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Content

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Editor's Notes[1]

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The Bond Lawyer Volume 49 No.2

Welcome to Volume 49 No.2 of *The Bond Lawyer*.

In this Edition

In this edition, Tony Martini provides commentary on recent developments on the public finance tax front.

Drew Kintzinger's securities law column returns in this issue with a report on the activities of the SEC this year, including recent enforcement activity.

Nationwide Property Tax Reform

Property tax reform is currently "trending" across the United States. A survey of some of the more common measures proposed and/or passed[2] recently may be considered "time honored" as most states have already enacted one or more of these at some level[3]:

- *Increase in Exemptions:* This seems to be one of the more common first steps in property tax reform and has been adopted in many states over the past several years. This includes increases in a homestead exemption generally (if one already exists), additional exemptions for various classes or groups (veterans, first responders, disabled persons, and seniors, for example) and added or increased exemptions for specific uses (e.g. affordable housing).
- *Annual Cap on Property Assessment Increase*: Some states have instituted various caps on property valuation for taxation purposes. While the first such measure may date back to the Depression and subsequently to the well-publicized California Proposition 13 in 1978, which instituted, among other

[1] Portions of this column (including this footnote) were generated with the assistance of ChatGPT, an AI language model developed by OpenAI (version June 23, 2025). While the author curated and edited the content, the AI contributed some original phrasing and ideas.
[2] This list of property tax reform measures is not intended to be a primary source for this information but rather a description of the types of property tax reform measures being considered.
[3] For a primer on variations in property tax policy, see Walczak, Jared, "Property Tax Limitation Regimes: A Primer," available at https://taxfoundation.org/research/all/state/property-tax-limitation-regimes-primer/; accessed June 16, 2025.

things, a 2% annual cap on increases (until a sale or substantial rehabilitation/construction occurs), several states have implemented a wider variation on assessment valuation.

- *Annual Cap on Tax Rate Growth by Tax Rate or Levy Limits:* Many states have limits on the increase in property tax burden. Some limit the actual tax rate, while others limit the total collection.

In 2024, Florida voters approved Amendment 5, which requires an inflation adjustment for a portion of property tax homestead exemption. Some Florida legislators tried to go further in 2025 by proposing additional local property tax relief (a measure favored by the Florida Governor); however, an alternate tax relief proposal, increased exemptions in the state's sales tax and expanded sales tax "holidays," appears to have won the 2025 tax relief battle, at least for now.[4]

Georgia voters approved Amendment 1 in 2024 that limits annual assessment increases to the previous year's inflation rate.[5] The assessed value will "reset" upon sale of the property. There is a provision for local governments to "opt out" but local governments that do not opt out can implement a 1% increase in sales tax to offset the revenue loss. [6]

An extreme approach to property tax reform that has been proposed (or threatened) in a few states would eliminate ad valorem property taxes altogether. In North Dakota, for example, a constitutional amendment was proposed through a citizens' initiative that would have eliminated property taxes, except for bonded obligations (presumably voter-approved general obligation debt). The measure would have required the state to reimburse local taxing entities the amount of taxes collected in 2024, estimated at approximately $1.3 billion per year. This measure was defeated in November 2024 with 63% of voters voting "no."[7] In the aftermath of the referendum failure, however, North Dakota legislators took up property tax reform measures in the 2025 legislature, including what the governor billed as "historic property tax relief."[8]

In Illinois, multiple property tax reform bills were introduced that would grant a homestead exemption to anyone who had paid property taxes on the same residence

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[4] The Florida Governor reportedly is pushing for a constitutional amendment to eliminate property tax on homesteaded property.
[5] https://www.pew.org/en/research-and-analysis/articles/2024/12/17/voters-approve-property-tax-overhaul-in-georgia-more-limited-reforms-elsewhere; accessed June 30, 2025.
[6] Id.
[7] https://northdakotamonitor.com/2024/11/05/north-dakota-voters-reject-property-tax-ballot-measure/; accessed June 30, 2025.
[8] https://www.governor.nd.gov/news/updated-armstrong-signs-historic-property-tax-relief-and-reform-package-north-dakota; accessed June 30, 2025.

for 30 years,[9] limit tax increases to 5% per year,[10] and limit increases in assessed value to 3%.[11]

In Ohio, a number of property tax relief measures are being complicated by a potential citizens' initiative to amend the Ohio constitution to eliminate property taxes. The citizens' initiative group had a mammoth task to obtain more than 400,000 signed petitions by early July (that then must be verified) in order to be on the ballot in November and organizers have recently stated they will target 2026. The property tax measures that were passed in the Ohio Legislature this year (dubbed "historic" by some legislators) were included in the state's budget and were recently vetoed by the Ohio Governor.[12]

In Colorado, two ballot initiatives proposing property tax reform were withdrawn after state legislation was proposed to provide some measure of property tax relief.[13] The legislature was called into special session to craft compromise reform, which the Colorado Governor signed once the initiatives were removed from the ballot. Perhaps the Ohio initiative will be resolved in similar fashion.

