in the Fixing America's Surface Transportation (FAST) Act that became law in early December. The grants must be renewed each year by Congress despite efforts by Democrats to make it a multiyear program.

The Senate has passed a 2017 transportation appropriations bill that would provide $525 million for TIGER next year, but a measure adopted by the House Appropriations Committee in May approved a cut in TIGER to $450 million.

President Obama's proposed $73 billion transportation budget that never gained traction with lawmakers would have increased TIGER funding to $1.25 billion in fiscal 2017.

The largest grant this year is $25 million to the Chicago Transit Authority to upgrade an existing "L" train station and restore a segment of a historic track structure.

Flint, Mich., will receive a $20 million TIGER grant to rebuild city streets that will be torn up as the city moves ahead with a program to replace lead water pipes.

Pittsburgh will use its $19 million TIGER grant to put a cap over a below-grade portion of Interstate 579 to connect a residential district with the downtown area. The project includes a new bus stop, improvements to streets, and sidewalk upgrades.

Other grants include $10 million to Brownsville, Texas, for rehabilitation of a bus maintenance facility and the purchase of eight hybrid-fueled buses, $17.7 million for a highway freight interchange in Scott County, Minn., and $6.2 million for a river port in Little Rock, Ark.

The Bond Buyer

By Jim Watts

July 29, 2016

[S&P: U.S. State And Local Government Credit Conditions Outlook: Economic Growth Outlook Dims Amid Rising Global Uncertainty.]

Economic data since March remain consistent with S&P Global Ratings' forecast for continued slow growth. The United Kingdom's vote in late June to leave the European Union added to an already uncertain global economic setting and is likely to weigh indirectly on U.S. GDP. Consequently, we have lowered our real GDP growth forecast for 2016 to 2.0% from 2.3%. The effects are likely to dissipate over time and result in only a modest revision to our forecast for 2017 growth to 2.4% from 2.5%. Fortunately for state and local governments, the key drivers of U.S. economic growth—consumer spending and the housing sector—are largely a function of domestic demand. Nevertheless, the uptick in uncertainty stemming from Brexit and slow GDP growth in the first quarter has led us to raise our risk of recession estimate over the next 12 months to 20%-to-25% from 15%-to-20%.

For most state and local governments, the new fiscal year began on July 1, in the wake of financial market shockwaves unleashed by the Brexit vote. Although equity markets initially tumbled in the immediate aftermath of the U.K. vote, they subsequently rebounded. Still, the tendency for markets to experience bouts of volatility has become a theme for 2016. This has cast a modest pall over the revenue outlook for state governments in particular, which tend to be more reliant on personal income taxes than their local government counterparts. Most states still project that tax revenues will increase in fiscal 2017, but at a slower pace than in 2015 and 2016. We also perceive that state revenue forecasts are subject to greater risk as a consequence of the increased financial market volatility. In addition, market volatility that struck in late June is likely to undermine investment returns for state and local government pension systems with a July 1 fiscal year. The California Public Employees' Retirement System (CalPERS), for instance, reported that its investments earned just 0.6% for fiscal 2016, far short of its 7.5% assumed rate of return. We expect the trend toward weaker investment returns seen in fiscal 2015 and 2016 will translate to upward pressure on pension contributions for state and local governments, further squeezing their fiscal positions.

Overview

- Our revised forecast anticipates slower economic growth in 2016, at 2.0% from 2.3% as of March;
- The risk of recession has increased to 20% to 25% from 15% to 20%;
- Key supports to economic growth remain consumer spending and the housing market;

Continue reading.

27-Jul-2016

Think Tank Warns of Downsides to P3 Noncompete Clauses.

Many developers seek to incorporate noncompete clauses in their P3 agreements to ensure their project investments will deliver an expected rate of return. However, one think tank cautions public agencies to consider what unforeseen changes could occur over the life of a project that may cause these provisions to turn what was a beneficial project into a public liability.

Noncompete clauses are designed to discourage the government from developing projects or policies that could compete for or in other ways reduce revenues the developer expects to earn from the project, the Center for American Progress explains in a July 27 report. Examples include provisions that penalize an agency for building a free road that could lure drivers away from a toll road the developer is building or passage of a law that suddenly imposes a statewide cap on the amount of fees that a toll road operator can impose.

Many developers see noncompete provisions as a way of decreasing their financial risk, regardless of the economic or political changes their public partners may initiate or endure. These agreements lock in financial stability for the private partner but this guarantee may come at the expense of the public partner’s bottom line.

The center cites Chicago’s decision in 2008 to lease many of its parking meters to a private company for 75 years in exchange for a one-time payment of $1.15 billion. Under the deal, the city retained some say over which and how many parking spaces it leased to the company but this flexibility came at a price. The city government agreed to pay a fee for making any policy or regulatory changes that might reduce the company’s parking fee revenues, such as adding public parking spaces close to the leased spaces, reducing parking fines below an agreed-upon level, reducing the number of spaces the company controls or relocating a company-leased parking space from a high- to low-demand area. Under the terms of this agreement, Chicago has thus far paid the firm $31 million for making these types of changes — at a period during which its population, and therefore, its tax base was on the decline.

“This suggests that the city would have been better off simply borrowing the sum it received through the deal. Issuing municipal debt would have provided needed capital at a fixed price without locking the public into an agreement that provides a low-risk, near monopoly position for a private concessionaire,” the center explains.

Because many P3 agreements stretch for decades, “government negotiators are forced to try to foresee all future possible scenarios — an essentially impossible task,” the report warns. The strict nature of many of these agreements lock governments into terms and conditions that can ultimately can work against rather than for the public good.

For this reason, policymakers should avoid noncompete clauses whenever possible. If noncompete clauses are deemed necessary, the state must ensure that the concessionaire accepts a lower rate of return that reflects the reduced revenue risk the provision provides," the center advises.

NCPPP

August 1, 2016

NCPPP Launches Fall Schedule for P3 Bootcamp.

NCPPP is bringing its popular P3Bootcamp training course to five cities this fall. P3Bootcamp offers basic information geared toward newcomers to the P3 field, but also covers current developments and insights tailored for seasoned professionals who are looking for the latest perspectives on the ever-changing P3 landscape.

This intensive day-and-a-half course, taught by seasoned professionals who are experts in their fields, is designed to teach public- and private-sector leaders how and why successful partnerships work and proven strategies for assembling and managing highly effective projects.

Courses will be offered in:

- Phoenix on Sept. 27-28
- Boston on Oct. 11-12
- Miami in November, in conjunction with a to-be-announced NCPPP conference
- Jackson, Miss., on Nov. 16-17
- Chicago on Dec. 13-14

NCPPP also has begun planning P3Bootcamp offerings for early 2017.

For more information about P3Bootcamp, visit the course website.

If you have any questions about the schedule, are interested in sponsoring a course or would like to host a 2017 P3Bootcamp, please contact Deputy Director Paul Kalomiris at pkalomiris@ncppp.org.

July 29, 2016

Social Finance Publishes New Report: Social Impact Bonds: The Early Years.

On July 5th, 2016, the Social Finance global network launched its first white paper on the state of the Social Impact Bond/Pay for Success market. The paper looks back to the launch of the first Social Impact Bond in Peterborough in 2010 to chart the growth of this emerging global movement. Results from the early projects confirm the value of using this innovative financing mechanism to deliver better outcomes for vulnerable individuals.

Read the report.

[Manufacturing Finance: Bonds & Tax Increment Supporting the Industrial Renaissance.]

August 16, 2016
@ 1:00 pm Eastern

With the improving economy, many state and local development finance agencies are reporting a resurgence in manufacturing. However, manufacturing has changed in the past decade and new financing tools are needed to support this opportunity for job growth and investment. This month's CDFA // BNY Mellon Development Finance Webcast Series will unlock the financing tools that support new, expanding and relocating manufacturers. From financing growth opportunities and emerging industries to developing industrial parks and robust infrastructure, this webcast will give you the resources you need to drive manufacturing in your community.

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

REGISTER

A Summary of the Final Regulations on Non-Issue Price Arbitrage Restrictions: Squire Patton Boggs

On July 18, 2016, the Treasury Department published final regulations on non-issue price arbitrage restrictions (the "**Final Regulations**") in the Federal Register. The Final Regulations finalize regulations proposed in 2007 and 2013 (collectively, the "**Proposed Regulations**"). Click here for a copy of the Final Regulations, and read below for a high-level summary of them. We will in subsequent posts be publishing more detailed analysis of specific provisions in the Final Regulations.

As discussed in a prior post, the Final Regulations apply to bonds sold on or after October 17, 2016 (the "**Effective Date**"). References in this blog post to "Prior Regulations" are references to the Treasury Regulations in effect prior to the Effective Date of the Final Regulations.

The Final Regulations make changes to a number of rules scattered throughout the arbitrage regulations. Below, we take them in order, progressing through the Treasury Regulations. To facilitate your review, at the end of the blog is a comparison table showing certain provisions of the Final Regulations next to the parallel provisions in the Prior Regulations.

Continue Reading.

by Joel Swearingen

July 22, 2016

The Public Finance Tax Blog

Squire Patton Boggs

Puerto Rico Extends Legal, Advisory Contacts After Debt Default.

Puerto Rico extended contracts worth $3.2 million with outside restructuring firms as the commonwealth defaulted on nearly $1 billion of principal and interest on July 1 and federal lawmakers passed legislation to oversee the island's finances.

The commonwealth continued agreements with Cleary Gottlieb Steen & Hamilton LLP and Millstein & Co. on July 1, according to a review of contracts provided by the island's Office of the Comptroller. That same day, Puerto Rico missed payments to general-obligation bondholders, the biggest default ever in the $3.7 trillion municipal-bond market.

Cleary Gottlieb, a New York-based law firm, will earn $2 million through June 30, 2017, for its advice as Puerto Rico seeks ways to reduce its $70 billion debt load. The commonwealth's Fiscal Agency and Financial Advisory Authority is set to pay Millco Advisors LP, an affiliate of Washington-based Millstein & Co., $1.2 million for financial expertise, including $450,000 for possible expenses in any potential lawsuit or investigation regarding the firm's restructuring work with the commonwealth. The one-month contract ends July 31. Millstein has a separate $3 million agreement with Puerto Rico that runs through December and would compensate the firm if a restructuring deal is finalized.

Shannon Lynch, a spokeswoman for Cleary Gottlieb, and Jenni Main, Millstein's chief financial officer, declined to comment.

The two firms have been advising Puerto Rico since February 2014 on how the commonwealth can reduce it obligations and negotiating on its behalf with creditors. President Barack Obama enacted on June 30 a law that creates a federal control board to oversee a restructuring of Puerto Rico debt and to monitor the island's budgets. The next day, the commonwealth defaulted on nearly $1 billion due to bondholders, including $780 million on general-obligation bonds.

Cleary Gottlieb contracts totaled $24.9 million and Millstein agreements were $16.4 million through June 30, 2016, according to the Office of the Comptroller.

Bloomberg Business

by Michelle Kaske

July 28, 2016 — 2:02 PM PDT

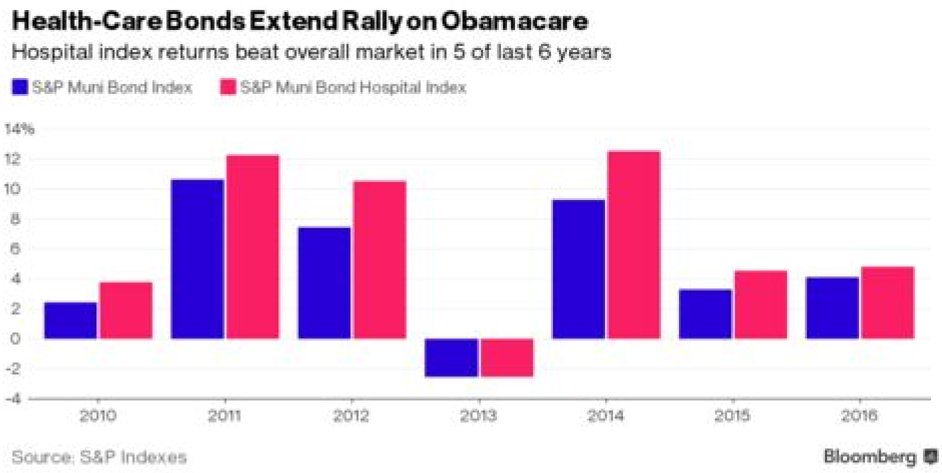
Hospital Bond Rally Undeterred by Latest Threat to End Obamacare.

The $250 billion municipal hospital-bond market is proving immune to Donald Trump's plan to eliminate Obamacare.

Sutter Health is among nonprofits tapping demand for the tax-free debt, with the California chain planning to sell $850 million in new securities this week. Health-care bonds are beating the overall $3.7 trillion municipal market for a third straight year as the federal law expanding medical coverage to Americans improves business. Despite the Republican presidential nominee's goal, the rally has been undaunted as investors hunt for yield while rates hold near record lows.

"There's lots of demand with all of the money pouring in," said Mike Quinn, a managing director at

Chicago-based investment bank Ziegler, which underwrites bonds for hospitals. “This is a really great environment for health-care borrowers to issue tax-exempt money.”



