The Ledger

January 2014 www.gfoaPA.org

Quarterly News From the Government Finance Officers Association of Pennsylvania

From the President of GFOA-PA

I would like to wish all GFOA-PA members a very happy holiday season.

Vice President Terri Windstein and the conference committee have a very exciting state conference planned for the membership this year. Please place April 27 - 30 on your calendar. The conference will be held at the Penn Stater again this year.

It is exciting that the GFOA national conference will be held in Philadelphia in May 2015. It will be great fun to co- host this event with GFOA national. Dean Dortone and I will be keeping the statewide membership updated as to the progress of this event.

GFOA-PA has much to celebrate in the coming weeks. Please stay tuned as we continue to update you on these very exciting events.

Respectfully,
Marita J. Kelley, GFOA-PA President

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GFOA Scholarships Available

The Government Finance Officers Association (GFOA) will administer four scholarship programs that will be awarded in the spring of 2014. All of these programs are intended to benefit students planning to pursue careers in state and local government finance. The submission deadline for applications for the 2014 awards is February 21, 2014. The following scholarships are available:

- The **Daniel B. Goldberg Scholarship** for graduate students in public finance
- The **Frank L. Greathouse Governmental Accounting Scholarship** for undergraduate or graduate students enrolled full time in an accounting program
- The **Minorities in Government Finance Scholarship** for upper-division undergraduate or graduate students
- The **Government Finance Professional Development Scholarship** for employees of a state or local government enrolled in part-time graduate study preparing for a career in state and local government finance.

GFOA-PA Mentorship Program

A mentor is an active GFOA-PA member who is interested in assisting other members in the field of government finance. The mentor acts as a fellow professional to talk to, helping other members think through a situation or decide how to handle a problem area. The mentor can give the mentee the benefit of his/her own experience, either with the same set of circumstances or with knowledge about others in similar situations.

Members who are interested in volunteering to serve as mentors can learn more and enroll on the members-only section of GFOA-PA's **website**. Members who wish to view the list of available mentors and contact one can view the list **here**.

GFOA-PA's Mission

"...to promote high standards and professional development in public financial management for all government entities in Pennsylvania."

The Ledger

The Ledger is published by GFOA-PA to communicate with and inform its membership about news and events affecting government finance.

GFOA-PA Officers

Marita J. Kelley, President
Local Government Policy Specialist
DCED, Ctr. for Local Government Srvcs.

Dean Dortone, President-Elect
Chief Financial Officer
Lower Merion Township

Terri Windstein, Vice President
Assistant Finance Director
Municipality of Mt. Lebanon

Richard Grove, Treasurer
Finance Director
Lower Allen Township

Bruce T. Koller, Secretary
Government Banking Relationship Mgr.
M&T Bank

GFOA-PA Board of Directors

GFOA-PA's Board of Directors welcomes its newest member, Dawn Lane. Dawn is the Finance Director for Ross Township in Allegheny County. Originally from Robinson Township, Allegheny County and a graduate of Montour High School, she now resides in Scott Township, Allegheny County. She received her Bachelors of Arts in Business Administration from Thiel College. In 1990, she entered the municipal government arena and has since enjoyed 23 years in the profession. Over this time, she has had the opportunity to work as both a Finance Director and a Municipal Manager. Dawn is a member of PELRAS and GFOA-PA.

2014 Board of Directors

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Maher Duessel CPAs

Terri Windstein
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Mount Lebanon Municipality

Welcome New Members

(September 27 - December 31)

James Dillon
Borough of Bristol

Robert E. Ihlein
Borough of Lemoyne

Frances Kiscaden
Lancaster Area Sewer Authority

Janice E. Kowalski
Township of Pine
Wexford, PA

Tricia Levander
Borough of McKees Rocks

John Lindeman
AXA Equitable Life Insurance Co.
Jersey City, NJ

Andrea Mannino
Econsult Solutions, Inc.
Philadelphia, PA

Stephen P. Mullin
Econsult Solutions, Inc.
Philadelphia, PA

Corry H. Sheffler
Southwest Greensburg Borough

Joseph P. Soloski
Centre Area Transportation Authority
State College, PA

NEWS FROM THE REGIONS

West Region
Terri Windstein, Regional Chair

The West Region has reappointed Judy Kording to the GFOA-PA state board.

