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Content

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Editor’s Notes

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Tony Martini’s column in this edition includes the latest on the federal tax scene, including an interesting summary of the proceedings brought by several issuers of Build America Bonds (BABs) challenging the sequestration of BAB subsidies as well and the somewhat confounding IRS update regarding the impending electronic filing requirement for IRS Form 8038-CP.

Drew Kintzinger reports on the Financial Data Transparency Act of 2022 as well as other federal securities law developments, including a roundup of the latest regulatory and enforcement actions.

The Final(?) Chapter in the Garcon Point Bridge Saga

When the State of Florida purchased the Garcon Point Bridge from the Santa Rosa Bay Bridge Authority last year and all bondholders were paid in full, one might have thought the long, tortured story of the Florida Panhandle bridge bonds had come to an end. The Authority issued the bonds in 1996 to build a 3.5-mile toll bridge, and the bridge opened in 1999. Traffic and tolls were lower than projected, and the bonds defaulted in 2011. After 11 years of default administration, the resignation of the entire issuer board, some litigation, and at least two years of negotiation with the State, the State purchased the bridge for $134 million. According to the EMMA notice posted last year, all bondholders were paid in full, the State took ownership and reduced the tolls on the bridge. Reminiscent of the infomercials of old, “But Wait, There’s More,” a portion of the bonds issued in 1996 was in the form of capital appreciation bonds (CABs), which do not pay interest periodically but increase in maturity value over time at a stated accretion rate. At maturity, the bonds are paid in an amount that essentially (and very simply) includes both principal and interest. In 2021, an investor in the CABs called FINRA’s Securities Helpline for Seniors concerned about the price he paid for the bonds in the secondary market. After FINRA investigated, FINRA determined some secondary market sales of the bonds had applied an incorrect “factor” to the price. As a result of FINRA’s review, broker-dealers involved in similar sales paid $3.4 million in restitution to some 300 purchasers. FINRA noted the use of the wrong factor in these sales was not found to be intentional. No one was fined, and the broker-dealers involved were not identified. One could ask why there were so many trades of bonds that had been in default for a decade, but that is a question for another day.

Knocking the Wheels off the ESG Bandwagon

There are reports of no less than twelve states (maybe more by publication) introducing or passing legislation or issuing administrative directives that restrict consideration of environmental, social, and governance (ESG) factors in retirement fund (and other) investments[1]. One state (yes, that would be Florida), has also seen legislation introduced that would ban the designation or labelling of any municipal bonds issued in the state as "ESG" bonds (e.g. green bonds, social bonds, etc.). This restriction is in addition to prohibiting taking other than pecuniary factors into consideration when making investment decisions or exercising shareholder voting rights with respect to pension fund investments (and this includes local government pension funds, not just the state retirement system) as well as investment decisions concerning local government surplus funds.

If passed and signed into law, it would be prohibited for any of the listed Florida issuers to:

> (a) Issue ESG bonds; (b) Expend public funds (as defined in s. 215.85(3), Florida Statutes) or use moneys derived from the issuance of bonds to pay for the services of a third-party verifier, including, but not limited to, certifying or verifying that bonds may be designated or labeled as ESG bonds, rendering a second-party opinion or producing a verifier's report as to the compliance of proposed ESG bonds with applicable ESG standards and metrics, complying with post-issuance reporting obligations, or other services that are only provided due to the designation or labeling of bonds as ESG bonds; (c) Enter into a contract with any rating agency whose ESG scores for such issuer will have a direct, negative impact on the issuer's bond ratings.[2]

While the provisions of (a) and (b) above are straightforward, the same cannot be said for provision (c), which appears to go beyond ratings on labelled bonds. Note, however, the reference to "ESG scores" which suggests this provision is not referring to the consideration of ESG risk factors in a credit analysis but rather the use of separate "scoring" of the issuer by a third-party (which may be the rating agency). Whether a particular rating agency is utilizing "ESG scores" in its rating process would be evident in the rating report, however, an issuer will not see the rating report until after the rating application is made. Compliance with this provision may be left to watching for an announcement from the rating agencies on this topic or word of mouth from market participants.

