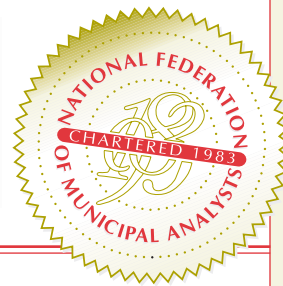


Municipal Analysts

JULY 2007 Vol.17 - No. 2

BULLETIN



LETTER FROM THE CHAIRMAN

For the third year in a row, the NFMA's Annual Conference experienced record attendance. The 24th Annual conference held at the Four Seasons Hotel in Las Vegas May 16-18 was an overwhelming success with 315 people in attendance. While the location was obviously a large drawing card, the success of the conference is directly related to the hard work of many individuals. I'd like to thank the conference chairs, Lisa Zuckerman and Lisa Washburn, as well as the entire Conference Committee for an outstanding job selecting panels and speakers for this conference. I would also like to thank our generous sponsors who allow us to add extra benefits like the opening cocktail reception or the wine upgrade at dinner while also allowing us to keep the overall costs of the conference down. When it comes to the issue of sponsors of the NFMA, we need to acknowledge the efforts of Bill Hogan, Susan Dushock and Don Cirillo for their great work with the sponsors. Finally, and as always, our conferences would not be successful without the guidance, organization and hard work of Lisa Good and Betsy Harkins. Lisa Washburn is beginning to put together a committee to plan the 2008 conference in Miami Beach. Anyone interested in assisting in this effort should contact Lisa Washburn or Lisa Good.

Moving forward, the Education Committee, under the leadership of Mark Stockwell and Bob Donahue, is working on several events for the second half of the year. The first event will be the Advanced Seminar on Legal and Regulatory Issues to be held in the Washington D.C. area in October. Next up is the annual Introduction to Municipal Bond Credit Analysis Seminar that Anne Ross organizes in Philadelphia each November. Finally, we will start 2008 off with an Advanced Seminar on Transportation in Southern California in January.

Several important events for the municipal market have occurred during the past month. A couple of weeks ago DAC and MACT announced that they have settled the law suit between the two entities. As we go to print with the *Bulletin* and we have not had an opportunity to analyze the Settlement Agreement. Our understanding is that the settlement allows the CPO to keep operating in a form very similar to the CPO as we know it. In addition, the announcement of the settlement has also resulted in some activity within the Muni Council, which will hold its first conference call in well over a year. The Muni Council was inactive during the law suit because certain members were concerned since the Muni Council was the sponsor of the CPO.

A second event of note was the decision of the Supreme Court to hear the State of Kentucky's appeal in the Davis v. Kentucky case. Erik Kimball has written an excellent piece on this case and its implications for the municipal bond market which is included in this edition of the *Bulletin*. The Board of Governors of the NFMA has decided to file an amicus brief (a friend of the court brief) on this issue. The goal of this brief would be to inform the court of the potential implications of its decision. The Board debated this issue as intensely as any issue that I have witnessed during my service to the organization. Due to the conflicting interests of various constituencies within the NFMA, we decided that a brief advocating a specific outcome would not be appropriate but that we should file an informative brief.

Tom Weyl

United States Supreme Court to Consider *Kentucky v. Davis*

After much delay, on May 21, 2007, the United States Supreme Court granted the petition for writ of certiorari of the Commonwealth of Kentucky, indicating that the Court will rule in the *Kentucky v. Davis* matter. On the same day, the Supreme Court granted permission for the National Association of State Treasurers to file an amicus brief.

In January 2006, the Kentucky Court of Appeals ruled that the practice of the Commonwealth of Kentucky in taxing interest income on municipal bonds issued by other states, but not interest income on bonds issued by the Commonwealth of Kentucky and its subdivisions, is prohibited by the Commerce Clause of the United States Constitution. In August 2006, the Kentucky Supreme Court declined to hear the case, and in November 2006 the Commonwealth of Kentucky requested that the United States Supreme Court consider the matter.