There will be an education meeting on January 7 to develop the 2014 training schedule. If anyone is interested in working on the education committee, please contact one of our board members. We would love your input and ideas for upcoming sessions.

Lastly to all, may you have a merry Christmas and a happy, healthy New Year!

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East Region
Nicholas Hiriak, Regional Chair

The East Region has conducted three training sessions since the beginning of our training cycle in September. September's topic was "Healthcare Reform: What's Next for Employer Benefit Plans." October's topic was "Internal Controls/Risk Assessment" and November's session discussed 1099s and W-2s.

The 2014 seminar schedule resumes on February 13, from 11:45 am to 2:15 pm at the Plymouth Township Community Center on Debt/Financing Strategies.

2014 Sessions

March 13 from 9:00 am to 11:30 am at Uwchlan Township on Arbitration

April 10 from 9:00 am to 11:30 am at Towamencin Township with an Economic Update.

The following is the slate of candidates for Officers and Board Members of the East Region for 2014:

Nicholas Hiriak, Regional President
Richard Livergood, Regional Secretary
David Bernhauser, Regional Treasurer
Luisa Follweiler, Communications Committee
Vickie Brown, Education Committee
Marion Marucci, Finance Committee
Timothy Sander, Governance Committee
Susan Bernhard, Membership Committee
Dean Dortone, Regional Member
Courtney Mulholland, Regional Member
Daniel Knueppel, Regional Member
Colleen Williams, Regional Member
Laureen Gallagher, State Board Director

Central Region
Melissa Devlin, Regional Chair

As a standard practice. the Central Region will hold board meetings immediately following each program session. All are welcome to attend.

2014 Proprosed Program Sessions

If anyone would like to request a specific topic or presentation for 2014, please email anyone on the Central Board OR bring your ideas to the board meetings immediately following each session.

- GASB# 67 & 68 (scheduled for January 23)
- Succession Planning in the Governmental Environment
- Building and Renewing Financial Policies
- Employment and Labor: HR 101 AND Employment Labor A to Z.
- Budgeting and Project Accounting
- Finance Director's Role in Debt Issuance
- How do Credit Rating Agencies Analyze Your Financial Statements and Understanding the Notes to the Financials

2014 Central Region Board Members

Officers

Regional Chair, Melissa Devlin
Regional Secretary, Tracey Rash
Regional Treasurer, Rick Grove

Committee Regional Board Members

Laurie Yohe	Terri Noll
Marita Kelley	Karen Schaale
Albert Penksa	William Seymour
Mike Lehman	

State Board Director

Tracey Rash

Economic and Investment Market Update

By Michael R. Varano

Growing Global Economy?

The world economy is poised to expand over 3.4% next year, as growth in the U.S.; China, and emerging markets improves and the European economy continues to recover. Third quarter U.S. gross domestic product (GDP) growth was 3.6%, which was considerably faster than expected and driven by business inventory accumulation—a sign of business confidence. Construction and sales of automobiles, houses, and big ticket items like aircraft and anything energy related are boosting manufacturing and contributing to the recent fall in unemployment. Payroll employment grew by an average of 200,000 net new positions over the last two months, pushing the unemployment rate down to 7% in November. Corporations continue to boost profits, helping the U.S. stock market reach all-time highs. As of December 11, the S&P 500 Index has increased 25% year to date. Huge stock market gains and the 12% year-over-year increase in housing values added $1.92 trillion to the net worth of households and non-profit groups in the third quarter. Confidence among U.S. consumers has moved higher as many have become more optimistic about jobs and finances.