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[1] There are also some states taking action to encourage ESG matters.

[2] See CS/HB3 available at https://www.myfloridahouse.gov; this bill was passed in the Florida House of Representatives. The Legislative Session in Florida will run through May 5, 2023 subject to extension.

But wait, there's more!

Similar to legislation being considered in other states but somewhat more expansive, the Florida legislation would also prohibit the consideration of "social, political, or ideological beliefs in state and local government contracting." Under the proposed Florida legislation, an awarding body may not request documentation of or give a preference to a vendor based on the vendor's social, political, or ideological interests. It would also add new restrictions to eligibility requirements for a financial institution to serve as a "qualified public depository" enabling that institution to accept state and local government deposits. If passed and signed by the Florida Governor, it would be an "unsafe and unsound practice" for a financial institution to make decisions regarding the denial or cancellation of services based upon, among other things, the customer's political opinions, speech, or affiliations, or the use of a "social credit score" based upon any number of factors including the person's lawful gun ownership (or manufacturing), engagement in exploration, production, and other endeavors relating to fossil fuel-based energy, timber, mining, or agriculture, support of the state or federal government regarding fighting illegal immigration, drug trafficking, or human trafficking. This definition is used in a number of other Florida statutes and would apply not just to "qualified public depository" eligibility but also to consumer finance businesses, check cashing businesses, and all financial institutions. While clearly intended to provide protection to certain personal or business activities in the state, the language would also provide protection from financial discrimination to businesses engaged in what some may view as less socially acceptable endeavors (e.g. the adult entertainment industry). According to public statements by the bill's sponsor, however, discretion in enforcement of the statute is left to the Florida Attorney General.

There are a few sources to keep track of ESG and related legislation around the country. A recent post in the Harvard Law School Forum on Corporate Governance[3] had a detailed survey of the different approaches being taken around the country.

Is Everything Old New Again?

With the recent rise in interest rates, some old things are seemingly new again. With current short-term investment rates in excess of four percent, the potential for investment yields materially higher than long-term bond yields is a reality, and discussions about arbitrage, arbitrage rebate, and rebate exceptions are ongoing. In light of this, one panelist at the NABL Institute pondered whether we might see a return to synthetic fixed rates. Personally, that was a cringe-worthy comment. In the aftermath of the Lehman bankruptcy in 2008, many issuers were faced with paying a swap termination payment or forced to novate their Lehman

[3] https://corpgov.law.harvard.edu/2023/03/11/esg-battlegrounds-how-the-states-are-shaping-the-regulatory-landscape-in-the-u-s/)

swaps to another counterparty because their Lehman counterparty entered bankruptcy. Fifteen years is not long enough to dim the memory of those transactions.

Closing Thoughts

Congratulations to the NABL team for an excellent presentation of the NABL Institute in Scottsdale, Arizona this month. The presentations were interesting, the location beautiful, and the weather very Arizona. The general session included insightful commentary about the current economic environment cast in historical perspective. Well done, NABL (again)!

A special shout-out to **John S. Overdorff**, one of NABL's long-time members and unsung laureates. Younger NABL members may only know his name from being the addressee of both NABL letters from the SEC regarding Rule 15c2-12. John was the chair of the NABL Securities Law and Disclosure Committee in 1995 when the significant amendments implementing continuing disclosure became effective. John was also the long-time NABL liaison to the Government Accounting Standards Advisory Council (GASAC). It was great seeing you at the Institute, John, and thank you for your decades of service to all things NABL.

And now, enjoy the rest of this edition of *The Bond Lawyer*.

Federal Securities Law

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Recent columns have focused on the active enforcement efforts of the SEC's Public Finance Abuse Unit. From December through the first quarter of 2023, market regulation initiatives have offered myriad evidence the SEC's 2012 Report on the Municipal Securities Market (the "2012 Report") remains a living document, with its recommendations relating to financial disclosure and to market structure.