In a seemingly novel approach to influencing local government policy, an Arizona citizens' initiative resulted in the passing of Proposition 312 which affords local property tax payers the right to a refund of taxes paid to the extent they incurred documented expenses to mitigate the effects of the taxing entities failure to enforce "existing laws, ordinances or other legislation prohibiting illegal camping, obstructing public thoroughfares, loitering, panhandling, public urination or defecation, public consumption of alcoholic beverages, or possession or use of illegal substances."[14]

The point to all of this is that while property taxes may be local, the effort to reform existing laws is nationwide, spurred in large part by rising property values and economic hardships. The potential risk to investors in municipal bonds may not be limited to bonds specifically backed by property taxes as property tax reform, depending on the gravity, may have ripple effects throughout the local government. The complete elimination of property tax, without the substitution of alternative (credit

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[9] https://ilga.gov/legislation/BillStatus.asp?DocNum=1862&GAID=18&DocTypeID=SB&LegID=161040&SessionID=114&SpecSess=&Session=&GA=104; accessed June 30, 2025.
[10] https://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=4010&GAID=18&SessionID=114&LegID=163134; accessed June 30, 2025.
[11] https://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=4011&GAID=18&SessionID=114&LegID=163135; accessed June 30, 2025.
[12] https://www.wfmj.com/story/52891548/dewine-blocks-budget-provision-restricting-school-levies; accessed July 1, 2025.
[13] https://news.ballotpedia.org/2024/09/05/advance-colorado-withdraws-two-property-tax-initiatives-from-nov-ballot-following-legislative-compromise/; accessed June 30, 2025.
[14] https://taxfoundation.org/research/all/state/property-tax-relief-reform-options/; accessed June 30, 2025.

worthy) revenue sources seems inconceivable and raises constitutional issues regarding contract impairment. That then leads to the question of whether and to what extent this potential risk is something issuers should be disclosing in current offerings.

Similar to the question raised in my last column, if an issuer has no reasonable basis to predict which current or future tax reform proposal might be successful, if any, I am not sure how meaningful disclosure would be that states "this bad thing might happen, but we don't know when or if it will happen, but if it does happen, it will be bad, but if it's bad, someone likely will sue, and if someone sues, they might win, so it might not be that bad....." Or, in the case of North Dakota or Colorado, "this bad thing almost happened but it didn't, but it could be proposed again, and if it is proposed again and is successful, it will be bad, and if it's bad someone likely will sue, and if someone sues, they might win, so it might not be that bad." On some level, it is similar to a Florida coastal issuer (with "beach" in its name) having to disclose it is a coastal community and faces the potential risk of future storm events. I am continually trying to find that dividing line between what issuers need to tell investors and the common sense a reasonable investor should be assumed to have.

An Issuer, an Underwriter, an Investor, a Regulator, and a Bond Lawyer Walk into a Bar....

That may sound like an after-party at a public finance conference, but it sets the table for a survey about the different perspectives in our market and how those perspectives align or clash over the "big" issues, as well as the more mundane day-to-day issues in the market. In previous columns I have discussed proposals intended to "improve" the municipal market. Those proposals were, in my opinion, rather myopic and emanated primarily from the secondary market perspective. The following are admittedly over generalizations of how I view the perspectives of market participants.

Issuers issue. Issuers also run local governments, keep the water clean and trash removed, combat homelessness and housing unaffordability, educate our children, support local art and culture, fund police and fire departments, and provide a host of other services to its residents, all the while fielding criticism about service delivery, property taxes, fiscal responsibility, government inefficiency, street lights that are out, trash not picked up, animals running loose, school buses that are late, and, most recently, books that maybe shouldn't be in schools. When issuers go to market, it is typically to finance capital projects that support the services they provide to their residents. Issuers want the most efficient and lowest cost financing for their capital needs because this preserves financial resources for the other needs of the community. While the secondary market plays an important role in achieving efficient and lowest

cost financing for municipal issuers in the primary market, the correlation between liquidity in the secondary market and initial offering pricing is not easily discerned, particularly to the less frequent issuer.

Underwriters sell bonds. Investment banks assist issuers in structuring transactions, provide market insight and strategy, and facilitate issuer-investor engagement, all geared toward a successful initial sale of bonds. Investment banks are typically compensated from the proceeds of the bond issue (i.e. the underwriting "spread"). After the sale, the investment bank may also participate in the secondary market trading of the bonds.[15] Investors in the secondary market are likely the prime target investors in the primary market, particularly in more specialized market segments (e.g. land-based financings, healthcare, higher education, charter schools, etc.).

Investors invest. Investors come in a few shapes and sizes. Large institutional buyers, SMAs, and the true retail investor. Other than the relatively rare individual retail investor, most investment decisions are made or supported by the diligent work of investment analysts. Analysts want information, lots of information, to support their credit analysis. The National Federation of Municipal Analysts, an organization of approximately 1,200, has published numerous white papers covering industry specific disclosure "best practices."[16] The disclosure papers provide great insight into the perspective of the analysts and many, to a large extent, reflect current disclosure practices in the primary market. One of topics of continuing debate, however, from the analysts' perspective is the "timeliness" of the delivery of secondary market disclosure, which illustrates how the analyst's perspective can be in direct conflict with an issuer's perspective.

Regulators regulate. Pure and simple, right? The SEC's primary mission is to protect investors while also facilitating capital formation.[17] The IRS' stated mission is to "[P]rovide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all."[18] The MSRB "protects and strengthens the municipal bond market, enabling access to capital, economic growth, and societal progress in tens of thousands of communities across the country."[19] These are all lofty missions; however, when one factors in that a

[15] There is a risk factor sometimes included in offering documents addressing whether the underwriter intends (or does not intend) to create a secondary market for the bonds, thereby (potentially) affecting liquidity for the bonds.
[16] https://www.nfma.org/best-practices-in-disclosure; accessed June 30, 2025.
[17] https://www.sec.gov/about; accessed June 30, 2025.
[18] https://www.irs.gov/about-irs; accessed June 30, 2025.
[19] https://www.msrb.org/MSRB-Vision-Mission-and-Values; accessed June 30, 2025.

large portion of municipal issuers are governmental entities[20] with responsibilities to the public they serve, some balancing and, to some extent, deference, is necessary. The comments received by the SEC, MSRB, and IRS in response to proposed rules or interpretations illuminate the varying perspectives of market participants and the need for balance. Statements by SEC commissioners and staff over the years have been both critical of primary market participants, including issuers, and somewhat protective of issuers. That's a bit of a conundrum.