Borrowing costs have tumbled this year with money flooding into the securities amid turmoil in financial markets overseas, pushing the Bond Buyer’s 20-year index to as little as 2.8 percent this month, the lowest since the data began in 1961. Debt issued for hospitals has returned 4.8 percent this year, outpacing the 4.1 percent gain for the market overall, according to Standard & Poor’s indexes.

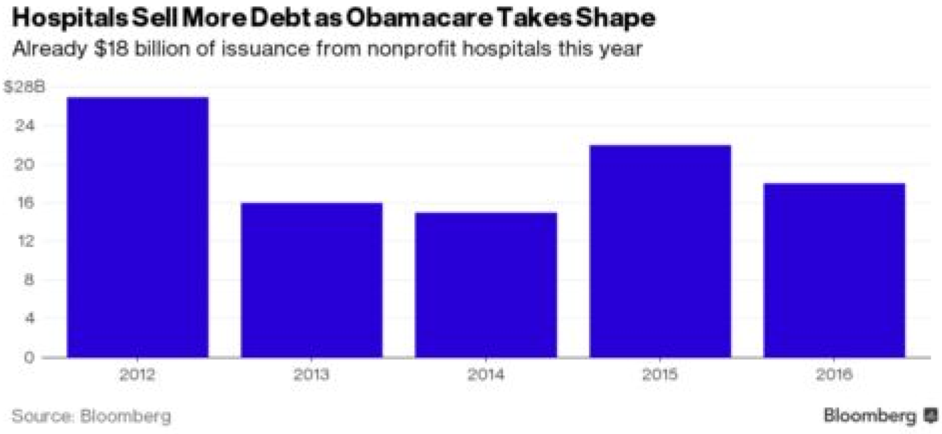
Much of the financial gains from President Barack Obama’s overhaul have already emerged, with about 20 million people gaining coverage through private insurance plans or state Medicaid programs since the passage of the law in 2010. Hospitals are now facing the prospect of reduced reimbursements as the government aims to shift from a model where it pays for services to one where it rewards outcomes.

Republicans have repeatedly failed to repeal the law in Congress, and court challenges to its key provisions were turned away by the U.S. Supreme Court. While Trump has pledged to ask Congress to scrap it as soon as he takes office, doing so outright would be difficult politically given how many Americans are now covered by it, Morgan Stanley analysts said in a July 12 report.

For S&P Global Ratings and Moody’s Investors Service, U.S. hospitals will manage the risks without undermining their credit ratings. Both companies have stable outlooks on the sector, meaning downgrades and updates will be roughly equal.

“We’re about to enter a period with more uncertainty, but the organizations have very strong balance sheets and operations,” said Kevin Holloran, an analyst at S&P. “The health-care system in America has proven over time to be very resilient and successful.”

After sitting on capital plans as implementation of Obamacare started, hospitals ramped up borrowing last year to retire more costly debt, with sales this year already exceeding those in 2014 and 2013.



Sutter, which is issuing securities Tuesday through the California Health Facilities Financing Authority, is using the proceeds to refinance higher-cost debt and to help fund two new hospitals in San Francisco. Based in Sacramento, it runs 28 acute-care facilities, two recovery hospitals, four medical foundations and 15 home health-care locations.

“We have a consistent operating performance and excellent long-term stewardship of our balance sheet,” said Svend Ryge, Sutter’s treasurer.

Moody’s ranks the debt Aa3, the fourth-highest grade, citing its stable cash flow and its strong presence in California.

The breadth of the company’s business in California is a draw, said Todd Sisson, a debt analyst in Charlotte, North Carolina, for Wells Capital Management, which owns Sutter bonds among its $40.5 billion in municipals. While the company may buy some of the new securities, it’s limiting holdings of health-care debt because of the price run up and cuts providers face after reimbursement changes begin next year, he said.

“We’ve got considerable headwinds,” Sisson said. “The sector’s outperforming at the same time we’re seeing the risk increase.”

Sutter will see Medicare payments actually increase annually through 2019, bond documents show. Still, “estimates of future impact would not be reliable” from later calculations of reimbursements, according to the statement.

The industry has “immunity” to uncertainty, said S&P’s Holloran. “People still get sick, go to the doctor, get surgeries.”

Bloomberg Business

by Molly Smith and Romy Varghese

July 25, 2016 — 2:00 AM PDT Updated on July 25, 2016 — 6:46 AM PDT

[What America Might Look Like If These 6 Issues Are Neglected.]()

America's challenges will get worse without the support and commitment of the next administration to city issues

For over a year, the nation – and the world – has been wrapped up in the contest for the highest office in the land. We've seen 17 Republican presidential hopefuls whittled down to a businessman billionaire. We've seen a political revolution stopped short by a former Secretary of State and First Lady. We've seen mean tweets and rowdy stump speeches, #NeverTrump and a Speaker's endorsement, and a lot about those damn emails.

It's been a wild ride for sure. But let's be frank: it's time to get serious. At the National League of Cities (NLC), our goal is to empower local leaders to do what they do best: create environments that support families and businesses, and strengthen local economies. Cities and towns need a strong partner in the next administration. The candidates must engage in dialogue reflective of how government actually works. We need less talking points, and more policy, or the problems being ignored in 2016 will look easy by the year 2020. Here's what's at stake if we don't:

1. Infrastructure Will Continue to Decline, Hurting American Competitiveness

The future of American infrastructure looks grim. The American Society of Civil Engineers (ASCE) gave the U.S. a D+ for overall infrastructure in 2013. From energy to hazardous waste, the U.S. is just points away from a failing grade in numerous categories. One in nine bridges is structurally deficient; 45 percent of American households have no access to public transportation; an estimated 240,000 water main breaks happen each year – just to name a few challenges.

Today, 80 percent of Americans live in cities, a number which is projected to increase in the next decade. Surging population growth will put stress on already strained infrastructure, causing more damage and hastening decay, even by 2020. While municipal governments are responsible to their constituents, they are not empowered to raise the revenue necessary to invest in long-term solutions. Cities need a strong partner in the next administration to keep infrastructure from falling into further disrepair.

2. Affordable Housing Will Be Increasingly Hard to Find

The market for affordable housing in the U.S. is rapidly shrinking. According to the Joint Center for Housing Studies, the number of new renters will outpace the number of new homeowners significantly over the next 15 years, raising rental property values and reducing the amount of overall affordable housing. This comes at a time when funding cuts have limited federal and local government investments in the construction of new affordable housing.

Meanwhile, as metro-areas continue to grow, moderate to low-income homes will be forced to find new housing accommodations or contribute more of their salary to rent. In 2013, over half of families with low to moderate-incomes spent over 30 percent of their income on rent, leaving less money for essentials like groceries and healthcare, not to mention savings accounts, retirement funds or other wealth-building systems. The next administration must work with cities to ensure safe, affordable and accessible housing remains a core element of the American Dream.

3. Natural Disasters Will Become More Challenging to Manage

Climate change affects cities differently across the U.S., but as average temperatures and sea levels rise, environmental and natural challenges will become more frequent and more devastating. Recently, Hurricane Sandy left between $10 and $15 billion in damages to infrastructure and private property. Cities located in the Gulf and along the Atlantic face threats to basic amenities like clean water and energy, a sector the U.S. Department of Energy reported will be particularly vulnerable to future storm damage.

In a different part of the country, the National Climate Change Assessment found that changes in rainfall and high temperatures will affect the lives and economies of 56 million people in the South and Southwest. Drought has decimated water supplies and changing weather patterns will make it difficult to predict precipitation, increasing competition for resources amongst cities. To prevent further loss, cities need significant investment in climate-resilient architecture and construction.

4. Local Economies Will Lack Skilled Workers to Drive Economic Growth

There are two different storylines playing out in cities: economic conditions are improving for some, but stagnating or worsening for others. While addressing rising inequality may require multiple policy solutions, what we do know is the changing nature of the economy, from advances in technology to shifts in the global market, underscore the need for proactive and effective workforce development.

According to city leaders, new businesses and business expansions are the most widespread positive drivers of local economic health. However, labor force challenges threaten to stymie this business growth and the economic benefits that would follow. City leaders report that the misalignment between available workforce skills and the skills employers' need is the most widespread concern facing local economies. This concern will only grow if we fail to tackle the challenge.

5. The Opioid Epidemic Will Devastate More Families

Drug overdose is the leading cause of accidental death in the U.S., with 47,055 lethal drug overdoses in 2014. Opioid addiction is driving this epidemic, with 18,893 overdose deaths related to prescription pain relievers, and 10,574 overdose deaths related to heroin in 2014 (CDC 2015 Report). From 1999 to 2008, overdose death rates, sales, and substance use disorder treatment admissions related to prescription pain relievers increased in parallel. The overdose death rate in 2008 was nearly four times the 1999 rate; sales of prescription pain relievers in 2010 were four times those in 1999; and the substance use disorder treatment admission rate in 2009 was six times the 1999 rate.

By 2020, if we don't stem the tide, these troubling trends will continue. In the U.S., we have reduced the number of smokers, the number of teen pregnancies, and the number of new HIV/AIDS infections over time. The lessons from these public health challenges can be applied to the present opioid drug epidemic. To make real progress in the fight against opioid addiction, all levels of government must work together in partnership.

6. More Lives Will Be Lost to Gun Violence

The U.S. has the highest homicide-by-firearm rate of any developed country. In 2015 alone there were 52,606 gun-related incidents resulting in 13,344 deaths. While Congress fails to address this epidemic, communities suffer the violent consequences. In 2020, we can expect wide-spread gun violence to be a persistent tragedy of life in America if don't take action.

To reduce gun violence, legislation that regulates the possession of firearms is essential. NLC supports universal background checks on purchasers of guns, banning the sale of firearms to those on the terror watch list, and a 30-day waiting period for the purchase and transfer of all firearms. Within the past four years, we have witnessed tragedies in Newtown, CT, Aurora, CO, and Orlando, FL. There is no evidence that continued inaction from the federal government will end the violence.

If the status quo is maintained, we will see continued loss of life in our communities.

The challenges cities face in the next four years are immense, but not insurmountable—and they can't be solved by one level of government. In the next president, we need not only a leader, but a listener and collaborator. Whether Trump or Clinton, the future of our nation depends on what happens in cities.

Show your support and sign onto our Cities Lead campaign.

National League of Cities

by Carolyn Coleman

About the Author: Carolyn Coleman is NLC Senior Executive and Director of Federal Advocacy. Follow her on twitter at @CColeman_Cities.

Where Are the P3s We Need?

We ought to be doing what many other countries are doing: making far more use of public-private partnerships for infrastructure.

Public-private partnerships may seem like the latest innovative way to finance crucial public needs, but P3s have been around for a while — quite a long while. In a recent Governing Guide to Financial Literacy, Justin Marlowe describes a Revolutionary War public-private partnership as a key factor in George Washington's defeat of the British. After a grim winter spent at Valley Forge, where soldiers starved and died of disease, the Continental Congress authorized a reorganization of the army's supply system and gave private contractors wide latitude in managing the logistics.

As successful as this arrangement was early in our history, we make far less use of such partnerships today than many other developed countries do. A study by the U.S. House Transportation and Infrastructure Committee found that while more than $61 billion was spent on highway P3s in this country from 1989 to 2013, that amount represented just 1.5 percent of the costs of all highway projects completed during that period.

Why such a small percentage? Well, it isn't for lack of need. A 2015 Governing Institute survey found that half of state and local public officials believe lack of infrastructure investment is their most significant financial problem. Traditionally, governments have tapped tax-exempt bond markets to provide low-cost capital. But access to this market can be restricted for a variety of reasons, including limited bonding capacity or poor credit ratings, so P3s have the potential to bring in private-sector money to jump-start projects that might not happen otherwise. In countries that make strong use of them, P3s typically constitute about 5 to 10 percent of overall investment in infrastructure.

To be sure, there are hurdles to creating public-private partnerships. For starters, they require authorizing legislation. While most of the early P3s centered on transportation (California was first to pass legislation in 1989, followed by Florida and Missouri the next year) projects today can cover virtually every type of public infrastructure. P3 legislation varies state to state, and the National Conference of State Legislatures provides a detailed table of the specific types of authorized projects (including highways, toll bridges, buildings, and water and sewer systems) for each jurisdiction. As of this January, 33 states, Puerto Rico and the District of Columbia had enacted some form of legislation enabling P3s.

Given the gap between existing infrastructure needs and available funds, it's not surprising that a number of recent papers and reports offer analyses and recommendations to help catalyze the use of P3s. This May, the Bipartisan Policy Center issued "Bridging the Gap Together: a New Model to Modernize U.S. Infrastructure," which outlines the core principles of a new American model for investing in infrastructure centered on P3s. Those principles include public benefits identified and clearly stated; investment decisions based on a full life-cycle evaluation; project benefits, cost and risks completely accounted for and made publicly transparent; sharing by public- and private-sector partners of risks, costs and benefits; and comparing the costs of action against the costs of not investing.

In a recent paper, the West Coast Infrastructure Exchange points out that financing is just one of an entire set of project costs. The report segments these costs across the entire lifecycle of a project and describes how, through incentives, a focus on performance can integrate design, construction and maintenance responsibilities and counterbalance the higher cost of private capital to reduce overall project budgets.