The Financial Data Transparency Act of 2022 ("FDTA")

In the 2012 Report, the Commission generally recommended that Congress "[A]uthorize the Commission to establish the form and content of financial statements for municipal issuers who issue municipal securities". In a "form" or "format" variation on this general theme, in December, 2022, the FDTA became law. Section 5811 of the FDTA mandates certain regulatory agencies, including the SEC, develop data standards that specify rules by which data, including financial data, is described and recorded and that conforms to certain specifications, including identifier specifications and technical specifications, such as rendering data fully searchable and machine-readable. Section 5823 of the FDTA is captioned "Data Transparency Relating to Municipal Securities." Section 5823 is a carefully tailored amendment to Section 15B(b) of the Securities and Exchange Act of 1934 (the "Exchange Act"). Section 5823 instructs the SEC to develop data standards for information submitted to the Municipal Securities Rulemaking Board ("MSRB"). The Section mandates that "[T]he Commission shall consult market participants in establishing data standards." Importantly, Section 5823 affirms nothing in the new data standards provisions may be construed to affect the operation of the Tower Amendment. The Tower Amendment in the Exchange Act places limits on the authority of the Commission and MSRB to require filings by, or on behalf of, municipal issuers prior to the sale of municipal securities or of the MSRB to require a municipal issuer to furnish information. After final data standard rules are adopted by federal agencies, including the SEC, which is expected by December of 2024, Section 5823 provides that the Commission has two years to promulgate rules to adopt the new data standards for information provided to the MSRB. Section 5823 states the Commission "may scale those data standards in order to reduce any unjustified burden on smaller regulated entities" and "shall seek to minimize disruptive changes to the persons affected by those rules."

Section 5823 contains many safeguards for the municipal issuer community. The SEC (rather than the MSRB) will do the rulemaking; the Tower Amendment limits imposed on the Commission and the MSRB are expressly preserved; the municipal marketplace must have input in the rulemaking; the implementation timeline is lengthy; and the provisions acknowledge that unjustified burdens on, and disruption to, issuers be factored into the rulemaking. More importantly, the FDTA provisions do not substantively expand the scope of information that is currently collected or made publicly available by municipal issuers or obligated persons to EMMA. Rather, the FDTA is inching the municipal market closer to the data reporting standards that registered, reporting companies use in reporting information and financial data into the corporate EDGAR system. However, as is uniquely the case with municipal issuers, the costs of implementing these new data standards for reporting disclosures to EMMA will be of significant concern. A helpful primer on how FDTA may impact the municipal marketplace can be found at a recorded link and PowerPoint Slides for the January 25, 2023, NABL program "Virtual Roundtable On The Financial Data Transparency Act."

SEC Municipal Securities Disclosure Conference – May 10, 2023

The 2012 Report concluded that "[T]he Commission could organize and host an annual conference on the municipal securities markets in order to allow market participants to confer with one another and to share with the Commission important developments in the municipal securities market." Recently held virtually in 2020, the SEC's Office of Municipal Securities will hold a hybrid Municipal Securities Disclosure Conference on May 10, 2023, at Commission Headquarters in Washington D.C. Registration information, which must be received by May 5, can be found at the SEC's website. We can anticipate remarks from Chair Gary Gensler on the municipal market and some update on the Commission's approach to implementing the FDTA for municipal issuers.

Market Structure and Regulation Developments

A number of market regulation initiatives have percolated in the first quarter of 2023, with highlights for the municipal securities market below:

Best Execution. The MSRB in 2016 adopted Rule G-18 on "best execution" requiring municipal securities dealers when trading for customers to ascertain the best market for the security and to buy or sell in that market so the price to the customer is as favorable as possible under prevailing market conditions. On December 14, 2022, the SEC proposed its own Regulation Best Execution, which would extend to municipal securities dealers. The proposal would require dealers to maintain written policies and procedures to ensure compliance with the best execution standard, including "conflicted transactions" in which conflicts of interest may result due to a dealer putting its own interests ahead of a customer's interest. Of note is the continued, proposed layering of written policies and procedures on dealers.