Bond Lawyers lawyer. Bond lawyers "paper" the transaction and review material provided by other working members. We do the legal analysis and tax and disclosure diligence. We track down signatures and keep up with deadlines, and we render unqualified opinions, all toward the goal of a successful, legal conclusion to the transaction. Our perspective is multi-faceted. From a legal perspective, we want laws, rules, and regulations that are (mostly) clear, but also capable of compliance from the practical standpoint of our clients (whether the client is an issuer, an underwriter, a lender, a financial advisor, a trustee, or an investor).

So, what's the punchline? An issuer, an underwriter, an investor, a regulator, and a bond lawyer walk into a bar. The issuer orders a glass of freshly treated local tap water (lead-free). The underwriter orders the daily charcuterie "spread." The investor complains the menu didn't have enough information to make a decision. The regulator pauses and waits for comments from the public before ordering. And the bond lawyer? The bond lawyer reviews the menu, passes on the tap water and charcuterie, asks the waiter to expand the menu information to the investor's satisfaction, submits comments to the regulator, and then leaves early to take a conference call.

Fun and Games with ChatGPT

I started playing around with ChatGPT (the free version) recently and asked it to write the punchline for the bar scene described above. It came back with this script:[21]

Title: "Full Faith, Credit, and Cocktails"

INT. CRAFT BAR – EVENING

[20] This applies to direct municipal issuances, as opposed to conduit transactions.

[21] OpenAI. (2025). ChatGPT response to prompt " An Issuer, an Underwriter, an Investor, a Regulator, and a Bond Lawyer Walk into a Bar" [Large language model]. Retrieved June 23, 2025, from https://chat.openai.com.

A cozy place called “The Disclosure Lounge.” The specials are listed on a chalkboard next to a yield curve diagram. The lighting is soft, but the compliance is strict.

[THE ISSUER] (city finance officer, weary but hopeful)

“I’ll take a Long-Term Liability — neat. We’ve got aging infrastructure, an election coming up, and a budget hearing tomorrow.”

[THE UNDERWRITER] (confident, charismatic)

“Relax, I’ve got a structure that spreads the pain, boosts the rating, and still looks good in the offering document.”

[THE INVESTOR] (analytical, sipping something strong)

“Is this project essential-purpose? Because if it’s another convention center in a floodplain, I’m out.”

[THE REGULATOR] (dry, clipboard always in hand)

“Before anyone orders, I need to see your preliminary disclosures, verify continuing obligations, and confirm you’re not using emojis in offering materials again.”

[THE BOND LAWYER] (calm, impeccably dressed, holding a thick legal binder)

“Don’t worry — the use of proceeds is clearly stated, the authorizing resolution was passed legally, and we built in a non-litigation certificate just in case someone sues over the parking lot.”

[THE BARTENDER] (retired state treasurer, polishing a glass)

“You folks want a round of Tax-Exempt Tequilas or a Build America Beer?”

[THE ISSUER]

“Make it tax-exempt. I’ve got voters to answer to.”

[THE UNDERWRITER]

“Put mine on the preliminary tab. We’ll finalize pricing later.”

[THE INVESTOR]

“Only if it settles T+2.”

[THE REGULATOR]

“Disclose the ingredients. In writing.”

[THE BOND LAWYER]

“This bar is now covered by a legal opinion. Cheers.”

Fade to black. On screen:

“Municipal Bonds: Where nothing’s simple — but everything’s documented.”

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

Federal Tax Law: The Tax Microphone

Antonio D. Martini
Hinckley Allen
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Well, we just hit 101° in Boston, Massachusetts, on the fourth full day of the Summer of 2025. I'm guessing it'll be a long and hot one for many of us. Let's take a look back at what transpired in the legislative, administrative, and advocacy quarters of the public finance world in the cooler days of Spring 2025.

To begin, we've seen some movement on H.R. 1, the Administration's legislative vehicle for extending the 2017 tax cuts and for effectuating tax and non-tax policy on lots of other fronts. The House of Representatives passed its version of H.R. 1 on May 22, 2025 by the narrowest of margins, with nary a hint of repeal or rollback with respect to access to tax-exempt bond financing for state and local governments (there do appear to be provisions relating to qualified small issue bonds issued under Section 144(a) of the Internal Revenue Code to harmonize with proposed Code changes to the calculation of research and development expenditures, but that's about it; hardly a rollback). And more recently, as the committees of jurisdiction in the Senate have raised their pens to mark H.R. 1 up, it appears that tax-exempt state and local bonds are continuing to fly under the radar. My tendency, of course, would be to congratulate NABL's Governmental Affairs team and those of the other membership associations that cover the tax-exempt bond markets for their effective advocacy, but I'm very conscious of the fact that this bill has a long way to go before the legislative process is complete. We'll have to stay tuned right through to the bitter end.