FOMC and Interest Rates

The Federal Reserve (Fed) is moving closer to winding down (or "tapering") its $85 billion monthly purchases of longer dated bonds. This additional stimulus was intended to push longer maturity yields lower to stimulate the housing market and construction of factories and schools. Clearly, this program has been successful, as the lowest rates in U.S. history have contributed to the rise in construction spending. The timing of this tapering has been the center of attention for both the stock and bond markets since Fed Chair Bernanke's June 19 statement that the Fed could begin scaling back its bond-buying program this year. Recent statements from Fed officials show they are looking for further improvement in the labor market and steady economic growth before making the decision to taper. Once again, the Fed reaffirmed its commitment to keeping the target range for the federal funds rate at zero to 0.25% as long as the unemployment rate remains above 6.5% and inflation remains in line with expectations. Since the federal funds rate is the benchmark for most short term interest rates in the U.S., this means that short rates will likely remain low over the next year or so.
Interest rates climbed to a two-year high in September before easing off after the Federal Open Market Committee unexpectedly decided to hold off on tapering at its September meeting, preferring to await more data. Recent stronger economic reports have pushed longer-dated rates higher again as the market anticipates a near-term tapering. As investors sold longer-dated securities, a large quantity of funds moved to the short end of the yield curve, further depressing short rates.

How It Affects You

Low short term rates limit public funds investors' investment income, while higher longer-term rates hinder bond refinancing and add interest costs to new issuance. This sharply positive yield curve will likely be in place over the next year. Public funds investors should make sure that any longer-term investments meet their cash flow requirements.

Michael R Varano is a Managing Director at PFM Asset Management LLC and a portfolio manager for PLGIT.

Unemployment Undergoes a Computer Conversion!

By Debra S. Gross, U•COMP Member Service Representative

Pennsylvania's Department of Labor and Industry has rolled out new online employer interface software. The name of the new system is the Unemployment Compensation Management System (or UCMS). The UCMS system will provide employers, third party administrators and claimants access to a quality online experience.

UCMS will allow employers to access information that, previously, came from multiple data sources. Employers will be able to:

- View account information
- Access account and transaction history
- Enter and change demographic information

All of the above is completed through a secure sign-on.

The new software system is being implemented through a multiphase approach. Each phase is known as a "release" which is a group of system features that are implemented simultaneously. There are three key releases and they are:

1. Wage Records and Tax Remittance Posting
2. Tax Services
3. Benefits Services

The initial rollout period for the above releases was to be over a period of five years. Some implementation issues have extended this timeframe. Currently, although the system was thoroughly tested, there remain some unforeseen challenges. This has resulted in additional testing and rollout delays. Phases one and two are currently live for employer use, however, the second phase is not fully functional for all employers, such as reimbursable employers. Reimbursable employers are employers who pay the Department of Labor and Industry dollar for dollar for their unemployment claims as opposed to paying an assigned percentage rate times a taxable wage figure.

Employers are currently able to:

1. Create their account in the UCMS system.
2. Set up their administrative users.
3. Manage their account profile.
4. Set up preferences for correspondence and contact information.
5. File quarterly employee withholding reports and payments.

As further enhancements and corrections are made, more functionality will become available. This will include the ability for employers to request services that require minimal or no human intervention. In addition, the employer will be able to exchange employee separation information electronically before a claim is filed.

Periodic updates are sent to employers with the most current UCMS information and upgrades. The Department of Labor and Industry requires all employers to file their first quarter 2014 withholding electronically in UCMS. **This link** will bring employers to the UCMS home page. The next phase is scheduled to roll out in 2014 and we look forward to it.

National Representative's Report

By Dean Dortone

Register to Attend GFOA's 108th Annual Conference

Registration for GFOA's 108th annual conference, *The Future of Government Finance*, in Minneapolis, Minnesota, is now open on GFOA's website.

First-Time Conference Attendee Scholarships

The GFOA strives to provide leadership to the government finance profession through education, research, and best practices. Nowhere are these efforts more apparent than at the GFOA annual conference. To keep with this commitment, the GFOA Executive Board is pleased to announce that fifty scholarships will be awarded ***per state*** or province in the amount of the full-conference registration fee to first-time conference attendees who are national GFOA active government members. Apply for the scholarship by emailing firstannualconference@gfoa.org.