Securitizations. On January 25, 2023, the SEC reintroduced under Dodd-Frank a proposed "Rule to Prohibit Conflicts of Interest in Certain Securitizations," This proposal continues with the foregoing best execution conflicts theme above. The proposal notes that municipal issuers do not typically issue asset-backed securities directly, but in some instances municipal issuers may be "sponsors" in securitizations involving "self-liquidating assets" such as mortgages, student loan obligations or other lease-type arrangements. The proposal seeks confirmation or comment on the scope of the proposal with respect to municipal issuers, and NABL is studying potential comments closely.

Municipal Advisors "FAQs" Updated

On March 20, 2023, the Office of Municipal Securities updated its FAQs on municipal advisors, adding a helpful section "18" on registration of municipal advisors. In addition to adding clarifications on prompt filing timelines and disclosing employment histories for advisors, the newly added questions and answers specify that each municipal advisor must specify a Chief Compliance Officer. This supervisory theme is consistent with recent SEC enforcement actions that often include actionable allegations of "failure to supervise" under MSRB rules and Exchange Act provisions. Of note is this FAQ format remains a key mode of interpretive guidance by the Office of Municipal Securities for the municipal advisor segment of the municipal market.

Cybersecurity Developments

The cybersecurity concern is increasingly "material" and not just in the sense of appropriate risk factor coverage in an official statement.

In January 2023, the SEC filed an enforcement subpoena against a law firm, seeking the names of entities whose non-public information was accessed by threat actors (associated with the Microsoft Hafnium cyberattack). According to the SEC, the cyberattack accessed non-public files of nearly 300 of the law firm's clients that are regulated by the SEC. Among other reasons, the SEC maintains that the client identity information "will assist the SEC in determining whether the impacted clients made all the required disclosures to the investing public about any material cybersecurity events in connection with the cyberattack." An ultra-delicate balancing act for any law firm regarding its client confidences and privilege. See ***Securities and Exchange Commission v. Covington & Burling LLP,*** **No. 1:23-mc-00002 (D.D.C. filed January 10, 2023).**

On March 15, 2023, the SEC proposed three rules related to cybersecurity and the protection of consumer information. Of particular note to the municipal market is the second of the three rule proposals, proposed **Rule 10**, which would require broker-dealers, the MSRB and other related market entities to maintain and regularly update written policies and procedures that address cybersecurity risks and include prescribed content, provide immediate written notice to the SEC of significant cybersecurity incidents, and publicly disclose summary descriptions of cybersecurity risks and incidents.

Enforcement Update

Pricing Methodology Disclosure. In an interesting case that involves themes of market pricing, market structure and disclosure fraud, on January 23, 2023, the SEC announced a settled administrative proceeding against Bloomberg Finance L.P., ***Securities Act of 1933 Release No. 11150, Administrative Proceeding File No. 3-21284.*** According to the Order, Bloomberg made misleading disclosures relating to its paid subscription service, "BVAL", which provides daily price valuations for fixed-income securities, including municipal bonds, to financial services entities. A repeated theme in this Order that will resonate with the municipal bond market is that "[M]any fixed income securities are thinly traded and difficult to price." The Order goes on to describe the Bloomberg's BVAL pricing service:

> The BVAL service provided prices on a daily basis for over 2.5 million securities across all asset classes, including thinly-traded and hard-to-price fixed income securities. Since at least 2016, Bloomberg has disclosed to customers that its independent valuations of fixed income securities are derived by using proprietary algorithmic methodologies, and Bloomberg has described in detail the methodologies used to derive BVAL prices. From at least 2016 through October 2022 (the "Relevant Period"), however, Bloomberg made disclosures to its customers that did not explicitly include that valuations for certain thinly-traded fixed income securities could, in certain circumstances, be largely driven by a single data input, such as a broker quote. The omission that valuations could be largely driven by a single data input made the statements to customers regarding valuation methodologies materially misleading.