That paper highlights British Columbia, with a relatively long history of using this performance-based P3 model, as a best-practice example: Since 2002, the province has completed 45 projects totaling $17 billion (with over $7 billion from the private sector). All of the projects were delivered on or before their due dates, and none had cost increases stemming from design or construction mistakes.

To be sure, developing a public-private partnership that's likely to succeed requires considerable public-sector expertise. But there is a growing body of resources available to government officials. Organizations such as the National Governors Association and the American Association of State Highway and Transportation Officials, for example, offer interactive courses and peer-to-peer workshops on infrastructure financing. The U.S. Department of Transportation offers technical assistance and resources for states. And three states — Florida, Texas and Virginia — have established dedicated agencies to help promote and evaluate P3 opportunities. Virginia has long been considered a leader in this approach, and its website is worthy of review.

Clearly there's a case for more use of P3s and other innovative approaches to meeting our growing infrastructure needs. The American Society of Civil Engineers' last infrastructure report card, issued in 2013, gave a grade of D-plus to the overall condition of the nation's infrastructure, citing conditions that are well known not only to public officials but also to the public: a backlog of overdue maintenance and a pressing need for modernization. ASCE's next report card is due out this year. Will our grade be better? If not, that will certainly drive home the point that doing nothing has a cost.

GOVERNING.COM

BY BOB GRAVES | JULY 26, 2016

Why the MSRB is Shortening its Dealer Closeout Timeframes.

WASHINGTON – The Municipal Securities Rulemaking Board wants to cut in half a proposed requirement to mandate municipal securities transactions be closed out within 20 days of settlement after dealer groups pushed for the shorter timeframe.

The MSRB proposed a move to a 10-day closeout requirement, with the option for a one-time 10-day extension if the buyer of the municipal security consents, in a partial amendment with the Securities and Exchange Commission. The 10-day requirement, which the MSRB proposed on Monday, would join other proposed changes to MSRB Rule G-12 on uniform practice that the MSRB filed with the SEC for approval on May 11.

“Shortening the close-out period from 20 calendar days, as stated in the original proposed rule change, to 10 calendar days will further reduce the risk and cost associated with interdealer [failures],” the MSRB said in its amendment.

The partial amendment mirrors suggested alterations that the Securities Industry and Financial Markets Association and Bond Dealers of America had proposed.

“We emphasize in our [comment] letter and the MSRB states in its amendments that failed transactions don’t get better with age,” said Leslie Norwood, associate general counsel and co-head of munis for SIFMA. “To that end, we are very pleased that the MSRB is taking this step to give investors greater certainty and reduce the risk and cost for regulated broker-dealers.”

John Vahey, director of federal policy for BDA, said BDA’s members “are pretty satisfied with the way the rulemaking is going.”

Under the MSRB’s current Rule G-12, there is no specific time requirement for closeouts, only a recommendation that any dealer that fails to deliver securities to another dealer by the agreed upon settlement date close out those interdealer trade failures within 90 days of the settlement date.

When the MSRB first proposed changing the rule, it recommended there be a requirement that failures be closed out no later than 30 days after settlement. SIFMA responded to that proposal by suggesting the MSRB instead require a closeout within 15 days of settlement with the possibility of an extra 15 days if the buyer consents.

The MSRB then changed its proposal to require a closeout within 20 days after the settlement date, citing both concerns that smaller dealers would be overburdened by a shorter timeline and a desire to ensure all dealers operated under the same, fixed timeline.

SIFMA said the concerns weren’t warranted and again argued the time period was too long. Both SIFMA and BDA then recommended the 10-day timeline with the possibility of a 10-day extension.

The dealer groups also brought up other issues, with SIFMA saying it would be “extremely helpful” to know whether a dealer should have the authority to close out a position by returning it to the seller when a customer with a self-directed account won’t agree to do so. BDA asked for further clarification on the closeout process for accounts transferred to a dealer through the Automated Customer Account Transfer Service (ACATS). ACATS facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

The MSRB said in a footnote in its partial amendment that both concerns are “beyond the scope of the original proposed rule change and current proposed rule change.”

In addition to the changes to the timeline for resolving interdealer failures, the MSRB is also asking the SEC to approve proposals that would allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business-day window. The MSRB proposal would also change the earliest day for execution to four days after electronic notification instead of the rule’s current 11 days after notice by telephone.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a “buy-in” and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The MSRB plans to give dealers a 90-day grace period after SEC approval to come into compliance with the changes.

The Bond Buyer

By Jack Casey

July 26, 2016

Ohio Airport Financing May Depend on New Political Subdivision Rule.

WASHINGTON – Four Ohio Congressmen are raising concerns that the Internal Revenue Service and Treasury Department’s proposed definition of a political subdivision would jeopardize funding for a $35 million terminal improvement project planned for Akron-Canton Airport.

The project is in the design phase, and will require bond funding for construction to begin as early as the spring or summer of next year, Rick McQueen, president and CEO of the airport, told The Bond Buyer on Monday. The IRS’ new definition of political subdivision could have national implications, he said.

Reps. Jim Renacci, R-Ohio; Bob Gibbs, R-Ohio; Tim Ryan, D-Ohio; and Dave Joyce, R-Ohio, wrote a two-page letter to the IRS during the agency’s comment period earlier this year. Should the rules be finalized in their current proposed form, the Congressmen said, Ohio’s regional airports – specifically the Akron-Canton Airport – may be hampered in their ability to issue tax-exempt bonds to fund infrastructure improvements.

“If at any time the IRS determines that the issuer is operating in a way that either does not provide a significant public benefit, or that provides more than an incidental benefit to any private party, then the status of all of the issuer’s bonds issued after the effective date of the regulations would be in jeopardy,” the Congressmen wrote.

McQueen said that the airport wrote to the IRS earlier this year asking the agency to clarify its issues with airport authorities under current regulations. The IRS responded roughly a month and a half ago with a standard letter that they would be reviewing the airport’s comments, he said.

“It’s not just airport authorities impacted in the state of Ohio, but also other multi-jurisdictional boards throughout the country,” McQueen said. “There are a lot of people that could be impacted by this. My concern is the organizations that aren’t aware of this potential change.”

Whether an entity qualified as a political subdivision has historically been based on whether it had the right to exercise a substantial amount of at least one of three sovereign powers: eminent domain, taxation and policing.

But the now-controversial regulations the IRS and Treasury proposed in February would add two new requirements: political subdivisions must serve a governmental purpose “with no more than an incidental private benefit” and they must be governmentally controlled.

In their two-page letter to the IRS and Treasury, the Congressmen said they were concerned that the Akron-Canton Airport’s “critical” $35 million terminal improvement project could be “negatively impacted” by the new requirements.

The Akron-Canton Airport, located roughly halfway between the two cities with portions in both Summit and Stark counties, is the only commercial airport in Ohio governed by an airport authority.

Its eight-member board includes four members appointed by the Stark County Commissioners and four appointed by the Summit County Executive and approved by council.

In their letter to the IRS, the Congressmen stress that most of Ohio’s airport authorities, including that of Akron-Canton Airport, control their own budgets rather than the airport’s appointing authorities or the counties they operate in.

It is an independent political subdivision of the state and not a component unity of any other government entity, according to the congressmen. Because both counties the airport lies in appoint an equal number of board members, the authority “does not appear to meet the single entity control requirement,” they added.

They said that many Ohio airport authorities issue tax-exempt bonds for purposes that could be construed as private benefit, such as parking garages that could also benefit the private sector. Under current IRS and Treasury regulations as well as Ohio state law, these types of incidental private benefits satisfy the public purpose requirements, making any related private benefit permissible, the congressmen said.

“We are concerned … with the IRS’s future interpretation of this new ‘limited private benefit’ test, which may also pose a federal question and may not follow state law,” the letter read.

McQueen said the situation is urgent for the Akron-Canton Airport project.

“We’re dealing with a building that is 54 years old,” McQueen said. “We will need to have bond capabilities to fund this. It’s very difficult to come up with that money upfront to build the project.”

The terminal improvement project is part of a 20-year, $240 million master plan approved by the Federal Aviation Administration in 2015. The last bonds issued by the Akron-Canton Regional Airport Authority came in 2007, when $16.2 million in bonds were issued to finance terminal and gate improvements, according to the Municipal Securities Rulemaking Board’s EMMA website.

McQueen said he couldn’t provide a cost estimate comparing the airport’s ability to issue bonds under current regulations versus the proposed rules.

“I can’t tell you the difference today if it were to be a tax-exempt versus non tax-exempt funded project, but obviously when you’re doing a governmental project you try to be as fiscally responsible as possible,” McQueen said. “But it would increase the cost for debt service no doubt.”

The proposed rules have largely been met with opposition from groups including the Government Finance Officers Association and the Securities Industry and Financial Markets Association, which have said the rules could potentially upend the muni market. Several port and airport authorities, water and sewer issuers, and utility associations were also among those that submitted written comment to the IRS expressing concerns over what the proposed rules could mean for their tax-exempt status.

The IRS and Treasury received 132 comments during the public input period, which lasted from February through late May. The agencies held a public hearing on June 6, where several market groups called for the withdrawal or re-proposal of what they felt were unnecessary or unfair proposed rules.

During the hearing, Thomas Devine, general counsel for the Airports Council International – North America, said what he called "non-problematic" entities like airport authorities had a "bullseye" on their backs.

John Cross, the Treasury Department's associate legislative tax counsel, has said that the new rules were proposed in response to concerns over who was controlling political subdivisions. Despite IRS audits that found some private entities were wielding significant control over political subdivisions, Cross said that the agency is not targeting airports.

IRS officials could not be reached for comment Monday as to when the proposed regulations could be finalized.

The Bond Buyer

By Evan Fallor

July 25, 2016

The Municipal Bond Industry Responds to Tax Foundation's Recent Paper.

Last week, the Tax Foundation released a paper titled, "Reexamining the Tax Exemption of Municipal Bond Interest," which argued that lawmakers should consider reforming the current tax treatment of municipal bond interest. Apparently, the municipal bond industry is less than thrilled with our report: yesterday, *The Bond Buyer* published an article titled, "Why the Tax Foundation Report on Munis is 'Woolly-Headed,' " which quotes several individuals who take issue with our analysis.

Here are a few selections from the article:

> Advocates for maintaining the tax-exempt status of municipal bonds are firing back after a Tax Foundation report last week concluded lawmakers should consider limiting, reforming or eliminating the muni exemption…
>
> "This is a classic woolly-headed, ivory tower analysis," said Chuck Samuels, a member of Mintz, Levin, Cohn, Ferris, Govsky and Popeo. "Tax exempts might cause state and local governments to over-invest in infrastructure? Does anyone feel like their pot holed, overcrowded roads, mass transit and airports are over-invested?"…
>
> John Vahey, director of federal policy for Bond Dealers of America, also disagreed with the opinion that municipalities may be prone to overinvesting in infrastructure. "We think the notion that there is an overinvestment in infrastructure in the U.S. generally right now is a fallacy," Vahey said. "You just need to point to the glaring need to rebuild roads and bridges as well as

grades and reports by engineering organizations that analyze the condition of infrastructure."

Most of the negative reactions in the article seem to be directed at one specific argument in the paper: that the tax exemption of municipal bond interest could lead state and local governments to overinvest in infrastructure. To illustrate this concern: it would be socially wasteful for a state government to spend $10 million on a highway project that delivers only $9 million in economic benefits, but the state government might undertake such an investment if the federal government provided it with a $1.5 million subsidy, in the form of a tax exemption.

As an aside, I'll note that this is not an imaginary, theoretical concern. State and local governments have spent over $6 billion on pro football stadiums since 1995, despite questionable public benefits. There is an entire book about how states and localities spend far too much money building new convention centers.

But the individuals quoted in *The Bond Buyer* article seem entirely unconcerned with the possibility that states and localities might invest in infrastructure projects with high costs and low benefits. Instead, they are worried about the opposite scenario: that state and local governments are currently passing up urgent opportunities to invest in infrastructure projects with high benefits and low costs.

Here's my question: if there's a "glaring need" for more infrastructure investment, why aren't state and local governments already filling that need? If there are urgent infrastructure projects with high potential benefits and low costs, why do state and local governments need a federal subsidy to invest in them?

I suspect that the reason why state and local governments aren't investing as much in infrastructure as Chuck Samuels and John Vahey would like is because *state and local voters aren't willing to foot the bill*. And there's the rub.

Supporters of the federal tax exemption of municipal bond interest are essentially making the case that 1) state and local voters are missing a great opportunity to reap large economic benefits at minimal costs, and that 2) the federal government should step in to nudge their decision-making in the right direction, by continuing to subsidize their infrastructure spending.

This is an entirely valid argument, but it assumes that the federal government has a better understanding of what infrastructure should be built than state and local voters do. If this is the case, why have the federal government subsidize state and local infrastructure projects? Why not argue for the federal government to increase its own direct spending on infrastructure?

In other words, it is either the case that 1) the federal government has a better idea of what infrastructure should be built, and it should purchase the infrastructure itself, or 2) state and local governments have a better idea of what infrastructure should be built, and the federal government should not subsidize them. Either way, a federal tax exclusion for municipal bond interest seems like an unideal policy.