On June 12, 2025, the Senate confirmed Billy Long as the new Commissioner of the Internal Revenue Service; he was sworn in four days later, on June 16, also known as Bloomsday to fans of James Joyce, the eminent Irish author. I wrote a bit about Mr. Long in this column a couple of numbers back. All I'll add here is that he follows no less than four acting Commissioners since January of this year, and that the IRS has seen a reduction of some 11,000 staff—11% of its workforce—since the new Administration come into office on January 21, with many more terminations virtually certain to come over the balance of this year.

On a related note, I will share that I recently experienced the effects of these cuts first-hand. The agent on a bond examination that I've been handling went radio-silent after my submission in response to her Information Document Request No. 1, as IRS agents typically do. The difference here was that the agent stayed silent and then remained silent for an even longer interval. Sometime in the Spring, when I felt I could no longer stand by and wait for a message or other outreach, I messaged the agent on the IRS Secure Messaging platform; almost immediately, I received something like an auto-reply advising that the agent in question was no longer with the IRS. Some days later, without more, an IRS manager called to confirm that "my" agent had been terminated. He added that he'd had a good number of agents terminated and that he was backlogged finding currently-employed agents to substitute on pending audits, and that I would have to stand by until he could identify one to assign to my matter. That eventually happened, and additional delay of course ensued as the new agent had to take time to review the file and make an assessment, starting from square one. I imagine other NABL members have had similar experiences; others who haven't, but handle bond examinations as part of their practices, may still.

If this weren't enough, it seems there have been multiple reports from "103" practitioners that the IRS staff who have managed so far to stay on the job have been busying themselves, in part, during the early part of 2025 with sending out errant notices to bond issuers, advising them, incorrectly, that their filings on IRS Forms 8038 and 8038-G are late or unsigned. This isn't the first time that there's been a spate of erroneous late filing notices, but it seems especially ironic that it's happening now, when IRS staffing is becoming an ever more scarce commodity. What a waste of time and resources, on all sides.

On May 6, 2025, a subcommittee of NABL's Tax Law Committee published a "Tax Due Diligence Matrix" for governmental bonds. The preface to the Matrix quite rightly disclaims any intention to prescribe any set system or approach to gathering or assessing the facts pertaining to the predicates for tax-exempt treatment of governmental purpose bonds. Instead, according to NABL, the Matrix was published with the aim of "support[ing] bond counsel's existing methods of information gathering by providing suggestions that help bond counsel hone their existing procedures, ultimately allowing bond counsel to confidently advise issuers and borrowers as to the allowable uses of bond-financed projects and the proceeds of tax-exempt bonds and prepare an issuer or borrower for success in managing post-issuance compliance." The publication tackles this goal by addressing substantive topics such as validity, debt-versus-equity treatment, timing of expenditures of tax-exempt bond proceeds, the financing of working capital costs, arbitrage and yield restrictions, hedge bonds,

refundings, and record retention, among others, offering a synthesis of the law and practice tips and observations about fact-gathering under each topic heading. The Matrix can be accessed by NABL members on NABL's website at https://www.nabl.org/resources/tax-matrix-gov-bonds. Kudos to Taylor Klavan and to the other members of her working group for putting this learning resource together for the benefit of NABL's membership. I hope that NABL members, whether they are seasoned or just starting out, will take the time to study this invaluable reference tool and to take advantage of the insights it offers to evolve and elevate their practices.

On May 30, 2025, NABL President Jason Akers submitted NABL's response to an IRS solicitation in Notice 2025-19 (released April 4, 2025) for recommendations regarding items to be included in the Service's Priority Guidance Plan for fiscal year 2025-26. A print of the NABL submission can be found at https://www.nabl.org/resources/25-26-priority-guidance/. As is typical, it is almost wholly consistent with its counterpart for the preceding fiscal year (see my Tax Microphone column in the Spring 2024 issue, for example). Repeat topics this time around include requests for (i) updated guidance to the "incidental use exception" to the private business use rules, (ii) revisions and supplementations to the guidance in Revenue Procedure 2018-26, regarding remedial actions under Treasury Regulations Section 1.141-12, (iii) clarifications concerning the application of the allocation and accounting rules in Treasury Regulations Section 1.141-6, (iv) revisions with respect to the instructions for IRS Forms 8038 and 8038-G, (v) guidance on tax-exempt bond financing "haircut" rules that apply to the capture of refundable tax credits under Section 6417 of the Code, (vi) a lowering of user fees for private letter ruling requests, and (vii) guidance on the implementation of the relatively new exempt facility bond categories in Code Sections 142(n) and 142(o) for "qualified broadband projects" and "qualified carbon dioxide capture facilities" respectively. The only major change appears to me to be the omission of a request for final regulations regarding the retirement and reissuance of tax-exempt bonds, which makes sense as the IRS and Treasury Department issued these final regulations in December 2024.

Although it's true, as I've noted above, that there is a lot of carryover from year to year, the fact that NABL's list of requests for priority guidance this year is as static as it is resonates more than usual with me. I think it's indicative of a deep freeze within Treasury and IRS that is currently blocking their staff from engaging on the substantive issues on which municipal market participants need guidance. And I don't feel especially optimistic that guidance on any of the topics President Akers' letter references will shake loose from the tree.

Reinforcing this sense on my part, it seems that our tax regulators have not released a single piece of substantive guidance on any topic related to Sections 103 and 141 through 150 of the Code during the preceding three months. So, I'll state again what I've said before in this space about the orderly administration of the tax laws that, as of today, still govern the public finance markets: regularity and reliability in the administration of applicable laws and rulemaking are essential ingredients for making good business in our world.