Yolo County, California, Uses Best Practices to Solve Structural Problems

The Great Recession underscored the urgent need for long-term planning for many local governments, including Yolo County, California. In undertaking this planning work, the county discovered that it needed to be on firmer fiscal footing in the present before attempting to make any projections into the future. It was clear that recovery and growth would not be possible without first strengthening the county's financial infrastructure, and the best practices contained in the CIPFA-GFOA Financial Management Model – particularly the best practice related to long-term planning – turned out to be the key driver of change.

After several years of austerity strengthened the county's resolve to discard its short-term blinders, a new county administration championed the search for long-term fiscal stability. Following much introspection, county officials identified three factors that destabilized the county's financial condition:

- No focus on the long-range implications of current decisions.
- No measurements county officials could use to gauge the efficacy of past decisions.
- No safety cushion to help mitigate the effect of incorrect decisions or unforeseen events.

County staff turned to the GFOA's long-term financial planning model (available at no charge on the GFOA's website) to address the first and third deficiencies, and adopted the GFOA's financial management self-assessment tool, the FM Model, to correct the second deficiency. Long-term financial planning is itself one of 52 best practices contained in the FM Model, but it deserves special attention.

A critical goal of the financial plan is to ensure that the financial management structure is adequate to implement the plan. Yolo County subscribed to the GFOA's financial management self-assessment model (the FM model) and used its survey tool to assess the structure.

The results indicated that the county was barely effective in ensuring stewardship of public resources, the first level, or baseline, in the GFOA's three-stage model. County officials found that efficiency and effectiveness were hampered by the cumbersome patchwork of fixes and improvements laid over several decades – a situation that may exist in many long-lived institutions. This was the case for the organizational structure, policies, and processes as well as the information systems.

The FM Model also comprises four dimensions of financial management – leadership, people, process and stakeholders – and the county had low scores throughout. This told county officials that piecemeal improvement was clearly not the solution; the entire structure had to be revamped. Of course, scarce resources dictated a prioritized approach, and fortunately, the FM Model scoring system provided an indication of what the priorities should be. The county initially focused on the areas with the lowest scores, with the idea of eventually bringing up all areas to a normalized level. The practices that had received low scores were analyzed and put into synergistic groups for the purpose of designing the improvement plan. The model also provided suggestions for improvement in the guise of criteria supporting each best practice. In effect, each criterion question in the FM Model represents one aspect of the best practice.

The county scored low in the people and process dimensions; so officials formulated an improvement plan that included a wholesale reorganization of staff. Yolo County redesigned its financial services delivery and acquired an upgraded financial and human resources information system. As mentioned earlier, the tactical plan – which is derived from the county's strategic goals and links to its annual budgets – is the county's means of orchestrating this vast amount of change in the medium term.

The Great Recession forced the County of Yolo, along with many other local governments, to face structural problems that had been buried beneath superficial fixes. It clearly pointed out the need for shoring up the existing financial infrastructure and paving the path toward financial health. The county's experience showed that a plan for recovery does not need to be perfect before it is implemented; start now, and continuously monitor and refine it. Also, the linkage between planned actions and strategic goals must be constantly reinforced. For these purposes, the GFOA has provided a wealth of tools local governments can use to recover from distress and rebuild long-term health. Organizations can use the best practices contained in the FM Model to build a solid base for their long-term financial plan for achieving financial sustainability.

The Securities and Exchange Commission Assesses a Financial Penalty against a Municipal Bond Issuer for the First Time[1]

By Mark H. Vacha, Esq.[2]

November 5, 2013 marked the first time the Securities and Exchange Commission (the "SEC") assessed a financial penalty against a municipal issuer. The SEC charged The Greater Wenatchee Regional Events Center Public Facilities District (the "District"), a municipal corporation located within Washington state, with misleading investors in an offering of bond anticipation notes (the "2008 BANs") issued to finance an arena for ice hockey and other uses (the "Regional Center"). The Regional Center is located within the City of Wenatchee, Washington (the "City"). The civil monetary penalty was in the amount of $20,000.