Notably, no one quoted in *The Bond Buyer* article yesterday took issue with the other central claim in the Tax Foundation's report: that the current tax exemption of municipal bond interest is a poorly designed, inequitable, and inefficient tool for subsidizing state and local infrastructure.

The Tax Foundation

By Scott Greenberg

July 27, 2016

[Many U.S. States, Cities, Missing Chance of Lifetime to Borrow.]

NEW YORK/SAN FRANCISCO — The 1923 middle school building in Oregon's Corbett School District is so old that horses and trailers were used to dig the basement. It floods every winter, the building has no sprinkler system, and there is asbestos and lead paint in some spots.

Yet this May, voters struck down, for the fourth time, a plan to sell bonds that would pay for a new building, passing up an opportunity to finance the new school at a cost that may never be so low again.

Corbett is not alone. The amount of debt sold so far this year in the $3.7 trillion market for U.S. municipal and state debt is less than in 2015 despite record-low borrowing rates.

The yield on top-rated municipal 30-year bonds hit a bottom of 1.93 percent on July 6. That is far below the 3.27 percent of a year earlier and even below the comparable Treasury yield thanks to an income tax exemption granted to U.S. investors on the interest earned on most muni bonds.

There are several reasons why municipalities are slow in exploiting what could be a rare window of opportunity created by historically low global rates and investors' intense hunt for higher returns.

For one, municipal borrowers have to clear hurdles including those at the ballot box, which makes it hard for them to respond quickly to changing market conditions.

Some communities are also still aching from recession-era budget cuts and remain reluctant to take on new debt service costs, however low they may be. Some are hemmed in by sluggish economies, big pension liabilities – which crowd out new projects – or both.

"Apart from the very large states and cities that typically are the leaders … (others) are still not sure that they have the backing of the voting population or the economic resources to expand their spending," said VanEck Global portfolio manager James Colby, who buys municipal debt for the firm's muni exchange traded funds.

For example, voters in Travis County, Texas, narrowly rejected a $287 million bond that would finance a replacement for an old, overcrowded courthouse in Austin, in part because of concerns that the chosen location might be too expensive.

New Jersey halted many state-funded road and bridge projects this month after lawmakers failed to extend the program that funds them because of a continuing battle over how to hike gasoline taxes to pay for new transportation spending.

Dysfunctional politics and fiscal strain also derailed last year's budget in Illinois, which was a full year late, and in Pennsylvania, where a nine-month budget impasse left public schools struggling to stay open.

LESS DEBT

As a result, municipalities and states issued $227 billion in debt between January 1 and July 19, down 1.6 percent compared with the same period of 2015, according to Thomson Reuters data. The lion's share of tax-exempt debt has been issued to refinance older bonds at lower rates, rather than fund new projects. (Graphic: http://tmsnrt.rs/29MmnHb)

Yet besides big issuers, in economically robust states, such as California and New York, it is America's most troubled borrowers that have increased new borrowing.

Some are selling bonds now because buyers who previously shunned them are piling in looking for extra yield. Other communities must borrow to cover running costs or finish essential projects.

With negative yields in Germany and Japan and a global hunt for fixed income assets because of market volatility, some foreign investors are also buying U.S. municipal bonds, even though they do not get any tax benefits.

"We're the best name in town right now in a very low-yield environment," Blair Ridley, municipal bond portfolio manager at Deutsche Asset Management, said during a recent webinar.

Municipal bond funds recorded consecutive net inflows for the last 42 weeks, according to Lipper data, with inflows this year so far reaching $36 billion, compared with $13.8 billion for the whole of 2015.

Yet prospective issuers still face voter resistance.

"It's a result of the credit crisis, an aversion to debt, and trying to right size the balance sheet," said Peter Hayes, head of municipal bonds at BlackRock.

In Corbett, since the $11.9 million bond proposal was voted down, officials in the 1,100 student school district 20 miles east of Portland are now considering a costlier private loan that does not need voter approval.

"I keep telling people the interest rates are so low," Superintendent Randy Trani said. "But it's not happening."

Some voters did not want to demolish a historical building. Many are also over the age of 50 and are averse to more costs, Trani said.

"They have no connection to the school at all. It's hard to get them to vote to pay more taxes."

By REUTERS

JULY 26, 2016, 6:18 A.M. E.D.T.

(Reporting by Hilary Russ in New York, Robin Respaut in San Francisco and Karen Pierog in Chicago; Additional reporting by Rory Carroll in San Francisco; Editing by Daniel Bases and Tomasz Janowski)

Atheist Group Sues Kansas City, Missouri, Over Baptist Convention.

(Reuters) – An atheist group has sued Kansas City, Missouri, charging that plans to use $65,000 in tourism tax dollars to assist in an upcoming Baptist convention violates guarantees in the U.S. Constitution separating church and state.

The lawsuit, filed on Friday in U.S. District Court by American Atheists Inc against officials including Kansas City Mayor Sly James, asks a federal judge to block the city from spending taxpayer dollars to support the event.

It contends that using tax dollars to help Modest Miles Ministries Inc, prepare for the National Baptist Convention USA Inc, would advance a religious purpose in violation of American Atheists' right to be of state-supported religion, as provided for under the "establishment clause of the First Amendment of the U.S. Constitution.

In April, the city approved to pay $65,000 in municipal funds from the Neighborhood Tourist Development Fund to the ministry to help transportation costs, the lawsuit said. The conventions is scheduled to be held Sept. 5-9 in Kansas City.

Kansas City spokesman Chris Hernandez declined to comment on the pending lawsuit. But a contact has not been signed for the funds to be released, and standard contract language excludes religious use of any funding, Hernandez said.

About 10,000 people are expected to attend the convention, which was previously held in the city in 2010, 2003 and 1998, the Kansas City Star reported.

By REUTERS

JULY 26, 2016, 5:33 P.M. E.D.T.

(Reporting by Justin Madden in Chicago; Editing by Scott Malone and Alan Crosby)

Chicago Deficit Narrows Despite Pension Uncertainty.

CHICAGO — Chicago's budget deficit could reach a 10-year low next year despite unresolved funding questions for its largest and most underfunded pension system, according to an annual financial analysis released by the city on Friday.

The report projected that fiscal 2017 expenditures will exceed revenues by $137.6 million, representing a 40 percent reduction from 2016 and the narrowest gap since 2007, when the city deficit stood at $64.5 million.

"This is the result of hard work and difficult decisions, which have put Chicago on path towards long-term financial stability after decades of mismanagement," Mayor Rahm Emanuel said in a statement.

Emanuel's administration attributed the improvement from the fiscal 2016 deficit of $232.6 million, in part, to "health-care cost reductions, lease consolidations and energy efficiency programs." An infusion of new dollars also will help cover 2017 obligations for three of the city's four pension funds.

Last fall, the city approved a record $543 million property-tax increase to be applied to Chicago police and fire pension funds, and won final approval last spring to spread out state-mandated payments despite opposition from Republican Governor Bruce Rauner.

In May, Emanuel reached an agreement with city laborers to steer $40 million per year from a 2014 increase in the Chicago's 911 telephone surcharge to save their pension fund from insolvency.

A plan to rescue the Municipal Employees' Pension Fund from insolvency has not been finalized. Covering more than 50,000 active and retired city workers, the municipal fund is forecast to run out of money within 10 years and carried $18.6 billion in unfunded liabilities at the end of 2015, up from $7.13 billion in 2014.

In June, Standard & Poor's warned the city, which had $33.8 billion in unfunded liabilities spread over all four pension funds, could face additional bond-rating downgrades unless it makes comprehensive changes to the municipal fund.

In a conference call with reporters, Chicago Budget Director Alex Holt predicted on Friday an announcement regarding a new revenue source for the municipal fund would be forthcoming within the next two weeks but declined to offer details, saying only "everything is on the table."

The 2017 financial analysis released Friday forecast that budget gaps would continue through fiscal 2019, when the city's deficit could range between $144.1 million and $780.1 million.

By REUTERS

JULY 29, 2016, 4:33 P.M. E.D.T.

(Reporting by Dave McKinney; Editing by Jonathan Oatis)

Cash-Strapped Chicago Schools Pay Big Premium in $150 Million Bond Deal.

CHICAGO — Chicago's cash-starved public schools borrowed $150 million to pay for capital projects in a privately placed deal with a yield of 7.25 percent, the nation's third largest school district announced on Friday.

The 30-year bonds were priced 513 basis points over Municipal Market Data's benchmark triple-A scale, indicating Chicago Public Schools continues to pay a big penalty to sell debt.

The system said the unlimited tax general obligation bonds that mature in December 2046 would not be used to balance CPS' budget.

J.P. Morgan purchased the bonds, which were sold under an existing authorization from CPS' school board.

"Today, CPS sold $150 million in bonds for capital projects at a significantly more favorable interest rate than its last issuance," Ron DeNard, CPS' senior vice president of finance said in a prepared statement. "These bonds will fund critically needed capital work."

CPS' last bond sale for $725 million in February represented one of the biggest "junk" bond offerings the municipal market has seen in years and carried an 8.5 percent interest rate.

That yield for bonds due in 2044 with a 7 percent coupon was slightly below the 8.727 yield for 21-year bonds in the municipal market's last big junk bond sale – a $3.5 billion Puerto Rico issue in March 2014.

The district said it would make public a preliminary official statement on the deal announced on

Friday by Sept. 2.

CPS faces a lingering $300 million deficit for the fiscal year that began July 1. The system also may lose an additional $215 million in state funding that was approved by Republican Governor Bruce Rauner and the Democratic-led state legislature in June on the condition a statewide pension-reform package pass by January.

There has been no tangible movement on a deal to reel in pensions for state government workers and retirees and teachers after a May 2015 Illinois Supreme Court ruling that invalidated a 2013 pension-cut law opposed by public-sector unions.

By REUTERS

JULY 29, 2016, 6:03 P.M. E.D.T.

(Additional reporting by Karen Pierog; Editing by Bernard Orr)

SIFMA Submits Comments to the SEC on FINRA and MSRB Proposed Rules.

SIFMA submitted comments to the Securities and Exchange Commission (SEC) on the Financial Industry Regulatory Authority's (FINRA) Rule Filing SR-FINRA-2016-024 and the Municipal Securities Rulemaking Board's (MSRB) Rule Filing SR-MSRB-2016-09. MSRB and FINRA are proposing to create new Real-time Transaction Reporting System (RTRS) and Trade Reporting and Compliance Engine (TRACE) academic historical trade data products that would include anonymized dealer identifiers.

The RTRS and TRACE Academic Data Products would be made available only to institutions of higher education. SIFMA continues to support the MSRB's and FINRA's efforts to improve market transparency to investors and promote regulatory efficiency. Both FINRA and the MSRB have made a number of modifications to the proposals to address our concerns and we have provided comments on those modifications.

While we appreciate FINRA's and the MSRB's responsiveness on a number of aspects, we believe that the proposals, in some cases, could provide additional protections without impeding the goals of promoting academic access and research. SIFMA's comments include concerns about the scope of data available, data aging requirements, anonymizing dealer identities, and concerns about the potential for reverse engineering.

Read the letter.

July 28, 2016

- IRS PLR: City's Purchase of Interest in Electric Generating Facility Won't Result in Private Business Use of Bonds.
- IRS Releases Final Arbitrage Regulations (Unrelated to Issue Price): Squire Patton Boggs
- Municipal Bank Loans and Direct Placements SIFMA Seminar: October 25, NYC
- Customizing EMMA® Issuer Homepages.

- MSRB Files Amendment to Proposal to Modernize Close-Out Procedures.
- Hawkins Advisory: (Annual Qualified Mortgage Information)
- Fed's Final Treatment of Municipal Securities as High-Quality Liquid Assets Disappoints the Industry: Butler Snow
- Bill to Raise Issuer Limit For Bank-Qualified Bonds Offered in Senate.
- And finally, Ingrate Superheroes is brought to you this week by *Kinsey v. City of New York*, in which Mr. Kinsey climbed a five-story building, jumped, and lived to sue the City of New York for allowing him to escape an ambulance and engage in said stunt. Incroyable all around. Your editor's superhero alter-ego is Punctual Man. He's the first person on the scene, but then just stands there terrified and, let's face it, probably wets himself.

Technology Is Monitoring the Urban Landscape.

SAN FRANCISCO — Big City is watching you.

It will do it with camera-equipped drones that inspect municipal power lines and robotic cars that know where people go. Sensor-laden streetlights will change brightness based on danger levels. Technologists and urban planners are working on a major transformation of urban landscapes over the next few decades.

Much of it involves the close monitoring of things and people, thanks to digital technology. To the extent that this makes people's lives easier, the planners say, they will probably like it. But troubling and knotty questions of privacy and control remain.

A White House report published in February identified advances in transportation, energy and manufacturing, among other developments, that will bring on what it termed "a new era of change."

Much of the change will also come from the private sector, which is moving faster to reach city dwellers, and is more skilled in collecting and responding to data. That is leading cities everywhere to work more closely than ever with private companies, which may have different priorities than the government.