I'm so desperate for "material" for this column that I'll report now on three bills that are probably bound for legislative oblivion. The first bill is the American Infrastructure Bonds Act, S. 1480, which was introduced by Senator Bennett of Colorado and Senator Wicker of Mississippi on April 10, 2025. This bill would establish a new direct-pay bond program for the issuance of taxable "American Infrastructure Bonds" that would give rise to a recurring refundable tax credit in the hands of their issuers equal to 28% of the interest paid on these bonds. S. 1480 appears to have a sequestration "inoculation" along the lines of what NABL's leadership has recommended to Congressional staff in the past for BABs-type direct pay bonds. Kudos to Senators Bennett and Wicker for staking out this ground; they've done the same in previous Congresses, and there has been support among co-sponsoring fellow Senators, but nothing has come of the bill in the past, and I'm not holding my breath this time around.

The second bill is S. 1481, the Lifting Our Communities through Advance Liquidity for Infrastructure (LOCAL Infrastructure) Act of 2025, also introduced by the aforementioned Senators Bennett and Wicker on April 10, 2025. This bill, which is also a rehash, would repeal the repealer in the Tax Cuts and Jobs Act of 2017 that has prohibited the reissuance of tax-exempt advance refunding bonds since the beginning of 2018. Kudos again to the sponsors, who are clearly allies of municipal bond issuers and borrowers.

The third bill is titled the "Financing Lead Out of Water Act of 2025" (the "FLOW Act"). This bill was offered in both houses of Congress on June 10, 2025, as S. 2007 (introduced by Senator Bennett) and H.R. 3892 (introduced by Representative Tenney of the 24th New York Congressional District). I will take a bit more space with regard to this bill, as it may not be as familiar a topic for readers, compared with the idea of bringing back tax-exempt advance refunding bonds, or BABs-type direct pay bonds. The text of the FLOW Act bill is brief, and there have been several counterparts that have been introduced in previous sessions of Congress. They were always destined not to go anywhere (which is why I haven't written about them

before), and the current bills probably will not, either. But here's what S. 2007 and H.R. 3892 would do: they would add a new subparagraph (D) to Code Section 141(b)(6) to clarify that, in general, "qualified lead service line replacement use" does not constitute private business use. The term "qualified lead service line replacement use" would be defined for these purposes to mean, with respect to public water systems (as defined in Section 1401(4) of the Safe Drinking Water Act), the use of the proceeds of an issue to replace any privately-owned portion of a lead service line connected to such system to facilitate, achieve or maintain compliance with a national primary drinking water regulation for lead. Definitions of the terms "lead service line" and "national primary drinking water regulation for lead" are also provided, and the provisions of new Code Section 141(b)(6)(D) would take effect with respect to tax-exempt obligations issued after December 31, 2025. This is surely a laudable legislative policy, but that is about all there is to say at present about the FLOW Act. I doubt there will be any movement on this bill; there has not been any formal legislative action taken on it, or on the other two bills described above, since introduction.

I'll close these miscellaneous ramblings with a further thought or two on Treasury Decision 10020, which promulgated final regulations regarding when tax-exempt bonds are treated as retired and reissued for federal tax law purposes. Readers will recall that the final regulations, appearing in Treasury Regulations Section 1.150-3, are effective as of the date of their release, December 30, 2024, although issuers and borrowers are permitted under the terms of Treasury Decision 10020 to continue to apply the provisions of the preceding tax-exempt bond reissuance guidance in Notice 88-130 or Notice 2008-41 to events occurring and actions taken with respect to tax-exempt bonds for a "transition period" until December 30, 2025. So far this year, you may be falling back, as permitted, to the prior notices when you've had occasion to analyze reissuance questions relating to bonds, but the window for doing so will soon be closing.

NABL's Tax Law Committee highlighted a discussion of the final reissuance regulations at one of its regularly scheduled meetings, and I imagine there will be a panel or two at NABL's Workshop in September 2025 that will cover this topic as well. I briefly surveyed the new regulations in my last Tax Microphone column and won't recapitulate that overview here. But I will make a couple of additional observations about the regulations that have occurred to me in the intervening couple of months.

First, it dawned on me after several runs through Treasury Decision 10020 that it is far less explicit and direct on the subject of self-purchases of tax-exempt bonds by conduit borrowers (i.e., parties other than the actual issuers of tax-exempt conduit bonds), at least compared to Notice 2008-41. You'll recall that the 2008 notice stated in black and white that conduit borrowers could purchase tax-exempt conduit bonds issued for their benefit and hold them indefinitely without risking that they would be treated as extinguished for federal tax law purposes. It made sense that Notice 2008-41 should offer comfort on this issue because of the prevalence of failed remarketings of tax-exempt auction rate and interest rate reset bonds in 2008 and 2009, but over parts of the last several months I began to wonder why Treasury Decision 10020 should be silent on this topic. I'm not sure that I have a good reason for why this should be, though I think I've gotten comfortable with the idea that the omission does not signify a withdrawal of the guidance on this topic that was offered in the 2008 notice.