This article will briefly summarize the events leading up to the enforcement action, explain the SEC's analysis and the settlement of the enforcement action and discuss what guidance this enforcement action may offer for municipal issuers generally and what significance can be placed upon the imposition of civil monetary penalties. The summary of events and legal conclusions is based upon the SEC's findings as set forth in Securities Act of 1933, Release No. 9471 and consequently sets forth the SEC's perspective on the matter rather than that of the District. It is important to emphasize that, as is typically the formal process in other SEC enforcement actions, the District submitted offers of settlement which the SEC determined to accept. The District neither admitted nor denied the findings of the SEC except as to admitting the SEC's jurisdiction over the District and the subject matter of the proceedings.

Events Leading up to the Enforcement Action

In 2006, the City and eight nearby municipalities and counties created the District. The District entered into a development arrangement with the developer/operator (the "Developer") for the Regional Center. Over the period of time during which the Regional Center was developed, the Developer prepared a series of financial projections both for budgeting purposes and for inclusion in the District's official statement. The Developer initially provided projections in August 2006 and the City Council requested that an independent consultant review the projections. On August 23, 2006, the independent consultant submitted a report indicating that there could be an operating deficit at the Regional Center and that the financial projections regarding annual net operating income were possibly overstated by 16% to 25% in the first year for the Regional Facility.

Redesign and Revised Financial Projections

Unexpected building costs in late 2006 and early 2007 led to cost overruns and a redesigned Regional Center with fewer seats but more luxury suites. The Developer updated its projections in March of 2007 to account for these changes and the City Council requested another review by the independent consultant. The independent consultant questioned an unexplained "substantial" increase in food and beverage revenue projections and concluded that anomalies in the new financial projections raised doubts about the economic viability of the Regional Center. The City provided the independent consultant's report on the updated projections to the Developer. The independent consultant was not asked to and did not undertake any further review of any projections, including the projections ultimately used in the official statement for the 2008 BANs.

In the spring of 2008, the Developer's CEO became concerned that sales relating to a key component of the Regional Center's revenue stream (referred to as contractually obligated income ("COI") and consisting principally of income from luxury suites, other premium seating, naming rights and advertising) were below expectations. The Developer prepared revised projections in June of 2008 that significantly decreased the COI line item. The revised June 2008 projections also reduced the projected total net cash flow before taxes line item (i.e., the equivalent of income available for debt service) by nearly 70% from projections prepared in 2007 (i.e., from $1,210,207 to $370,245).

Upward Revision to Financial Projections in Midst of Political Pressure

In July of 2008, the Developer revised the set of financial projections, increasing the net cash flow before taxes to $839,365. The upward projections were not initiated by the Developer but rather were made in response to assertions made by the City's former mayor and the District's contracts administrator that the projections were "not sufficiently optimistic" and that the local citizenry would ultimately support the Regional Center despite weak ticket sales.

Continued on next page

[1] This article is for informational purposes only and does not constitute advice.

[2] Mark Vacha is a Member in the Public and Project Finance Group at Cozen O'Connor based in Philadelphia (mvacha@cozen.com).

SEC Assesses a Financial Penalty, Continued

2008 Financial Crisis: Change in Financing Structure and Underwriter

During 2008, the District had been working with an underwriter on a long-term bond financing for the Regional Center. A preliminary official statement for such financing was prepared and an investment grade rating was obtained. However, the underwriting firm withdrew in September 2008 after the financial crisis prevented access to the bond market. The District then found a new underwriter and proceeded to issue the 2008 BANs in the principal amount of $41,770,000. The District and the City were under pressure to obtain financing because the District was obligated to purchase the Regional Center once construction was substantially completed or to make substantial lease payments to a construction lender. The City was obligated to back any lease payments to be made by the District. The principal of the 2008 BANs was to be repaid solely through the issuance of long-term bonds. The District's official statement for the 2008 BANs contained the financial projections as revised in July of 2008. However, the District knew that an independent consultant had been asked to review the Developer's earlier versions of the projections and had raised questions about the economic prospects for the Regional Center. The official statement for the 2008 BANs included a statement to the effect that no financial advisor or accounting or similar firm had examined the projections to verify their reasonableness or the reasonableness of the underlying assumptions. The SEC found such statement to be materially inaccurate.