Bloomberg neither admitted nor denied the findings and promptly took remedial steps, including retaining an outside expert to examine and enhance its pricing service to incorporate single-broker quotes in its valuation methodologies. The SEC found a violation of Section 17(a)(2) of the Securities Act in this material omission case, issuing a cease and desist from future violations of Section 17(a)(2) and imposing a $5,000,000 fine on Bloomberg. The "misstatement liability" prong in Section 17(a)(2) prohibits "any person in the offer and sale of any securities…directly or indirectly…to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." The Order notes that negligence is sufficient to establish a violation of Section 17(a)(2).

Limited Offering Exemption Settlement Orders Continue. In the Summer 2022 publication, this column reported on three administrative settlements and one litigation action commenced by the SEC against underwriters for allegedly failing to satisfy the criteria in the limited offering exemption in Rule 15c2-12. The SEC announced two, additional administrative settlements with underwriters regarding the limited offering exemption, ***Administrative Proceeding File No. 2-21259 (PNC Capital Markets LLC) December 21, 2022*** and

Administrative Proceeding File No. 3-21336 (Key Banc Capital Markets Inc.) March 7, 2023. Like the administrative settlements that preceded these two actions, each order is "no admit/no deny" by each underwriter and takes into account remedial actions and cooperation by each underwriter. The stated violations remain consistent: willful violation of Section 15B(c)(1) of the Exchange Act and Rule 15c2-12 under the Exchange Act, as well as violation of MSRB Rule G-27 (failure to have policies and procedures to ensure compliance). The nature of the sanctions remain consistent as well: cease and desist from future violations of the provisions above, censure, disgorgement, and civil money penalty. As stated by the Commission, this is an ongoing investigation of other firms' reliance on the limited offering exemption.

The Tax Microphone

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As winter turns to spring in 2023, it's quite clear that there continues to be a lack of new regulatory guidance, pronouncements and rulings forthcoming from the Department of Treasury and the Internal Revenue Service for municipal market participants. We await much-needed and much-anticipated guidance on the application of the refundable tax credit provisions of the Inflation Reduction Act of 2022 (the "IRA"), which for the first time make the investment and production tax credit sections of the Internal Revenue Code accessible to issuers and borrowers of state and local bonds. The same goes for the IRA provisions that create new categories of exempt facility bonds for qualified broadband projects and for certain types of carbon capture facilities. IRS and Treasury also need to promulgate guidance, mainly for the benefit of its agents conducting examinations of tax-exempt bonds, to confirm that no talismanic references to words like "reimburse" or "reimbursement" are required in order to adopt a valid declaration of official intent under the reimbursement bond provisions of Treasury Regulations § 1.150-2. NABL's Board of Directors and its Tax Law Committee have recently put out commentary soliciting guidance from the regulators on each of these federal tax law topics, and a number of others, over the past several months. NABL members can find these commentaries on the NABL website; they are worth a look. We also find that there is a real dearth of private letter rulings, technical advice memoranda and similar pronouncements from the IRS, though it's fairly clear that the reasons for this are distinguishable from those that make a full-blown regulatory release from IRS and Treasury such a rare event these days.

And so, the Tax Microphone column in this issue will be relatively short. There is, however, a recent decision of the U.S. Court of Appeals for the Federal Circuit that I'd like to discuss, as it may have escaped the attention of some readers; one other small news item as well.

Indiana Municipal Power Agency et al. v. U.S.

On February 17, 2023, a panel of Federal Circuit judges released an opinion in the above-captioned case (Docket 22-1377), on an appeal from a decision of the Court of Federal Claims. The decision dealt with a case brought against the United States by the Indiana Municipal Power Agency ("IMPA") other Midwest public power agencies in which IMPA and its co-plaintiffs made statutory and contract-based claims that the federal government has been breaching a commitment made under and through Section 1531 of the American Recovery and

Reinvestment Act of 2009 (the "ARRA"). Many of you will recall with a kind of bittersweet fondness that ARRA Section 1531 authorized state and local governments to issue taxable build America bonds ("BABs") in 2009 and 2010, the payment of the interest on which would entitle their issuers to elect to claim refundable tax credit payments from the federal fisc (sounds familiar, of course; see the reference to the newer-vintage refundable tax credit provisions of the IRA noted above). Under the ARRA, these refundable tax credits, also referred to colloquially as direct pay subsidies, equal to 35% of the interest paid on BABs.