One of the biggest changes that will hit a digitally aware city, it is widely agreed, is the seemingly prosaic issue of parking. Space given to parking is expected to shrink by half or more, as self-driving cars and drone deliveries lead an overall shift in connected urban transport. That will change or eliminate acres of urban space occupied by raised and underground parking structures.

Shared vehicles are not parked as much, and with more automation, they will know where parking spaces are available, eliminating the need to drive in search of a space.

"Office complexes won't need parking lots with twice the footprint of their buildings," said Sebastian Thrun, who led Google's self-driving car project in its early days and now runs Udacity, an online learning company. "When we started on self-driving cars, we talked all the time about cutting the number of cars in a city by a factor of three," or a two-thirds reduction.

In addition, police, fire, and even library services will seek greater responsiveness by tracking their own assets, and partly by looking at things like social media. Later, technologies like three-dimensional printing, new materials and robotic construction and demolition will be able to reshape skylines in a matter of weeks.

At least that is the plan. So much change afoot creates confusion.

“We know for sure that there will be a lot of physical changes to our cities,” said Timothy Papandreou, the chief innovation officer for the San Francisco Municipal Transportation Agency. “Streets will be redesigned. There will be lots more real-time data. Automation will be everywhere. But it’s also crazy: Things are changing so quickly that we can’t pretend to have all the answers.”

One reason for confidence in a radically changed future is that much of it is already here. The city’s Uber and Lyft, the Boston-based auto-sharing company Zipcar and things like corporate shuttle buses have shown new ways for urban dwellers to use vehicles. Skylines in cities like London and Shanghai are full of unusually shaped buildings, thanks in part to computer-assisted design.

Rare robots can build with bricks, or monitor and rebuild the underground water, sewage and electrical pipes that make a city functional. It is hard to find a new municipal vehicle that does not come with a tracking system.

To the planners, innovations like automatic cars that learn people’s habits are simply an extension of trends. Mr. Papandreou said 13 companies are testing automated vehicles in the city. “We’re inviting start-ups to come in and work on the problems we have,” he said.

The city is developing a policy for drone-based deliveries. Emergency medical goods, transported from an airport to a hospital, are likely to be first, he said. But consumer goods may eventually be delivered by air.

Besides drones, the abundance of vehicles now on urban sidewalks, including motorized wheelchairs, scooters and hoverboards, is another intimation of the variety of ways people and things are expected to move, as digital technologies make these modes of transportation cheaper. Likewise, temporary offices and pop-up stores may foreshadow an urban landscape that changes faster than ever.

One danger of the new city may be the age-old faith that technology makes things better, and more tech is best.

“The danger of big dramatic projects is that they become the equivalent of urban renewal or the kind of sweeping things Robert Moses did for cars in New York that created dysfunction,” said Paul Saffo, a technology forecaster. “The best thing tech could do now is rescue us from the car-centric cities we built after 1930.”

The new techno-optimism is focused on big data and artificial intelligence. “Futurists used to think everyone would have their own plane,” said Erick Guerra, a professor of city and regional planning at the University of Pennsylvania. “We never have a good understanding of how things will actually turn out.”

He recently surveyed the 25 largest metropolitan planning organizations in the country and found that almost none have solid plans for modernizing their infrastructure. That may be the right way to approach the challenges of cities full of robots, but so far most clues are coming from companies that also sell the technology.

“There’s a great deal of uncertainty, and a competition to show they’re low on regulation,” Mr. Guerra said. “There is too much potential money for new technology to be regulated out.”

The big tech companies say they are not interested in imposing the sweeping “smart city” projects they used to push, in part because things are changing too quickly. But they still want to build big, and they view digital surveillance as an essential component.

“Digital infrastructure is like plumbing or electricity. You can’t just have point-by-point solutions,” said Rick Huijbregts, managing director of the Americas division of the computer networking company Cisco Systems. “Cars have to talk to other transit, to traffic lights, to law enforcement.”

Is that creepy? “Our next generation, born after 1995, doesn’t know a life without computers,” he said. “They don’t know a way of living without this.”

THE NEW YORK TIMES

By QUENTIN HARDY

JULY 20, 2016

How to Save Public Pensions, No Federal Bailout Needed.

It isn’t unprecedented for the feds to spur local pension reform. Kennedy and Reagan both did.

The pensions of states and local governments are, collectively, trillions of dollars in the hole. This debt is crippling budgets and will dump an enormous burden on future generations. Yet state and local politicians have proven that they cannot, or will not, solve the problem. The federal government ought to step in. But how?

Instead of bailing out these pensions, Congress should pass a law allowing states and local governments to reduce promised benefits—something that is now illegal under some states’ statutes or constitutions. Congress should stipulate that pension plans must be in very bad shape to qualify for relief, and the politicians in charge of them would have to voluntarily seek it. Most important, pensions should be required to uphold their original intent: to keep retirees who can no longer support themselves out of poverty.

Even with those restrictions, significant savings could be made. Many pensions allow retirement at age 55; states and local governments could mandate that benefits cannot be drawn until age 65. Payments could be capped at 150% of the median income in the local jurisdiction. Automatic cost-o--living increases that now exceed expected inflation could instead be tied to increases in the median income.

Troubled plans should qualify for relief only if their funding ratio falls below 50% and has failed to improve over the past five years. These are the plans that are in fiscal quicksand and cannot be saved without significant changes.

Local governments must also be required to terminate their defined-benefit plans. These should be replaced with defined-contribution plans, like 401(k)s or 403(b)s, or active employees could be enrolled in Social Security. Responsible officials are already taking this step: The board of the Tennessee Valley Authority voted in May to switch to a 401(k)-type plan and lower the cap on cost-of-living adjustments.

Once these steps are taken, the local government should be required to fully fund the remaining pension liability with a tax increase. That should be the deal: To receive the relief of reducing promised benefits, they must agree to solve the pension problem once and for all.

What would this look like in practice? Let's say that a retired firefighter in a troubled pension plan is set to receive $70,000 annually. If that is below 150% of the median income in his local jurisdiction, under federal relief his annual benefits would never be subject to the cap, since they would rise as the local median income increases.

What about a retired cop who became a city councilman and later a county supervisor—an extreme, but not unheard of, case? The cop would not be able to collect three pensions and would have his benefit reduced to meet the cap. Both the firefighter and the politician would have to wait until turning 65 to receive benefits.

No one wants to see his benefits reduced. Yet keep in mind that a retiree who receives a $75,000 pension for 30 years, with 3% compounded cost-of-living adjustments, gets total payments of more than $3.4 million. This has become common in cities like Chicago.

I am not the first person to suggest federal intervention. Rep. Devin Nunes (R., Calif.) proposed withholding federal aid to government entities that don't accurately report pension funding. That would be a step forward but would not solve the problem of underfunding.

Diana Furchtgott-Roth of the Manhattan Institute has proposed a law that would allow local governments to seek relief from pension debt in bankruptcy court. But this leaves too much discretion to judges and could lead to wildly different outcomes. Plus, such open-ended relief would be fiercely fought by public-employee unions every step of the way.

Federal intervention is not unprecedented. The Windfall Elimination Provision of the Social Security Act, an amendment that was passed in 1983, allows the federal government to reduce Social Security payments when recipients also receive pensions from public employment. This has curbed double-dipping and protected the Treasury.

Nor should a new plan for federal relief be seen as a purely partisan issue. In 1961 President John F. Kennedy established the Committee on Corporate Pension funds. This eventually led to the Employee Retirement Income Security Act of 1974, which outlawed abuses and forced private firms to put required money into their pension plans each year.

The plan outlined here would create a consistent and concrete path toward making pensions manageable for taxpayers. At the same time, it would protect retirement income for those unable to support themselves. The next president and Congress should take action to allow local governments to address this monumental problem—which gets worse by the day.

THE WALL STREET JOURNAL

By ED BACHRACH

July 17, 2016 7:22 p.m. ET

Mr. Bachrach is the founder and chairman of the Center for Pension Integrity.

A President Trump Would Be Obstacle to Municipal Bonds' Bull Run.

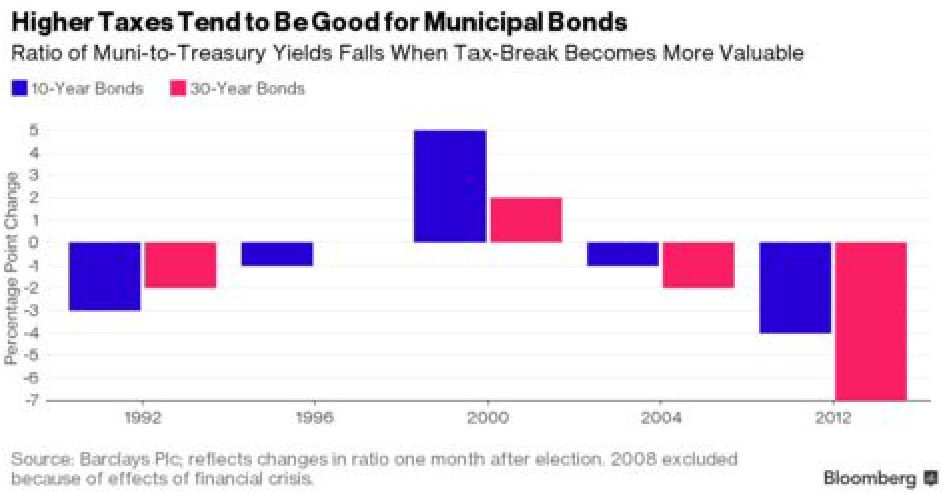
The municipal-bond market's rally is facing election year headwinds from Donald Trump.

The real estate developer and reality television star, who accepted the Republican presidential nomination Thursday night, has proposed slashing the top individual income-tax bracket from 39.6 percent to 25 percent, the lowest since 1931. That would sharply reduce the incentive to own tax-exempt bonds, whose yields have slipped to record lows as investors pour money into the safest assets and central banks hold down interest rates.

“He has a pretty aggressive tax reduction plan,” said Mikhail Foux, head of municipal strategy at Barclays Plc in New York. “Taxes going down is always bad for munis compared to Treasuries.”

U.S. presidential elections can have outsized significance for the $3.7 trillion municipal market — a haven of buy-and-hold investors looking for tax-free income — because they often result in changes to tax policy. Typically, Republicans cut taxes on the highest earners, while Democrats raise them.

The benefit of owning state and local-government bonds over other fixed-income securities declines when levies are reduced and increases when they rise. Yields — which move in the opposite direction as price — fell relative to U.S. Treasuries after Bill Clinton’s victories in 1992 and 1996, and again after President Barack Obama’s re-election in 2012, according to Barclays. They increased after Republican George W. Bush’s victory in 2000, which led to tax cuts.



Top-rated 10-year municipal bonds yield 1.47 percent, or about 93 percent of what Treasuries with comparable maturities offer. For an investor in the top income-tax bracket, the tax equivalent yield is 2.6 percent, or about 1 percentage point more than Treasuries with the same maturity. At a top bracket rate of 25 percent, the tax-equivalent yield is 1.96, or about 0.5 percentage point more than Treasuries.

Municipal bonds have gained every year but one since President Barack Obama took office in 2009, according to Bank of America Merrill Lynch indexes, as the Federal Reserve held interest-rates near zero and taxes were raised on the highest earners.

Trump’s plan is estimated to cut federal revenue by $9.5 trillion and swell the debt by $11.2 trillion over the next decade, according to the Tax Policy Center, a joint venture of the Urban Institute and Brookings Institution. The proposal may be scaled back: he’s expected to release a revised plan that calls for reducing the top rate to between 28 percent and 33 percent, closer to what House Speaker Paul Ryan has endorsed, according to the Washington Post.

The demand for municipal bonds could also be eroded by Hillary Clinton’s proposals, though not by nearly as much. While her plans include higher taxes on incomes over $5 million, she has also endorsed establishing a minimum 30 percent levy on filers earning more than $1 million and capping the value of tax exemptions, which could reduce the tax-breaks given to owners of the debt.

Municipal yields could increase by more than 1 percentage point under Trump's original plan and 0.35 percentage point under Clinton's, assuming prices are driven by investors in the highest tax bracket, according to Morgan Stanley's chief municipal strategist Michael Zezas.

But demand from lower-income investors could offset some of that: About 45 percent of returns that reported tax-exempt interest had adjusted gross incomes less than $200,000, according to the Internal Revenue Service. And enacting major tax overhauls are difficult, regardless of who controls Congress.

"It's extremely difficult to get the consensus required for what might be called fundamental tax reform," said Phil Fischer, the head of municipal research at Bank of America Merrill Lynch. "Nobody knows what that is any more."

Barclays' strategists predict that if Trump wins, the GOP would likely control Congress but wouldn't have a super-majority in the Senate. After an initial period of volatility and a flight to safer assets, 10-year Treasury rates could rise as much as 0.5 percentage point because of fiscal stimulus generated by individual and corporate tax cuts. With municipal rates forecast to increase even more, that may lead investors to pull money from mutual funds that invest in state and local debt.

"We can expect outflows when rates increase significantly," Foux said. "That's historically what we see."