Ultimate Need for Takeout Financing

The 2008 BANs were set to mature in 2011 and the District knew that at such time the 2008 BANs would need to be taken out through the issuance of long-term bonds. The SEC asserted that the District knew that in the event the Regional Center's financial performance could not support a long-term takeout bond financing, that it would be necessary to rely upon the City's financial support. However, the official statement for the 2008 BANs omitted disclosure (contained in the preliminary official statement for the financing that was pulled from the market earlier in 2008 due to the financial crisis) that highlighted that the City's limited, remaining debt capacity constrained its ability to support a long-term financing for the District.

Default and State Intervention

The Regional Center's financial results for 2008 through 2011 were worse than any of the projections prepared by the Developer. The 2008 BANs went into payment default in December 2011. The Washington State Legislature subsequently authorized the City to impose an additional sales tax and in the fall of 2012, the District sold long-term bonds secured by sales tax revenues to refinance the 2008 BANs and the holders of the 2008 BANs were then repaid in full.

Findings by the SEC

The SEC found that the District, among other parties, negligently failed to act with reasonable prudence in the issuance of the 2008 BANs and thereby violated Sections 17(a)(2) and Section 17(a)(3) of the Securities Act of 1933, as amended. Section 17(a)(2) makes it unlawful "in the offer or sale of any securities…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." Section 17(a)(3) makes it unlawful "to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser" of securities. In particular, the SEC found that there was a substantial likelihood that a reasonable investor would attach importance to disclosures regarding the examinations of and revisions to the financial projections for the Regional Center as well as information relating to the ability of the City to support the 2008 BANs.

Remedial Actions and Related Proceedings

In addition to the civil monetary penalty that the District paid, the District as part of its remedial actions, undertook within thirty (30) days of the entry of the SEC's order to establish policies, procedures and internal controls relating to disclosures in the offering of its securities and its continuing disclosures pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the "1934 Act"), and to designate an individual within the District responsible for ensuring compliance. The District also undertook to implement related "active and ongoing training on a periodic basis" for all personnel involved in the disclosure process. In addition to the action against the District, the SEC brought enforcement actions against the Executive Services Director of the City who served as the contracts administrator and senior staff member for the District, the Developer, its CEO, and the underwriter of the 2008 BANs.

Takeaways and Practical Considerations

There are at least three key areas to focus upon to gain some insights from this proceeding: first, the District's failures to disclose the City's limitations on its debt capacity which adversely affected the ability to take out the 2008 BANs; second, the SEC's findings that the District made misstatements and omitted material information related to the financial projections and the independent consultant's related reports; and third, the assessment of civil monetary penalties.

Continued on next page

SEC Assesses a Financial Penalty, Cont'd

With respect to the first point, this proceeding emphasizes a basic point for financings involving balloon indebtedness[3] (and particularly, short-term balloon indebtedness of which most bond anticipation notes are a prime example). Specifically, disclosures about an issuer's ongoing operations and ability to generate revenues (whether tax, enterprise or otherwise) is only part of the story. Generally, balloon indebtedness cannot be retired in the normal course from general revenues and disclosures about an issuer's or related entity's ability to obtain market access, whether to refinance short-term notes, or find permanent take-out financing, is key. The refinancing of the 2008 BANs was complicated by the fact that the credit of an entity other than the issuer of the financing was crucial to permanent financing.