Next, and last, I will observe that the final Section 1.150-3 regulations state that if a bond is treated as retired as a result of a significant modification under the principles of Regulations Section 1.1001-3 (i.e., as a consequence of a significant modification of the bond's terms that gives rise to a deemed exchange of an old bond for a new bond under Code Section 1001), the modified bond is treated as a "new bond" issued at the time of the modification (which is addressed in Regulations Section 1.1001-3(c)(6)). So far, so good; this is familiar ground and consistent with prior guidance. Similarly, if an issuer or its agent subsequently resells a bond that has been acquired in a manner that causes it to be treated as extinguished, the bond is treated as a "new bond" issued on the date of resale. This is also consistent with prior guidance. The new guidance, however, goes on to say that, as to the characterization of the resulting "new bond" in either case as refunding bond, we are to look to the definitional provisions of Treasury Regulations Section 1.150-1(d). This is where I pause to scratch my head a bit, at least in connection with the latter scenario, in which a previously-issued tax-exempt bond is treated as extinguished. In that case, prior guidance has taught us that a bond, once retired or extinguished, cannot be refunded and that, instead, a purported refunding in these circumstances generally should be treated as something other than a refunding—such as a disguised working capital financing. There have been occasional, one-off exceptions that have been noted in the guidance, usually having to do with sympathetic circumstances outside an issuer's control (the wayward trustee; the issuer's treasurer expiring just before time for the "roll" of maturing debt instruments), but to me those exceptions underscore the general precept. Maybe, then, this element of Treasury Regulations 1.150-3 is really a throwaway in this context. After reflection, I can't imagine that it is intended to expand the reach of the general definition of a "refunding" with all of its attendant "step in the

shoes" characteristic to include the purported refunding of tax-exempt bonds previously extinguished.

These musings lead me to wonder what other conundrums may be identified vis-à-vis Treasury Decision 10020 either before or after December 30, 2025. Your thoughts welcome on that score.

With that, I will close, adding my best wishes to all for a happy and safe Summer of '25.

Federal Securities Law

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While the regulatory focus over the past several months necessarily has been the tax bill and prospects for saving the tax exemption for municipal bonds, the SEC's Public Finance Abuse Unit in the Enforcement Division, the SEC's Division of Examinations, and the Office of Municipal Securities have remained steadily active in their market oversight efforts. Much has been written about the prospects for change in Commission direction from Chair Gary Gensler's departure on January 20, 2025, to Chair Paul S. Atkins arrival on April 21, 2025. However, over the same period, "the beat goes on" for municipal securities regulation.

Silver Point, Material Nonpublic Information and Puerto Rico Bonds

When lawyers advise on voluntary continuing disclosures by municipal issuers or obligated persons, they often need to consider how to handle "material nonpublic information" or "MNPI." On December 20, 2024, the Commission filed a litigation complaint charging an investment advisor firm, Silver Point Capital L.P., with failing to maintain and enforce written policies and procedure to prevent misuse of material nonpublic information in connection with trading of Puerto Rico bonds. Silver Point's business line was investing in distressed companies. Silver Point had a consultant—described by the Commission as a "now-deceased lawyer"—who participated on credit committees of these distressed companies on behalf of Silver Point. From September 2019 through February 2020, the consultant lawyer sat on the ad hoc creditor's committee in connection with restructuring Puerto Rico's defaulted municipal bonds. According to the SEC's complaint, the consultant lawyer received MNPI from a related confidential mediation and, in turn, had numerous communications—over 500 calls—with Silver Point's public trading desk without involving the firm's compliance department. During this time period, Silver Point continued to buy Puerto Rico bonds. According to the SEC, this created a substantial risk that Silver Point may have misused information from the mediation in connection with trading of over $260 million of Puerto Rico bonds. According to the Enforcement Division, "[a]llowing individuals who possess MNPI to have unfettered access to those making trading decisions presents an enhanced risk of misuse of MNPI, and the resulting risks to market integrity and investors are compounded when investment advisers fail to

enforce their compliance policies and procedures to prevent misuse of MNPI." Of interest, the investigation of Silver Point was conducted by members of the Public Finance Abuse Unit. Perhaps emblematic of new leadership and direction at the SEC, the Commission announced dismissal of this civil enforcement case on April 4, 2025. The case complaint is of interest on topics of MNPI and the advisability of addressing MNPI in disclosure policies and procedures. The case offers context for how municipal issuers may handle MNPI in cases of event, selective, or voluntary disclosures.

Legacy Cares/Legacy Sports Case—Arizona

In August 2020 and in June 2021, $284 million of revenue bonds were issued through the Arizona Industrial Development Authority for the benefit of conduit borrower Legacy Cares/Legacy Sports to finance the construction of a multi-sports park and family entertainment center in Mesa, Arizona. The sports complex opened in January 2022, with far fewer events and much lower attendance and generated tens of millions less in revenue than expected under projections contained in offering documents. Payment default on the bonds occurred in January 2023, followed by borrower's Chapter 11 bankruptcy in May 2023.

On April 1, 2025, the SEC filed a litigation proceeding in U.S. District Court for the Southern District of New York charging Randall Miller, the former Chairman and CEO of borrower entity Legacy Sports, his son Chad Miller, the former CEO of Legacy Sports, and Jeffrey De Laveaga, the Chief Operating Officer of Legacy Sports, with violations of antifraud provisions. The SEC complaint alleges the defendants fabricated letters of intent and altered pre-contract documents—nearly 50 in all—as well as forged signatures, leading to false projections that deceived bond investors into believing the sports and entertainment complex would generate sufficient revenues to pay debt service on the bonds. According to the Complaint:

> [4.] The financial projections in the 2020 Offering Memorandum were false and misleading. The revenue anticipated in the financial projections was based on indications of interest in the Sports Complex, and was purportedly evidenced by dozens of "letters of intent" that were attached to the 2020 Offering Memorandum and therefore provided to investors. These letters purported to be from various sports clubs, leagues, and other entities expressing the intent to move their events or operations to the Sports Complex. The 2020 Offering Memorandum referenced the letters throughout the document as the basis for the revenue expectations, and included the letters as an attachment.