Bloomberg Business

by Martin Z Braun

July 22, 2016 — 2:00 AM PDT Updated on July 22, 2016 — 7:09 AM PDT

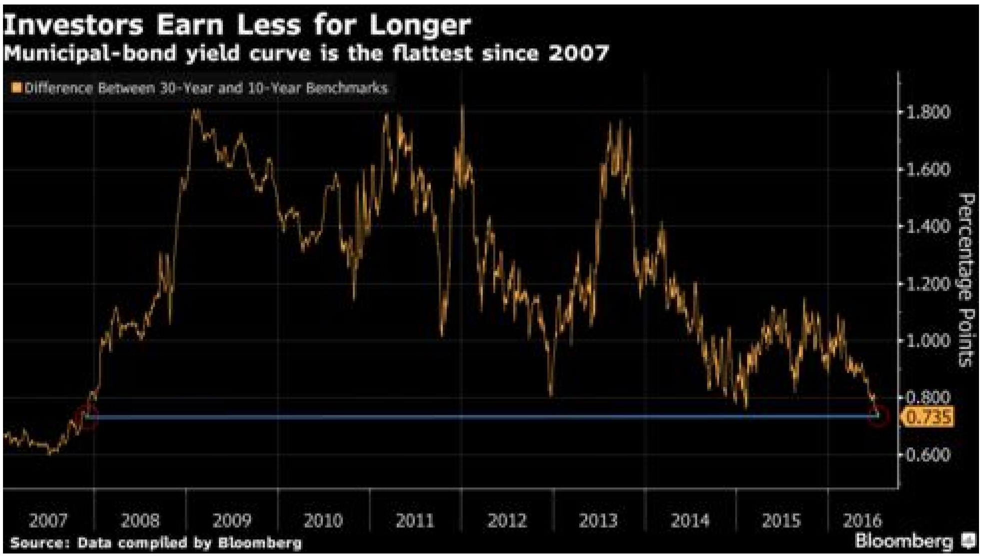
Bloomberg Brief Weekly Video - 07/21

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

Watch the video.

9:51 AM PDT
July 21, 2016

Muni-Bond Yield Curve Is the Flattest Since November 2007: Chart



The gap between short- and long-term yields in the $3.7 trillion municipal-bond market is the narrowest in more than eight years. Benchmark 30-year munis yielded 0.735 percentage points more than 10-year securities on Wednesday, the smallest difference since November 2007. This means that investors are earning less for the risk of holding securities with longer maturities.

Bloomberg Business

by Elizabeth Campbell

July 21, 2016 — 7:57 AM PDT

[Sell Oppenheimer Funds on Puerto Rico Risk, Ameriprise Says.]

Ameriprise Financial Inc., one of the world's biggest asset managers and financial planning firms, is advising clients to sell OppenheimerFunds municipal-bond funds that hold Puerto Rico debt in the aftermath of the island's record default.

Oppenheimer holds the most Puerto Rico debt among municipal mutual funds, according to Morningstar Inc. As the commonwealth works to reduce its $70 billion debt load through bondholder losses, Oppenheimer funds that hold commonwealth bonds may need to cut dividends or see changes in the value of their portfolios, Jeffrey Lindell, senior research analyst at Ameriprise, wrote in a Monday report.

"As Puerto Rico bond defaults accelerate, the mutual funds may have to cut dividend rates as bond interest payments are missed," Lindell wrote. "The net asset value of the mutual funds could also be volatile as the price of Puerto Rico bonds reacts to speculation and news, or as potential principal haircuts occur."

Oppenheimer held $3.5 billion of Puerto Rico securities across 19 funds, as of March 31, the most among municipal mutual funds, according to Morningstar Inc. Dan Loughran, who started the firm's Rochester funds in 1994 and oversaw its $24 billion of muni-bond funds, transitioned into an advisory role on July 1 and will retire from the company at the end of September.

Fund Strategy

Loughran’s departure and the risk of losses on Puerto Rico debt led Ameriprise to advise clients to seek less risky options, Lindell wrote in the report.

“The Rochester team maintains a steady hand and constantly focuses on the long term,” said Kimberly Weinrick, a New York-based spokeswoman for OppenheimerFunds. “With the passage of Promesa, it was an opportune time for Dan to retire and to pass responsibility for managing the Rochester team to his longstanding trusted colleagues,” Scott Cottier and Troy Willis, she said.

OppenheimerFunds is known for its strategy of pouring money into the riskiest areas of the $3.7 trillion municipal market in pursuit of big returns. Over the years, its funds have purchased tobacco bonds, real-estate development deals roiled by the housing-market crash and debt issued by Puerto Rico. Its high-yield fund returned nearly 15 percent over the past year, beating 98 percent of its peers, according to data compiled by Bloomberg.

Debt Restructuring

Investors anticipate much of the commonwealth’s debt will be restructured. President Barack Obama on June 30 enacted a law, called Promesa, that creates a federal control board to oversee any restructuring and monitor the commonwealth’s budgets. The next day, Puerto Rico defaulted on nearly $1 billion of principal and interest, the largest such payment failure ever in the municipal bond market.

The price of commonwealth securities tumbled after Governor Alejandro Garcia Padilla in June 2015 said the island was unable to repay its obligations on time and in full. The island piled on debt through years of borrowing to paper over budget deficits as its economy failed to grow.

Minneapolis-based Ameriprise, which oversees $800 billion of assets, recommends clients sell their investments from 16 different Oppenheimer muni funds. Potential replacements include municipal portfolios of Nuveen Asset Management, Eaton Vance Management, BlackRock Inc. and Columbia Management Investment Advisers, the company said in the report.

The one Columbia fund that Ameriprise recommends, the Columbia AMT-Free New York Intermediate fund, is managed by Columbia Management Investment Advisers, which has a global brand name of Columbia Threadneedle Investments. Columbia Threadneedle is the global asset management group of Ameriprise.

Bloomberg Business

by Michelle Kaske

July 19, 2016 — 1:54 PM PDT Updated on July 19, 2016 — 2:49 PM PDT

Taper Tantrum Memory Doesn’t Fade for MainStay Muni Fund Manager.

MainStay Investments is increasing the percentage of cash held in its municipal bond mutual funds as a hedge against the risk of investor redemptions if the outperforming tax-exempt market turns.

It’s $2.7 billion high yield muni fund has raised its cash level to as much as twice its normal range for liquidity, said David Dowden, a managing director who helps oversee about $19 billion of local debt at Princeton, New Jersey-based MacKay Municipal Managers, the fund's sub-adviser. The fund had about 9.6 percent of its portfolio in cash-equivalents as of April 30, the most in two years.

"When everyone suddenly gets all on the same side of the trade, that makes for a very dangerous situation," Dowden said during an interview last week. "That's what we saw in June of '13."

U.S. state and local-governments have taken in cash for 41 straight weeks, according to Lipper U.S. Fund Flows data, as anxiety that the Federal Reserve would raise rates receded and investors sought out the higher tax-adjusted yields and lower volatility than they can find elsewhere. During that period, munis have posted a total return of 5.8 percent, compared with a broader bond market gain of 4.2 percent, according to Bank of America Merrill Lynch index data.

The $45 billion inflow since October has helped replace the cash lost during the "Taper Tantrum" of June 2013. Investors pulled $65 billion from muni funds between June 2013 and January 2014 after then-Fed Chair Ben Bernanke jarred bond investors with plans to scale back asset purchases. The broad sell-off in the bond market highlighted a liquidity squeeze in the muni market, which was hit harder than Treasuries. Between June and the end of August 2013, yields on 30-year AAA rated municipal bonds rose almost 1.5 percentage point.

The level of liquidity risk is lower than in 2013. Banks are more willing to step in and buy and investors are less prone to yank money because munis are producing income, said Dowden. The U.K. vote to leave the European Union has lowered the likelihood that the Fed will raise interest rates before the U.S. elections in November. Muni prices rose following "Brexit" as investors clamored to safety.

As the yield curve flattened, Mainstay has focused its buying on bonds maturing from 12 to 25 years rather than long-term debt maturing in 25 to 30 years, which are more sensitive to changes in yields. Mainstay's High Yield Municipal Bond Fund has returned 7 percent this year, beating 77 percent of its peers, according to data compiled by Bloomberg.

"The reality is that incremental yield can be burned away very quickly in a price move," Dowden said.

The market pulled back last week as investors balked at yields that reached record lows and data on manufacturing and retail sales bolstered optimism in the economy. Yields on top-rated 30-year municipal bonds rose to 2.17 percent from 2.09 percent, the biggest weekly increase since February, according to data compiled by Bloomberg.

Some high yield managers are boosting their cash position for a different reason: they can't find securities that offer value in a market that has run-up more than 12 percent in the last year.

"There's so much cash in and everyone's buying because they have to buy," said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which oversees $5 billion of municipal bonds. Belle Haven is the sub-adviser for Transamerica's High Yield Muni Fund, which had had 13 percent of its assets in cash as of April 30.

"We're content with having more cash than we'd like to because of the dearth of opportunities," Dalton said.

Bloomberg Business

by Martin Z Braun

July 19, 2016 — 2:00 AM PDT Updated on July 19, 2016 — 7:16 AM PDT

Former Citi Auction-Rate Banker Heeds Lessons of Market Collapse.

At the advent of the financial crisis nearly a decade ago, former Citigroup Inc. banker Robert Novembre, who managed the firm's desks handling auction-rate securities, saw firsthand the disruption caused when banks withdrew support.

Dozens of banks stopped being buyers of last resort for auction-rate securities and variable-rate demand debt, leaving investors with bonds they couldn't sell and borrowers with little control of the interest rates on their debt. The $200 billion auction-rate securities market shriveled and Citigroup was among the banks that reached settlements with state and federal regulators to resolve claims they misled investors. The variable-rate market limped on in a smaller state.

Now Novembre, 47, plans to apply the lessons to a new alternative trading system for variable-rate debt. Within weeks, his Clarity BidRate Alternative Trading System, a division of Arbor Research & Trading LLC, expects to launch its first variable-rate demand deal as part of an enterprise designed to cut costs for state and local governments by getting bids from investors rather than relying on banks to remarket the debt.

"It's a very antiquated market that functions in the shadows," Novembre said. "But there's a conflict of interest in pricing because the banks are protecting their own balance sheets. Banks aren't pushing down the rates any more because they don't want to own the bonds."

The need for more competition has been shown of late as yields have come off historic lows of about 0.01 percent and soared to about 0.40 percent since the Federal Reserve raised its benchmark rate in December for the first time in almost a decade.

During the height of the market freeze, the weekly re-set rate on the index climbed as high as 7.96 percent.

Despite interest rates that are still low historically, the variable-rate demand market has been shrinking since the collapse of first auction-rate securities and then variable-rate demand obligations after sub-prime contagion brought down insurers and buyers of last resort in the muni market. Many banks and investors were stuck with debt they couldn't sell, while some issuers were forced into costly interest rate penalties and expensive restructuring. The variable-rate market stood at $222 billion and the auction-rate market was $27 billion in March 2014, according to the Municipal Securities Rulemaking Board.

Now with rates potentially poised to rise, Moody's Investors Service and others have predicted that borrowers may renew interest in the variable-rate structure to cut borrowing costs. New U.S. Securities and Exchange Commission rules requiring tax-exempt money-market funds to use floating net asset calculations also are encouraging more use of variable-rate debt.

The Securities Industry and Financial Markets Association, which represents banks and broker-dealers, supports the system of remarketing agents that "has served the market well for decades," said Michael Decker, managing director and co-head of the municipal finance division, in an e-mail. He declined to comment specifically on Novembre's company. That said, the association does "welcome market innovations that contribute to efficiency," Decker said.

Novembre, who worked for 18 years for Citi and oversaw about $170 billion of auction-rate securities, variable-rate demand obligations and tender-option bonds when the variable-rate markets collapsed starting in 2007, said his bank and others were glad to buy bonds to support the markets until it became a risk to their capital. Under variable-rate arrangements, remarketing agents aren't required to buy back the debt but did so voluntarily to support the market.

Trading Platform

With variable-rate demand obligations, issuers pay for so-called liquidity facilities, or buyers of last resort, that buy back the bonds when investors don't want them, something that can happen when the yields are reset.

During the global market turmoil, many buyers panicked and tried to unload the bonds because of fears generated by a freeze in fixed-income markets such as mortgage-backed securities. Following the auction-rate debacle in 2008, variable-rate demand obligations tumbled as buyers faced losses.

"There was a lot of fear," said Novembre. "People quickly started putting the bonds to the bank. The banks were no longer using their balance sheets to support the market."

Today, he said, that is still true because "dealers are loathe to deploy their balance sheets" amid increased regulation since the financial crisis.

By updating the market with an electronic-trading platform that replaces the traditional remarketing arrangement, Clarity is providing a place where buyers and sellers can make bids and offers for bonds that investors don't want to hold with more complete information about the market, he said.

Remarketing Role

"There is too much negotiation involved in setting yields now," he said. "There is an element of human decision making in setting the yields, instead of the actual market place competition."

Under his system, Clarity takes over the remarketing role, but instead of setting rates, buyers and sellers can see all the bids and offers and make their own bids and offers on an on-line trading platform during a remarketing period — up until the period for reselling the bonds closes.

"We take all the subjectivity out of it," he said. "Issuers are put in a position of competitive pricing."