As many of you will also recall, it didn't take long for Uncle Sam to begin to renege on this statutory (if not contractual) undertaking. The record in this case indicates that IMPA and its co-plaintiffs issued some $4 billion of direct-pay subsidy BABs before Section 1531 sunset at the end of 2010 and that, as a result of the federal government's budgetary sequestration process, the amount of direct pay subsidies they received from the federal government fell substantially short of the 35% mark in every year beginning with 2013. The decision in the Court of Claims decision notes that the statutory provisions implementing budgetary sequestration, as currently enacted, extend through 2030. Accordingly, IMPA and its cohorts were suing for the full 35% of direct pay subsidies from 2013 through 2030.

The Court of Claims rejected plaintiffs' statutory claim to be made whole on the 35% subsidy that Congress enacted in Section 1531 of the ARRA. The Court pointed to Congress' post-ARRA sequestration enactments, in 2011, 2013 and beyond, as subsequent statutory modifications of the Section 1531 subsidy commitment, effectively reducing the BABs subsidy plaintiffs were entitled to receive. Additionally, invoking the longstanding principle of interpretation that statutes are presumed not to create contractual rights, the Court of Claims also held that IMPA and its co-plaintiffs had failed to establish that Section 1531 created a vested, private and enforceable contractual undertaking on the part of the United States to pay their BABs subsidies at the full 35% level. To top things off, on plaintiffs' motion for reconsideration of the Court of Claims decision, based on legal error resulting in "manifest injustice," the Court of Claims rather dryly noted that plaintiffs "misapprehended federal law."

On appeal from the Court of Claims, the Federal Circuit decision made quick work of the issues presented, affirming the decision of the Court of Claims in an opinion running some three pages, a single paragraph of which addresses the merits. Apparently, the Federal Circuit viewed the Court of Claims' "well-reasoned analysis" as the legal equivalent of a slam dunk.

Taking a step back from these decisions, I will say that I always suspected it would come to this; namely, that if the feds ever decided to haircut, or even to fully repeal, the direct pay subsidy commitment made in Section 1531 before the last of the BABs were fully repaid and retired, it would be game over, end of story for BABs issuers. Don't get me wrong, though—I would be the last person to claim any competency to evaluate the ins and outs of federal budgetary sequestration and therefore to assess the legal claims of IMPA and its co-plaintiffs. It's just that, in contrast to the good, old-fashioned tax-exemption for state and local bonds that has been enshrined in federal law since the enactment of the first permanent income tax in 1913, looking to third parties in Congress and the rest of the federal government to live up to a long-duration undertaking such as the direct pay subsidy in ARRA Section 1531 is probably a lot like jumping off the side of a mountain in hopes that you'll discover you can fly. If you think I'm overdramatizing, just consider what Congress has been up to so far in 2023.

I know NABL's leadership has been working for a number of years to come up with some type of foolproof statutory "inoculation" against sequestration and other similar cut-backs, should a successor to build America bonds ever be enacted in the future. I give NABL full credit for making the attempt. My understanding is that there is some fairly compelling work product on the shelf that could be included in any future BABs-type bill, and for all I know it just might work. But these opinions out of the Court of Claims and the Federal Circuit should give all of us and our clients, and not just the Indiana Municipal Power Agency, a very long pause.

And While We're on the Subject of Refundable Tax Credits…

Sticking with claims for refundable tax credits for another moment, here's a late-breaking news flash about IRS Form 8038-CP, which is the tax form used by issuers to claim direct pay subsidies on BABs and other categories of tax credit bonds, including recovery zone economic development bonds, new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds. I don't mind mentioning as an aside that all of these sundry categories of bonds are subject to the direct pay sequester discussed above. I'm just sayin'.