[5.] However, the majority of the more than 50 letters of intent were either totally fabricated or materially altered in some fashion, including the forging of signatures, by Randy Miller, Chad Miller, and De Laveaga in the months leading up to the 2020 bond offering. Each Defendant knew or was reckless in not knowing that he was creating false documents, and that the documents would be disseminated to investors.

[6.] In addition to the fabricated letters of intent, Defendants also, knowingly or recklessly, collaborated to create a set of 25 so-called "pre-contracts," which, like the letters of intent, are referenced throughout the 2020 Offering Memorandum as supporting the revenue expectations. The 2020 Offering Memorandum represented that the pre-contracts constituted "binding" arrangements with Sports USA to use the Sports Complex and pay fees. The precontracts were listed in the 2020 Offering Memorandum, and copies of the pre-contracts themselves were provided directly to potential investors prior to the sale of the 2020 bonds through an online investor "data room" hosted by the Underwriter (the "investor data room"). These pre-contracts were purportedly signed by some of the same sports leagues and entities falsely identified as having previously submitted letters of intent. Like the fabricated letters of intent, however, most of the pre-contracts were fake.

The complaint alleges violations of antifraud provisions Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act. The complaint seeks injunctive relief, civil penalties and disgorgement from the individual defendants. The SEC advised the court on May 5, 2025, that it had reached partial settlement with defendant Jeffrey De Laveaga.

Simultaneous with the SEC's litigation complaint, the U.S. District Court for the Southern District of New York and the FBI unsealed criminal indictments against father and son Randall Miller and Chad Miller and arrested both individuals for allegedly defrauding investors. On May 28, 2025, Messrs. Miller each entered guilty pleas to securities fraud and aggravated identity theft, facing prison time and substantial money judgements. In the SEC action above, the SEC advised the court that Jeffrey De Laveaga had entered a guilty plea in the criminal action, as well.

The foregoing case reminds that disclosure fraud investigations and cases continue to be the "bread and butter" of the Public Finance Abuse Unit, including coordination with the Department of Justice when criminal activities are evident.

Municipal Advisor Regulatory Guidance and Enforcement Activity

Municipal advisor matters continue to be a priority for the Office of Municipal Securities ("OMS") and for the Public Finance Abuse Unit.

Updated FAQs regarding Municipal Advisor Registration. OMS maintains a set of frequently asked questions and OMS staff responses (the "FAQs") regarding municipal advisory activities and registration, available at the OMS page at www.sec.gov. The FAQ responses are prepared by OMS staff and represent the views of OMS staff but are not rules, regulations, or statements of the Commission. In January 2025, OMS staff updated the FAQs, intended to offer more clarity for certain market participants—direct bond purchasers, special assessment consultants, lease consultants, former employees of municipal entities, and certain associations organized for the benefit of municipal entities—on whether and when their activities may require registration. The FAQs are annotated to indicate the new additions. Staff advised that these responses were developed as a result of actual questions received from public finance market participants.

Of particular interest to counsel are the nuances in **new FAQ 1.5** regarding whether a financial institution (that is not a bank or broker-dealer) or other person (that is not a bank or broker-dealer) that intends to purchase municipal securities directly from a municipal entity or obligated person needs to register as a municipal advisor if it provides information about the types of debt structures it can offer, which may include the terms at which it could purchase the municipal securities. Is the purchaser providing general terms for purchase or recommending or designing a customized financing structure?

For practitioners in the special assessment or tax increment space, **new FAQ 19.1** on special assessment consultants as municipal advisors will be relevant to how such consultants interact with issuer clients. Similarly, for counsel in the leasing space, **new FAQ 19.2** on leasing consultants and various leasing structures, including "fractionalized leases" as municipal securities, will inform allocations of responsibilities between leasing consultants and issuer clients.

Municipal Advisor Enforcement Actions. In published SEC speeches last fall, Dave Sanchez, Director of the Office of Municipal Securities, repeated the Commission's continuing concern about activities of market participants that may constitute municipal advice and the failures of such participants to register as municipal advisors with the SEC and the MSRB. Specifically, OMS singled out activities

in the charter school financing space and in the P3 financing space that may involve municipal advisory activities.

On June 2, 2025, the Commission issued a "no admit/no deny" settlement Order with *Highmark School Development, LLC* regarding unregistered municipal advisory activity. According to the Order, Highmark provided development services to charter schools and private schools that consist primarily of overseeing and managing the acquisition and construction of school facilities to suit the specific needs of the school. The settlement order provides specifics on what the Commission believes constituted municipal advisory activity:

> Highmark engaged in municipal advisory activity when it provided advice to, and on behalf of, five charter schools in connection with five offerings of municipal securities. The advice that Highmark provided to the charter schools included: (a) advising on the development of financing plan that included the issuance of municipal securities; (b) advising on the structure (typically fixed rate with capitalized interest period during construction), timing (to coordinate with acquisition of property and/or commencement of construction), and terms of the offerings; (c) advising on current municipal bond tax-exempt interest rates based on its analysis of comparable charter school bond deals; and (d) advising on the schools' abilities to finance and/or refinance their facilities through the issuance of municipal securities given each school's student enrollment forecast and revenue projections based on anticipated per-pupil payments and the municipal securities terms. Highmark's advice was particularized to the specific needs, objectives, and circumstances of its charter school clients addressing their specific facility and fiscal needs and incorporating their enrollment forecasts and projected revenues. Highmark also interacted with other members of the municipal securities financing team – including the underwriter and potential bond investors, on behalf of its charter school clients. The five charter school clients financed approximately $227 million in aggregate principal amount of municipal securities in the five offerings. Highmark charged each of the five charter schools a flat consulting fee for all of its services, which included the municipal advisory services.