Bloomberg Business

by Darrell Preston

July 18, 2016 — 2:00 AM PDT Updated on July 18, 2016 — 7:32 AM PDT

MUNICIPAL ORDINANCE - CALIFORNIA

Lone Star Security and Video, Inc. v. City of Los Angeles

United States Court of Appeals, Ninth Circuit - July 7, 2016 - F.3d - 2016 WL 3632375 - 16 Cal. Daily Op. Serv. 7251

Owners of mobile advertising billboards brought actions alleging that municipal ordinances for four cities, prohibiting the parking of mobile advertising billboards on public streets, violated free speech, due process, and privileges or immunities protections in federal and California

Constitutions.

After consolidating actions, the United States District Court granted summary judgment to cities. Billboard owners appealed.

The Court of Appeals held that:

- Ordinances were content neutral;
- Ordinances were narrowly tailored to cities' significant interests in eliminating visual blight and promoting safe and convenient flow of traffic; and
- Ordinances left open ample alternative communication channels.

City ordinances that limited advertising signs that could be affixed to motor vehicles, and prohibited non-motorized mobile advertising billboards on public streets, were content neutral, and thus permissible under First Amendment if they were narrowly tailored and left open ample alternative communication channels. Ordinances' regulation of "advertising" signs was directed to activity of displaying message to public, not particular content that might be displayed, and there was no suggestion that ordinances applied differently to political endorsements than to commercial speech, for example.

Content-neutral city ordinances that prohibited non-motorized mobile advertising billboards on public streets were narrowly tailored to cities' significant interests in eliminating visual blight and promoting safe and convenient flow of traffic, and thus ordinances were permissible under First Amendment if they left open ample alternative communication channels. Cities believed mobile billboards detracted from cities' aesthetics, billboards reduced on-street parking, were likely to impair pedestrians' and drivers' visibility, and posed safety risk to motorists who were forced to veer around them, and cities' goals would be achieved less effectively absent prohibition because billboards could be moved in and out of jurisdiction with ease.

Content-neutral city ordinances that limited motorized mobile billboards were narrowly tailored to cities' significant interests in eliminating visual blight and promoting safe and convenient flow of traffic, and thus ordinances, which prohibited non-permanently affixed advertising signs and permanently affixed signs that were larger than vehicle's dimensions, were permissible under First Amendment if they left open ample alternative communication channels. Cities believed mobile billboards detracted from cities' aesthetics, temporary signs posed danger to pedestrians and motor vehicles because of risk they would come detached, and signs larger than vehicles were more likely to obstruct traffic and impede drivers' field of vision.

Content-neutral narrowly tailored city ordinances, which limited advertising signs that could be affixed to motor vehicles and prohibited non-motorized mobile advertising billboards on public streets, left open ample alternative communication channels, and thus ordinances were permissible under First Amendment. Messages could be disseminated through myriad other channels, such as stationary billboards, bus benches, flyers, newspapers, or handbills, or by painting signs on vehicles or attaching decals or bumper stickers.

ANNEXATION - INDIANA

Town of Reynolds v. Board of Com'rs of White County

Court of Appeals of Indiana - June 16, 2016 - N.E.3d - 2016 WL 3354316

County brought declaratory judgment action against town, arguing that its annexation ordinance was void. County and town moved for summary judgment.

The Superior Court granted county's motion and denied town's. Town appealed.

The Court of Appeals held that county that maintained county roads that were contiguous to parcels annexed by town had standing to challenge annexation on basis that town failed to included the roads, as required by statute. County's maintenance of the roads provided it a direct interest in enforcing the statute.

INFRASTRUCTURE DEVELOPMENT - MICHIGAN

[Detroit International Bridge Company v. Government of Canada]()

United States District Court, District of Columbia - June 21, 2016 - F.Supp.3d - 2016 WL 3460307

Owners and operators of toll bridge and international causeway between the United States and Canada brought action against United States Department of State (USDS), alleging that USDS violated the Administrative Procedure Act (APA), when it approved agreement between state and Canada for construction of new publicly owned bridge between United States and Canada.

USDS moved for summary judgment and owners and operators cross-moved for summary judgment.

The District Court held that:

- Dismissal of action, for failure to join indispensable party, was warranted;
- Public interest exception to procedural rule governing joinder of parties did not apply;
- USDS did not violate Compact Clause when it approved agreement;
- Statute authorizing state to enter into agreement with Canada or Mexico did not require USDS to determine whether agreement was lawfully executed under state law prior to approving agreement; and
- USDS's approval of agreement without determining whether it was valid under state law was not arbitrary and capricious under APA.

State, which entered into agreement with Canada for construction of new, publicly owned bridge between United States and Canada, was necessary party to resolution of claim, asserted by owners and operators of toll bridge and international causeway between the United States and Canada, alleging that United States Department of State (USDS) violated the Administrative Procedure Act (APA) when it approved agreement between state and Canada, in that agreement was invalid under the state's law, for purposes of determining whether state was indispensable party under rule governing required joinder of parties. State had an interest in validity of agreement, and its absence could impair or impede its ability to protect that interest.

Joinder of state, for purposes of determining whether state was indispensable party, was not feasible, in action brought by owners and operators of toll bridge and international causeway between the United States and Canada, against United States Department of State (USDS), alleging that USDS violated Administrative Procedure Act (APA) when it approved agreement between state and Canada for construction of new publicly owned bridge between United States and Canada, in that agreement was invalid under the state's law. State was entitled to sovereign immunity from suit under Eleventh Amendment, and that immunity had neither been abrogated by Congress in statute authorizing state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State, nor waived by explicit authorization in state law.

District court would dismiss, for failure to join an indispensable party, action brought by owners and operators of toll bridge and international causeway between the United States and Canada, against United States Department of State (USDS), alleging that USDS violated that Administrative Procedure Act (APA) when it approved agreement between state and Canada for construction of new publicly owned bridge. State was necessary party to resolution of owners' and operators' claim, joinder of state was not feasible because state enjoyed sovereign immunity from suit under Eleventh Amendment, state would be prejudiced by judgment rendered in its absence, and there was no way district court could avoid prejudice that would result from invalidating agreement in state's absence.

Public interest exception to procedural rule governing joinder of parties, which allows a district court to find that a necessary party is not indispensable whenever the plaintiff seeks to vindicate a public right, did not permit district court to find that state was not indispensable party in suit brought by owners and operators of toll bridge and international causeway between the United States and Canada, against United States Department of State (USDS), based on allegations that agreement was invalid under state's law. Case did not implicate matter of transcending importance of that type that prompts courts to apply exception, it did not require joining of an infeasibly large number of parties, and it would invalidate the rights negotiated in agreement between state and Canada.

United States Department of State (USDS) did not violate Compact Clause when it approved agreement between state and Canada for construction of new, publicly owned bridge between United States and Canada, regardless of whether agreement was valid under state law.

United States Department of State (USDS) was not arbitrary and capricious, in violation of the Administrative Procedure Act (APA), when it approved agreement between state and Canada, for construction of new, publicly owned bridge between United States and Canada, pursuant to statute authorizing a state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State. Even if USDS did not determine whether agreement was valid under state law prior to approving agreement; statute directed USDS to review an agreement's impact on foreign policy and the national interest, and did not direct USDS to analyze complex issues of state or foreign law.

United States Department of State (USDS) was not arbitrary and capricious, in violation of the Administrative Procedure Act (APA), when it relied on opinion of state's governor and attorney general to confirm legality of, rather than conduct its own review of legality of, agreement between state and Canada, for construction of new, publicly owned bridge between United States and Canada, prior to approving of the agreement, pursuant to statute authorizing a state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State.

To extent that United States Department of State (USDS) originally may have suggested that legislative authorization was required prior to its approval of agreement between state and Canada for construction of bridge between United States and Canada, it never articulated a formal policy or position to that effect, and did not adopt a longstanding policy that engendered serious reliance interests, and it was thus not required, under Administrative Procedure Act (APA), to provide good reasons for approving construction without legislative approval, pursuant to statute authorizing a state to enter agreement with Canada or Mexico for construction of bridge, conditioned on its approval by Secretary of State.

BALLOT INITIATIVES - NEBRASKA

Bernbeck v. Gale

United States Court of Appeals, Eighth Circuit - July 14, 2016 - F.3d - 2016 WL 3769481

Initiative petition sponsor brought action against Nebraska Secretary of State, challenging the constitutionality of the provisions of the Nebraska constitution governing the distribution and signature requirements for placement of initiatives on the ballot.

Following bench trial, the United States District Court for the District of Nebraska entered judgment in favor of sponsor, and the court granted in part and denied in part sponsor's motion for attorney fees. Secretary of State appealed.

The Court of Appeals held that:

- Sponsor lacked standing to bring equal protection claim based on claim that provisions burdened his individual voice and vote as a petition circulator, and
- Sponsor lacked standing to bring equal protection claim based on claim that provisions made his vote less meaningful than vote of any other Nebraska voter in any other county.

Initiative petition sponsor lacked standing to challenge constitutionality of provisions of Nebraska constitution governing distribution and signature requirements for placement of initiatives on the ballot, as a violation of the Equal Protection Clause because requirements allegedly diluted, cheapened, and debilitates sponsor's individual voice and vote as a petition circulator, where sponsor did not have an injury in fact because his claim rested on a desire to engage in future conduct at an unspecified and indefinite time, as sponsor did not attempt to follow requisite procedures he challenged and it was not a situation in which attempt to comply would have been futile.

Initiative petition sponsor lacked standing to challenge constitutionality of provisions of Nebraska constitution governing distribution and signature requirements for placement of initiatives on the ballot, as an equal protection violation as it allegedly made his vote less meaningful than the vote of any other Nebraska voter in any other Nebraska county, where sponsor did not have injury in fact as there was no evidence that sponsor was registered to vote in Nebraska and thus could not have claimed to have been injured as a resident of Omaha in parity between his petition signature and those of registered voters in other counties.

IMMUNITY - NEW YORK

Kinsey v. City of New York

Supreme Court, Appellate Division, First Department, New York - July 5, 2016 - N.Y.S.3d - 2016 WL 3582397 - 2016 N.Y. Slip Op. 05344

Individual who suffered from bipolar disorder brought action alleging that city police officers and emergency medical technicians (EMT) negligently failed to restrain him and allowed him to escape from ambulance, and later caused him to fall from building.

The Supreme Court, Bronx County, entered summary judgment in defendants' favor, and plaintiff appealed.

The Supreme Court, Appellate Division, held that:

- Officers and EMTs owed no special duty to plaintiff, and
- City was protected by governmental immunity from liability for damages.

City police officers and emergency medical technicians (EMT) owed no special duty to mentally ill individual other than that owed to public generally, and thus city, officers, and EMTs were not liable in negligence based on officers' and EMTs' failure to restrain him and allowing him to escape from ambulance.

Decisions of city police officers and emergency medical technicians (EMT) in response to 911 call regarding individual who suffered from bipolar disorder were discretionary in nature, and thus city was protected by governmental immunity from liability for damages arising after individual escaped from ambulance, and later fell from building.

EMINENT DOMAIN - NEW YORK

City of New York v. 2305-07 Third Avenue, LLC

Supreme Court, Appellate Division, First Department, New York - July 5, 2016 - N.Y.S.3d - 2016 WL 3582237 - 2016 N.Y. Slip Op. 05352

City commenced proceeding to condemn properties in connection with urban renewal project.

The Supreme Court, New York County, denied property owners' motion to dismiss, and they appealed.

The Supreme Court, Appellate Division, held that city's petition was timely.

Three-year time period for city to commence condemnation action commenced on date on which Court of Appeals dismissed property owners' appeal from appellate division's order confirming city's determination and findings to acquire property interests and dismissed condemnee's appeal, rather than on date of appellate court's order.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Com. v. Ansell

Superior Court of Pennsylvania - July 15, 2016 - A.3d - 2016 WL 3903204 - 2016 PA Super 151

After a magistrate found defendant guilty of two counts of parking in a no parking zone, defendant filed a summary appeal.

The Court of Common Pleas also found him guilty. Defendant appealed.

The Superior Court held that:

- Commonwealth was not required to prove that township performed a traffic study prior to enactment of ordinance which made parking unlawful, and
- Evidence was sufficient to conclude that road on which defendant parked was a highway.

“No Parking” sign erected by township was entitled to presumption of validity, and therefore, in unlawful parking prosecution, Commonwealth was not required to prove that township performed a traffic study prior to enactment of ordinance which made parking unlawful, where defendant came forward with no evidence that township failed to perform the study.

Evidence was sufficient to conclude that road on which defendant parked was open to the public for vehicular traffic, and therefore, road was a “highway” for purposes of unlawful parking prosecution, despite testimony from defendant’s brother that there was no documentation to show township acquired the road. Whether the road was dedicated to township was not a relevant factor in determining highway status, brother also testified that there was no signage designating the road as private and that cars traveled along the road to get to homes situated along the street, officer testified that the road was maintained by township, township erected street sign showing name of road, and there was no evidence that the road was not open to members of the public.

Key question in determining whether a local authority has appropriately erected an official traffic-control device that prohibits or restricts parking within its boundary is whether the regulated area constitutes a highway open to the public for vehicular traffic.