Anyway, on March 27, 2023, IRS-TEB released a Community Update advising that, for "certain filers," all filings of Form 8038-CP after December 31, 2023 must be done electronically, through an authorized e-file provider (a current list of IRS-authorized e-file providers can be found at https://www.irs.gov/e-file-providers/exempt-organizations-and-other-tax-exempt-entities-modernized-e-file-mef-providers). Apparently, the IRS currently accepts electronic filings of this form from issuers who opt not to go the traditional hard-copy route. That element of optionality will change at the start of 2024, at least for "certain filers."

The IRS, ever earnest in its communications to the municipal market, avers that this measure is part of its ongoing efforts to improve service, to ensure that issuers are always using current revisions of the form and to minimize filing errors and processing delays. The problem with TEB's brief Community Update is that is doesn't specify exactly which filers are mandated to file Form 8038-CP electronically beginning in 2024. There is additional information about filing Form 8038-CP in the Service's "Form 8038 Corner," at https://www.irs.gov/tax-exempt-bonds/form-8038-corner, but the types of filers affected by this announcement do not appear to be described there, at least not at the time of publication of this column. Presumably, more detail will be posted there in due course, and presumably the instructions for Form 8038-CP (currently in a December 2022 revision) will be updated to provide specifics as to who must file electronically.

To be fair, the Community Update does refer to final Treasury Regulations under Code Section 6011 released on February 23, 2023 (Treasury Decision 9972) and suggests that these new regulations have occasioned the Form 8038-CP announcement. The IRS summary of its new regulatory release notes that it provides regulations "amending the rules for filing electronically and affects persons required to file partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns. The final regulations reflect changes made by the Taxpayer First Act (TFA) and are consistent with the TFA's emphasis on increasing electronic filing." Among other things, this regulatory package adds a new Treasury Regulations § 301.6011-11, reading as follows:

> § 301.6011-11 **Required use of electronic form for certain returns for tax-advantaged bonds**.
>
> (a) *Return for credit payments to issuers of qualified bonds.* (1) An issuer of a qualified bond required to file a return for credit payments on Form 8038-CP, *Return for Credit Payments to Issuers of Qualified Bonds,* must file the return electronically if the issuer is required to file at least 10 returns (as determined under paragraph (d) of this section) during the calendar year.
>
> (2) Returns filed electronically must be completed in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.
>
> (b) *Exclusions from electronic-filing requirements*—(1) *Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing a paper return. An issuer's request for a waiver must be submitted in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request must specify the type of filing (that is, the return required to be filed electronically under this section), the name of the issuer, the name of the bond issue, the issue date of the tax-advantaged bond (as defined in § 1.150-1(b) of this chapter), and any other information specified in the applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(2) *Exemptions.* The Commissioner may provide an exemption from the electronic-filing requirement of paragraph (a)(1) of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website, to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file a return electronically under this section.

(c) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Qualified bond.* The term *qualified bond* means a tax-advantaged bond that is a taxable bond that provides a refundable Federal tax credit payable directly to the issuer of the bond under former section 6431 or any other tax-advantaged bond (as defined in § 1.150-1(b) of this chapter) that provides a refundable Federal tax credit payment to an issuer of such bond.

(3) *Return for credit payments to issuers of qualified bonds.* The term *return for credit payments to issuers of qualified bonds* means a Form 8038-CP, *Return for Credit Payments to Issuers of Qualified Bonds,* or such other form prescribed by the Commissioner for the purpose of filing a return for credit payment with respect to a qualified bond.

(d) *Calculating the number of returns* —(1) *Aggregation of returns.* For purposes of this section, an issuer of a tax-advantaged bond is required to file at least 10 returns if, during the calendar year, the issuer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(2) *Corrected returns.* (i) If an original return covered by this section is required to be filed electronically, any corrected return corresponding to that original return must also be filed electronically.

(ii) If an original return covered by this section is permitted to be filed on paper and is filed on paper, any corrected return corresponding to that original return must be filed on paper.

(e) *Applicability date.* The rules of this section apply to returns for tax-advantaged bonds filed after December 31, 2023.

Maybe the foregoing accounts for why TEB opted for the more concise "specified filers" reference in its Community Update. I wish you all the best for the coming spring season.