If the Kentucky Court of Appeals decision is upheld by the United States Supreme Court, it is widely believed this would result in the demise of state-specific municipal bond funds. A substantial majority of the states tax interest on municipal bonds issued in other states but not their own. The result is that resident holders of in-state bonds obtain a substantial benefit equal to approximately 25 basis points in yield, on average. Recognizing the demand for state-specific paper, mutual fund advisors established various state-specific municipal bond funds. For example, a recent published report showed that there are 78 New York municipal bond funds and 94 California municipal bond funds. (Not surprisingly, these are states with significant state income taxes and that consistently rank at the top of issuers of municipal securities.) If the Kentucky decision is upheld, states will be forced either to tax interest on their own bonds, or to give up income resulting from taxing interest on out-of-state bonds. Many believe that the affected states will not give up tax income from bonds issued in other states, and will be forced to tax income on their own municipal bonds. Even if the opposite is true, and affected states determine not to tax income on any municipal securities, one result is that state-specific municipal bond funds may present no advantage to their shareholders and likely will be collapsed into larger, national funds. (It is an open issue whether the states could act in a retroactive manner, or whether current state specific funds would benefit from substantial appreciation as interest income on their holdings could remain tax-exempt while income on new issues could become subject to state tax.)

Between the time the Commonwealth of Kentucky filed its writ of certiorari and the Court's determination to consider the matter, the Court issued its opinion in *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority*. The *United Haulers* opinion exhibits a significant change in Supreme Court jurisprudence and has only increased the uncertainty in the market as to how the Court will rule in *Kentucky v. Davis*.

The Commerce Clause of the United States Constitution empowers the federal government to regulate commerce among the states. Over the last 200 years, the Supreme Court developed an area of law addressing the so-called dormant Commerce Clause. This body of law prohibits the states from regulating in such a manner that they discriminate against citizens of other states to favor their own citizens.

The first question in dormant Commerce Clause analysis is whether the law discriminates "on its face" by benefiting in-state interests while burdening out-of-state interests. If the law does discriminate on its face, then the law will be upheld only if (i) the state has no other means to advance a legitimate government interest or (ii) the state is acting as a "market participant." The first option is difficult to satisfy, providing a substantial burden for a state to defend a facially discriminatory law. The second option, the "market participant" approach, presents a somewhat more broad exception. A state is considered a market participant where the state is offering goods or services of the kind that private citizens may provide - in which case the state may prefer one customer over another. The classic example is where a state produces a product and offers the product either solely to its residents or to its residents at a substantially lower price than available to out-of-state residents. Because under those circumstances the state is a market participant, and not acting in its regulatory capacity, there is no violation of the dormant Commerce Clause. Based on the Commerce Clause case law, it is theoretically possible for a state to issue municipal bonds with a higher interest rate for its own residents than the interest rate paid to non-residents.

If the law does not discriminate between in-state and out-of-state interests “on its face,” then the Court must weigh the burden that the law places on interstate commerce against the putative local benefits. The burden must be “clearly excessive” in order for the law to be struck down. This so-called “Pike test” was developed as a result of the Supreme Court’s opinion in the 1970 case Pike v. Bruce Church, Inc. In many cases, the Pike test amounts to a presumption in favor of finding the law to be constitutional.

In United Haulers, the Supreme Court added a new branch to its dormant Commerce Clause analysis. That case involved a “flow control” ordinance requiring that all solid waste generated within two New York counties be delivered to government owned processing sites. The Court determined that the flow control ordinance did not facially discriminate against interstate commerce because the law was designed to benefit a “clearly public facility, while treating all private companies exactly the same.” The Court distinguished its own opinion in C & A Carbone, Inc. v. Clarkstown, stating that “it does not make sense to regard laws favoring local government and laws favoring private industry with equal skepticism.” Determining that the ordinance did not present facial discrimination, the Court applied the Pike test to the facts of the case. In doing so the Court found that the burden on interstate commerce was, at most, incidental, and that the public benefits, including providing a convenient and effective way to finance waste-disposal services and increasing recycling, outweighed any claimed burden. More than once, the Court stressed its view that waste disposal is traditionally a local government function. While not ordinarily part of the Court’s Commerce Clause analysis, the Court’s focus on this concern should not be overlooked.