With respect to the second point, this action does not speak strictly to the use, in and of itself, of overly optimistic projections. Rather, in this matter the District and other working group members were on notice that questions had been raised about the projections by an independent expert. The issue is two-fold. First, there was no apparent basis for revising the projections to a more optimistic outcome. Second, not only did the District fail to disclose the existence of the independent consultant's review, but effectively denied it by stating in the official statement for the 2008 BANs that, "the unaudited projected financial performance of the Regional Center has not been examined by any financial advisor or by any accounting or other firm…" The SEC's criticisms related to the failure to disclose the independent consultant's reports are similar to criticisms in certain state pension disclosure proceedings of recent years where the SEC criticized failures to disclose in official statements blue-ribbon and similar official reports or analyses on the status of pension funding. In short, where bad news is contained within a report or study that has been officially sanctioned or commissioned in some manner, there should be a working presumption that it may require disclosure.

With respect to the third point, the civil monetary penalties should be viewed as part of the overall settlement entered into between the District and the SEC. Arguably, the SEC may have been more concerned about having the District undertake the policy changes and related training for its disclosure processes than receiving the $20,000 penalty. Thus, possibly the penalty was imposed to call to market participants' attention the SEC's concerns rather than to impose a direct out-of-pocket penalty on the District. (Consider that the penalty was in an amount less than 1/10th of 1% of the par amount of the 2008 BANs.)

Continued on next page

[3] Balloon indebtedness generally refers to debt where all or a significant portion of the principal becomes due in a single installment without substantial prior amortization. Revenue bond indentures frequently provide special tests for the incurring of balloon indebtedness and its treatment for purposes of debt service coverage and rate covenants.

SEC Assesses a Financial Penalty, Cont'd

However, the financial impact of paying a civil monetary penalty may be more substantial in its indirect consequences. Although perhaps difficult to quantify a pricing penalty in the market, the imposition of the civil monetary penalty may result in reputational damage within the municipal bond market for an issuer or related party (such as the District and the City). For example, were an issuer to suffer a 5 basis point[4] pricing penalty in the market due to being singled out for a civil monetary penalty, this would result in additional interest costs of over $20,000 per year on a debt offering outstanding in the amount of the 2008 BANs. (A 50 basis point pricing penalty would result in more than $200,000 per year.) Moreover, a pricing penalty could remain in the market for future debt issues as well. In any event, the SEC release did not discuss any methodology for determining the size of the civil monetary penalty imposed on the District or relate the amount to any particular cost or alleged damage.

Interestingly, the SEC assessed the civil monetary penalty in a matter where an issuer was found to be negligent, rather than to have satisfied a scienter standard (i.e., at least with recklessness, if not with knowledge or intent). A finding of scienter would have been necessary were the SEC to have brought an action against the District for violations of Rule 10b-5 pursuant to the 1934 Act.

It is difficult to assess whether the SEC's groundbreaking monetary sanctions should be viewed as portending a change of course, or, rather, may be part of a unique set of circumstances. What may be particularly interesting to monitor is whether the SEC in any future enforcement actions assesses civil monetary penalties against a general purpose government that provides essential public services. Those two characteristics did not pertain to the District. It appears that the SEC's pattern of enforcement actions, at least in its impact, has not increased financial burdens on jurisdictions (and thereby on underlying taxpayers or ratepayers) which, in many instances, have faced varying degrees of fiscal distress.

One final thought, Pennsylvania state blue sky laws have certain requirements related to the use of prospective financial projections (See 10 Pa. Code § 609.010) which may be applicable for certain municipal securities offerings. Among other things, these state law requirements provide that prospective financial statements shall be either prepared or reviewed by an independent qualified person. Were the District to have been a Pennsylvania issuer, the disclosure may likely have taken a different form and the outcome of the matter may have been different.

[4] Five basis points were used for purposes of this illustration since this is frequently the smallest increment in which interest rates may be quoted in a bid for competitively offered municipal securities or set in a negotiated offering. The author does not suggest any knowledge of what the magnitude of any reputational penalty might be.