PUBLIC CONTRACTS - PENNSYLVANIA

A. Scott Enterprises, Inc. v. City of Allentown

Supreme Court of Pennsylvania - July 19, 2016 - A.3d - 2016 WL 3908965

General contractor sued city for breach of contract seeking to recover its losses caused by city’s suspension of public highway project.

The Court of Common Pleas entered judgment for contractor. Both parties appealed. The Commonwealth Court affirmed in part and reversed in part. City appealed.

The Supreme Court of Pennsylvania held that jury finding of bad faith does not require trial court to impose a statutory penalty and award attorney fees under prompt payment provisions of Procurement Code; disapproving *Dep’t of Gen. Servs. v. Pittsburgh Bldg. Co.*, 920 A.2d 973, *A.G. Cullen Constr. Inc. v. State Sys. of Higher Educ.*, 898 A.2d 1145, and *Pietrini Corp. v. Agate Construction Co.*, 901 A.2d 1050.

Prompt payment provisions of Procurement Code, providing that the court may award a penalty equal to 1% per month of the amount that was withheld in bad faith, allows, but does not require, the court to order an award of a statutory penalty and attorney fees when payments have been withheld in bad faith, and the court’s determinations in this regard are subject to review for an abuse of discretion.

Trial court’s explanation in its opinion in support of order, that an award of a penalty and attorney fees under prompt payment provisions of Commonwealth’s Procurement Code was unwarranted because general contractor’s testimony, respecting damages relating to city’s suspension of public road project, was “conflicting”, without more, was insufficient to support its outright denial of an award following jury’s finding of bad faith in general contractors breach of contract action, warranting remand.

EMINENT DOMAIN - VIRGINIA

Virginia Electric and Power Company v. Hylton

Supreme Court of Virginia - June 16, 2016 - S.E.2d - 2016 WL 3361731

Electric utility filed petition for condemnation against property owner.

The Circuit Court granted owner's motion to dismiss and awarded costs and attorney's fees. Utility appealed.

The Supreme Court of Virginia held that:

- Owner waived his objection to trial court's jurisdiction;
- Separate value of coal reserves on the property was not admissible;
- Evidence related to potential surface mine was not admissible; and
- Whether there was unity of use between property and neighboring tracts was for jury to determine.

Property owner failed to timely raise objection to trial court's jurisdiction over electric utility's condemnation matter based on utility's alleged failure to make bona fide offer to purchase property, and therefore owner waived objection. Owner's answer and grounds of defense did not contain any mention of terms "object," "objection," or "jurisdiction," owner elected to proceed with empanelment of jury for determination of just compensation, and denials in owner's answer and grounds of defense were based on sufficiency of utility's offer, which could not be considered objection to bona fides of offer.

Separate value of coal reserves on property to be condemned was not admissible in electric utility's condemnation action against property owner. Even if modern techniques allowed for more accurate calculations related to coal reserves, such valuations invited speculation and conjecture, as they were based on conditions which did not, in fact, exist on condemned land at time of taking and future circumstances that may or may not have occurred, and there was no indication of when and if coal would actually be mined and, if it was, what price of coal would be at that time.

Evidence related to potential surface mine on property to be condemned was not admissible in electric utility's condemnation action against property owner. At time of taking, surface mine did not exist on property nor had one been contemplated, it was only in course of discovery that plans for surface mine were developed, and any award of damages based upon consideration of value created by hypothetical surface mine would necessarily have been speculative.

It is for the jury to determine the ultimate question of unity of lands, or its absence, and to determine whether that unity, and its loss by reason of the taking, ultimately affects the value of the remainder.

Pimco: The Impact of Lower Oil Prices on the Municipal Bond Market.

David Hammer, Head of Municipal Bond Portfolio Management, discusses the impact of lower commodity prices on high yield municipal bonds, and why energy producers may be more concerning than oil revenues.

Watch the video.

For more information, visit www.pimco.com/munis

DAVID HAMMER

JULY 2016

Why IRS Dropped its Challenge to Florida CDD Bonds.

WASHINGTON – The Internal Revenue Service has closed audits and left the tax-exempt status unchanged for $311.28 million of community development district bonds in Florida that started a huge debate about political subdivisions and led the tax agency to propose controversial rules for such districts earlier this year.

More than $246 million of the bonds were issued by the Village Center CDD in 1998, 1999, 2001, 2003 and 2004, but were redeemed in November 2014. Another $65 million of bonds were issued by the Sumter Landing CDD were issued in 2005 but were redeemed in October 2015.

In separate letters to each CDD, the IRS noted the bonds were redeemed and said, “We have concluded that closing this examination without further IRS action supports sound tax administration.”

The IRS actions close the book on long standing audits that sparked a huge ongoing debate between the tax agencies and municipal market participants over how to define political subdivisions that can issue tax-exempt bonds. These two CDDs – commercial districts for a retirement community with more than 100,000 residents in two counties — were organized as political subdivisions under Florida law. The IRS challenged their status in audits, but has now dropped the challenges and closed the audits.

Perry Israel, a lawyer with a private practice in Sacramento who is representing the Village Center CDD, and Richard Chirls, a lawyer with Orrick, Herrington & Sutcliffe in New York City who is representing the Sumter Landing CDD, each said they and their clients are pleased the examinations have been closed.

“They’re absolutely right,” said Israel. “It’s a poor use of IRS resources to continue to go after these bonds when they’ve been paid off for almost two years.”

The Village Center “did taxable refundings [of the bonds], but was still able to reduce its borrowing costs,” he added.

Israel said that he believes the audit of the Village CDD, which began in January 2008 and took more than 8 ½ years to complete, may have been the longest examination ever done in the muni market. Some of those same bonds had also been the subject of an earlier audit that was closed in January 2003 which would make the examination of them even longer.

The IRS was on a slower track with Sumter Landing, but Chirls said, “This is simply an examination that went on much too long. It was, in the end, a waste of resources, staff, administrative time, and actual dollars by the district and the IRS.”

Some muni market participants said the IRS may have been willing to close the audits, realizing they were a drag on resources while the agency was up against a statute of limitations problem. Generally, the IRS can go after taxpayers for payment of taxes due to violations of tax laws or rules three years from the later of the date that taxes are due or the date that taxes are paid.

The Village Center bonds were redeemed in 2014 meaning the latest date a full year of interest would have been 2013, with tax returns to be filed in April 2014. Three years after that would be in April of next year. With this year more than half over, the IRS had still not declared the CDD's bonds taxable and, if it had, the CDD would have had an opportunity to appeal that finding and go through a lengthy appeals process.

It seems odd that the IRS closed the audits without accepting a payment for settlements. The two CDDs earlier this year told the IRS they would settle the tax dispute for $300,000, the amount they estimated would be the legal fees they would have to pay to continue fighting the IRS. The IRS, which had been pushing for a $1.5 million settlement, never took them up on the offer.

Also, the IRS letters sent to the CDDs are odd in two respects. Both letters said the CDDs were sent Forms 5701, Notices of Proposed Adjustments. But these forms, which notify taxpayers of increased tax liabilities, are not used in the municipal market, bond lawyers said. The CDDs actually received Forms 5701-TEB, or Notices of Proposed Issue that notified them the IRS had preliminarily determined the bonds were taxable.

In addition, the IRS letter to the Village Center CDD noted the agency found the CDD was not a "proper issuer of tax-exempt bonds" and the bonds were private-activity bonds that did not fall in any of the categories that qualify for tax-exemption. The one sent to the Sumter Landing CDD said only that the IRS found the bonds were taxable PABs.

The IRS may not have said that Sumter Landing CDD was not a proper issuer, because it was only the Village Center that received a technical advice memorandum from the IRS chief counsel's office in May 2013. That TAM said the CDD was not a proper issuer of tax-exempt bonds because its board was and would always be controlled by a developer rather than by residents or others responsible to a public electorate.

However, after an outcry from issuers and bond lawyers that the IRS was trying to change rules retroactively through enforcement actions, the IRS made the TAM prospectively effective. That means the TAM shouldn't apply to either the Village Center CDD or the Sumter Landing CDD.

The TAM led the Treasury Department and IRS to propose rules in February of this year that would dramatically change the definition of a political subdivision.

Historically, the determination of whether an entity was a political subdivision was based on whether it had the right to exercise a substantial amount of at least one of three sovereign powers: eminent domain, taxation, and policing.

Community development districts in Florida, metropolitan districts in Colorado, rural utility districts in California and districts in other states for years have been set up to issue tax-exempt bonds to finance public infrastructure such as roads, sewer and water systems for a variety of development projects. Initially the districts are controlled by developers, but as homes, business parks or shopping areas are built and irrigation systems are set up, the control of boards is passed onto to residents or users such as homeowners, businesses or farmers.

But IRS officials, through audits, found some developers had created political subdivisions and were in complete control of them of years or indefinitely, sometimes issuing tax-exempt bonds for their own benefit.

The proposed rules would add two new additional requirements, besides the sovereign powers one, to the definition. Political subdivisions would also have to serve a government purpose “with no more than an incidental private benefit” and would have to be governmentally controlled.

“The IRS is now properly addressing the perceived problems through a regulatory process that includes proposals, comments and a prospective effective date,” said Chirls.

But the proposed rules have taken a beating from municipal market groups and individuals who have sent the IRS more than 130 comment letters slamming them.

The Bond Buyer

by Lynn Hume

July 19, 2016

Hawkins Advisory: (Annual Qualified Mortgage Information)

This Hawkins Advisory is of interest to single-family housing bond issuers.

Read the Advisory.

7/20/2016

S&P Global Ratings' Public Finance Podcast (Higher Education Ratios and PROMESA)

Shivani Singh and Ashley Ramchandani provide an overview of our recent higher education median reports for public and private colleges and universities. Paul Dyson discusses our take on the impact of the recently-enacted Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) on Guam and the U.S. Virgin Islands.

Listen to the podcast.

Jul. 22, 2016

Lessons Learned from Detroit: A Judge's Perspective.

U.S. District Judge Gerald E. Rosen has more experience than most in resolving thorny cases of municipal distress: He was the mediator in the high profile bankruptcy of Detroit. What lessons did he draw from that experience that might apply to future municipal bankruptcies? We put that question to him at our recent Municipal Finance Conference, and he offered what he calls “The Four

C's."

Candor

"As we began talking to the creditors and to the city…they were in denial across the board…We said denial…is not a way to move forward. We had to go through that ventilation process in the beginning."

Judge Rosen said he found that both the creditors and the parties were initially unwilling to be honest, with each other and even with themselves. They did not fully accept the dimensions of the structural debt problems and did not recognize the degree to which the city's ability to fund and deliver essential government services was compromised. Working in a state of denial will not advance the interests of the city, he said. Openness and honesty are integral to resolving financial troubles.

Cooperation

"My job as the mediator [was] to get the parties together and the earlier the better."

After listening to accounts of other cases of municipal distress, Judge Rosen suggested that some crises could have been avoided with earlier "facilitation of discussion between the various credit groups and the municipalities."

Creativity

"Every city has human assets, every city has physical assets, every city has revenue assets, so focus on creative ways to leverage those assets."

Detroit struck a "grand bargain" in which the city essentially sold the Detroit Art Museum to a collection of foundations, nonprofits and other donors to raise money for its underfunded pensions. Judge Rosen said that was just one of several creative elements in Detroit's bankruptcy resolution. Of course, the exact solutions to any particular crisis will depend on the circumstances, but the essential element is that "smart people who can get on the same team and look down the road, not just to get their piece of the pie, but to make the municipality healthy so there will be a bigger…pie at the other end."

Courage

"Detroit is really not [just] a series of deals over sixteen months….it's about people from all different walks of life, backgrounds, strata, coming together to put behind them the mistakes and ghosts of the past."

The Detroit bankruptcy, he said, could have resulted in a decade of litigation that went all the way to the U.S. Supreme Court. But if that had occurred, there would have been nothing left of Detroit. Instead, all the interests came together to "take a leap of faith" to find a solution that was in the best, long-term interests of the city, its creditors, it employees and its people.

Here's a video of Judge Rosen's remarks.

The Brookings Institution

Evan Bursey and David Wessel | July 20, 2016 9:24am

Michigan Cities Team Up to Offset “Fundamentally Unsustainable” Municipal Finance System.

These are trying times for cities in Michigan, thanks in large part to big cuts in state revenue sharing and real estate values that cratered during the economic meltdown.

On top of all that, Proposal A and the Headlee Amendment limits local municipalities’ ability to collect taxes.

As a result, many communities say they’re out of options. They can’t cut any deeper and they can’t raise the money needed to provide operations.

Public finance expert Michael McGee has come up with a possible solution: a legal “toolbox” that could allow cities to band together and put up a millage to pay for essential services.

Two cities in Southeast Michigan, Hazel Park and Eastpointe, have teamed up this way. More cities are taking a closer look at this toolbox, including Wayne, where voters will decide in August whether to join up with Eastpointe and Hazel Park.

Listen to our conversation with Michael McGee.

GUEST
Michael McGee is principal and chief executive officer of Miller Canfield. His special area of expertise is public finance.

MICHIGAN RADIO

By STATESIDE STAFF • JUL 19, 2016