To date, the Commonwealth of Kentucky and those on its side have focused on the market participant exception. The primary argument presented by the Commonwealth of Kentucky is that in issuing and remaining an obligor on municipal securities it is engaged in continuous market participation as bond obligor. Kentucky’s exemption from taxation on its own bonds is merely an extension of its theoretical ability to give a higher interest rate to Kentucky residents - the effect is arguably the same. This logic is faulty for several reasons. First, it would be extremely difficult for a state to offer in-state holders a higher interest rate because the bonds will trade and the practical effect of this benefit will be impossible to guaranty. Second, the act of taxing has historically been considered the ultimate regulatory act, exactly the kind of activity that is not market participation. Lastly, this argument ignores the fact that a substantial number of municipal securities are revenue bonds where the issuer is not the obligor, and thus the state has no ongoing participation in payment of the security to which it can point as its “market participation.” Following this argument could lead to the nightmare of differential treatment of interest on general obligation and revenue bonds from an income tax perspective.

The United Haulers decision brings new complication to the analysis in Kentucky v. Davis. It is unclear whether the Kentucky statute primarily benefits the Commonwealth of Kentucky itself rather than the citizens of Kentucky. By not taxing income on its own bonds, the Commonwealth of Kentucky increases the demand for, and thereby ensures a market for, bonds issued by the state and its subdivisions. The state may also claim lower interest cost on such securities as in-state investors likely will accept lower interest rates in light of the state tax exemption. On the other hand, the Kentucky statute provides a clear benefit to in-state bondholders as they directly benefit from the exemption from tax on domestic bonds, an exemption not available to out-of-state investors. In light of these mixed facts, it is difficult to predict whether the Court will land on the side of public or private benefit.

Based on the Court’s analysis in United Haulers, it seems likely the Court will give weight to the fact that issuance of municipal bonds is a traditional government function, as the Court found with solid waste disposal. This one factor may be the tipping point allowing a majority of the Court to rule in favor of the Commonwealth of Kentucky.

Erik P. Kimball

Eric Friedland

Co-Chairs, Industry Practices and Procedures Committee

Industry Practices and Procedures Committee

The Industry Practices and Procedures Committee acts as an advocate, representing the interests of the NFMA membership within the municipal finance industry. This Committee oversees preparation of all position papers published by the NFMA. In addition, on behalf of the NFMA the Committee responds to requests from and positions taken by other participants in the municipal market. Traditionally, the Industry Practices and Procedures Committee is co-chaired by the current Past Chair of the NFMA and one other member of the Board. Erik Kimball and Eric Friedland co-chair this Committee.

Elsewhere in this newsletter you will find the Committee's update on the Kentucky v. Davis matter, currently under consideration by the United States Supreme Court.

The Committee recently completed the "Securities Law White Paper," a paper addressing securities law concerns in the municipal market. The Securities Law White Paper was recently introduced at the NFMA annual meeting in Las Vegas, Nevada, and will soon be available for public comment on the NFMA web site, www.nfma.org. The goals of this paper are to provide (a) information regarding the applicability of federal securities laws to municipal bonds, both at issuance and in the secondary market, (b) a glossary of common securities law terms relating to municipal securities, and (c) answers to frequently asked questions that analysts may use as a resource in their day to day work.

The drafting committee for the Securities Law project included prominent attorneys as well as experienced analysts who are members of the NFMA. They are: Warren S. Bloom, Esq., Meghan B. Burke, Esq., Virginia Housum, Esq., David Belton, Molly Butler, Donald Cirillo, Paul Junquist, George Shuster, Lisa Good, and Tom Weyl. The project was chaired by Erik Kimball. We would like to extend our appreciation to all of the participants in this very successful project.

To a great extent, we rely on NFMA members to bring matters of import to our attention, and we rely on our members to assist in developing projects that result from such membership concerns. If you have concerns which you would like to bring to our attention, please contact [Lisa Good at lgood@nfma.org](mailto:Lgood@nfma.org).

*Erik Kimball and Eric Friedland
Co-Chairs*

Volunteers Needed for 2008 Annual Conference

Lisa Washburn, 2008 Annual Conference Chair, is seeking volunteers for next year's Annual Conference. Planning will begin in July, so your response is needed now. Next year marks the 25th Anniversary of the NFMA, so there may be other opportunities to volunteer for commemoration of that milestone. Interested members should contact Lisa Good at [lgood@nfma.org](mailto:Lgood@nfma.org).