Highmark was found to have violated the municipal advisor registration requirement provisions of Section 15B(a)(1)(B) of the Exchange Act and agreed to a notice undertaking to existing and new charter school clients of such violation unless and until it registers as a municipal advisor. Noting Highmark's cooperation, the Commission issued a cease and desist order, a censure and a $40,000 civil penalty.

This Order is notable in providing the detailed level of fact investigation conducted by Staff in identifying municipal advisory activities.

On May 30, 2025, the Commission announced a "no admit/no deny" settlement Order with ***Agentis Capital Advisors*** regarding unregistered municipal advisory activity in connection with consulting services provided to six private sector entities engaged in public-private partnerships ("P3s") in the US in connection with six municipal securities issuances. Agentis is based in Vancouver, Canada, and provides consulting services to private sector entities with a specialization in infrastructure. An Agentis affiliate became a registered municipal advisor with the Commission in 2023. However, according to the Commission, prior to that registration:

> Agentis engaged in municipal advisory activity when Agentis provided advice to the clients in connection with the municipal securities offerings, which raised an aggregate total principal amount of over $1.9 billion. Agentis' municipal advisory activities for its clients included: (a) providing detailed information and analysis of debt financing structuring options in complex financial models, including the sale of municipal securities; (b) providing advice on the structure, timing, and terms of the municipal securities offerings; (c) coordinating the credit rating process; and (d) soliciting and selecting other parties to the financing, including underwriters. Agentis' advice was particularized to the specific needs, objectives, and circumstances of its clients with respect to the issuance of municipal securities. A portion of the consulting services Agentis provided to these clients in connection with their municipal securities offerings included the municipal advisory activities described above, which are routinely engaged in by registered municipal advisors. Agentis charged the six clients consulting fees for its municipal advisory services.

The Commission charged Agentis with violating the municipal advisor registration requirements of Section 15B(a)(1)(B) of the Exchange Act and sanctioned Agentis with a cease and desist order, censure and $100,000 civil penalty.

The ***Highmark*** Order made specific mention of Highmark's "prompt cooperation with the staff's investigation"; the ***Agentis*** Order is silent on this topic. This could explain the significant difference in civil penalty amounts assessed to each.

The release of these Orders underscores that OMS is communicating its concerns about certain types of market consultants through speeches or published bulletins. Particular named activities are then referred to the Public Finance Abuse

Unit, which, in turn, is sending "message cases," with detailed investigatory findings, to all market participants.

SEC Examinations of Municipal Advisors. The past nine months have been a very active period of formal examinations of municipal advisory firms by the SEC's Division of Examinations. Particular lines of exam inquiry include registration compliance, compliance with requirements for written supervisory procedures, adequacy of disclosure of conflicts of interests to municipal entity clients and general compliance with fiduciary duties of care and loyalty under Exchange Act provisions and MSRB rules. Most of these examinations are resulting in issuance of a "deficiencies/weaknesses" letter by the Division of Examinations and a "closing" telephone conference to discuss the deficiencies letter, sometimes followed up with remedial steps. It is assumed that instances of material violations are referred by the Division of Examinations over to the Enforcement Division-Public Finance Abuse Unit for consideration of further enforcement actions.

Future Regulatory and Enforcement Trends?

We await what new directions the SEC may take under Chairman Atkins. The past six months have presented countervailing trends for the municipal market: on the one hand, in March, the SEC announced that it would no longer defend its proposed climate change disclosure rules for reporting companies; on the other hand, the Township of White Lake, Michigan, in an offering document posted earlier this year, noted that the SEC is investigating the events surrounding a cybercriminal event resulting in cancellation of sale of the Township's Series 2024B Bonds. (In this writer's view, not involved with either issuer or issue, the Township's cybersecurity disclosure is thorough, impeccable.) On the one hand, the SEC declined to pursue the Silver Point case discussed above. On the other hand, Commission Staff remains in overdrive regarding patrolling municipal advisory activities. One sure take away, highlighted by Legacy Sports discussed above, is that the Public Finance Abuse Unit will not ignore cases of inadequate, inaccurate, or misleading disclosures that impact investors.

Later this month, the national GFOA conference convenes in DC, as does NABL for Workshop in September. These conferences will offer opportunities to hear directly from the regulators at Commission Headquarters. We will monitor developments.

A professional note: Mary Simpkins, Senior Special Counsel in the SEC's Office of Municipal Securities, retired on March 31. Mary joined OMS in November 1997, under Chair Arthur Levitt and was a great source of institutional background—a true reservoir of knowledge—on all matters municipal securities. Her "secret weapon" was

that she was a trained bond and tax lawyer. She was a devoted attendee at nearly every NABL conference. Indeed, this writer observed her purchasing and wearing a pink NABL hat at Workshop in Chicago last Fall. She was a regular reader of this column and would always let this writer know what we got right, what we missed, and what we got wrong. We hope to welcome Mary at future NABL events!

—ARK