Treasurer's Report

The NFMA continues to be in sound financial position, based on unaudited figures for the first quarter of 2007. This is due, in part, to the generosity of our many corporate sponsors. Their financial and event support helps defray many of our organization's costs, and provides important networking and social opportunities for our members.

We would like to thank all of our sponsors for their participation!

*Chuck Emrich
Treasurer*



California Society of Municipal Analysts

The CSMA held a cocktail party on March 29 at Palomino's which was, as usual, well attended. The next cocktail party will be held in late summer at a new location!

The Board has spent the last quarter planning our bi-annual conference which will be held July 18-20 in Yountville (Napa County). The agenda includes 8 panels spread over three days, as well as several social events, including dinner in a wine cave. Some of the panel topics will be: the State's financial condition, the potential for universal healthcare in California, a discussion and case study of how special districts handle property tax defaults and foreclosures, as well as much more. If you are interested in attending, please go to the CSMA link on the NFMA website for registration information.

Mary Colby

BMAF

Boston Municipal Analysts Forum

The BMAF held several recent meetings spotlighting some key topics of interest to members. In April, the BMAF hosted a Massachusetts Credit Update with Governor Deval Patrick's Administration and Finance Team." At the meeting, Secretary Leslie Kirwan spoke with BMAF members along with key aides Henry Dormitzer, Jay Gonzalez, and Matt Gorzkowicz.

In May, the BMAF hosted a meeting titled, "Moody's Global Scale Ratings – Different Perspectives". The meeting featured Naomi Richman, Chief Credit Officer, Public Finance Group at Moody's Investor Service, and James Dearborn, Head of Tax-Exempt Group at Columbia Management. This was a well attended, interactive session which focused on Moody's new ratings approach. BMAF's June meeting featured Joe Mysak from Bloomberg News, who gave a provocative and interesting speech called "My World and Welcome to It".

The BMAF is working to schedule a summer outing and will be in touch with membership in the near future with more details. The Board is grateful to Deutsche Bank Asset Management, Eaton Vance, and Columbia Management for offering their offices for recent meetings.

Bob Donahue

SMFS

Southern Municipal Finance Society

The SMFS is busy planning several local events and has decided on its topic for a day and a half meeting in the fall. Mark your calendars for June 29th. SMFS is hosting a panel discussion on TOB's and other derivatives at the Columbia Management office in Charlotte. Representatives of the TOB and derivative groups at BOA and Wachovia will discuss how they market derivatives and other products to issuers, the role of the residual holder, how a TOB is constructed and why trusts unwind. We are hoping to include an expert bond counsel who will discuss the basis of tax-exemption for these products. For those unable to attend in person, a dial-in number will be provided.

Alex Fraser is planning an event in Texas and Barbara Vanscoy is gauging interest for an event in Florida.

We are in the early planning stages of a day and a half event to be held here in Charlotte (tentative) on Nuclear and Alternative Energy sources. If anyone has an interest in lending a hand, you are more than welcome. Please contact Julie Egan (JMEgan@evergreeninvestments.com) with program ideas or an offer to help.

We are reaching out to our members in an effort to increase membership and participation in our society and the NFMA. If you know someone who should be a member and is not, let us know or direct them to the NFMA website. Growing membership is a key to our success and longevity.

*Warm Regards,
Susan Dushock*

CMAS

Chicago Municipal Analysts Society

The first half of the year has included an economic update seminar featuring Mark McMullen from Economy.com. Our next event is scheduled for June 28th. This will be a roundtable on Illinois fiscal condition. Andrea McKeague and Richard Ciccarone of McDonnell Investment Management worked very hard to put together an interesting panel of participants. The panel includes members from the Civic Federation, McDonnell Investment Management, Taxpayers' Federation of Illinois, and Deloitte Consulting. Additionally, we are in the process of planning our summer outing.

Helen Samuelson



EDUCATION COMMITTEE

The Education Committee is in the planning stage for the next two advanced seminars, scheduled to be held in October and in January. The October session will address the various legal, regulatory and tax issues analysts now encounter. The fall advanced seminar will be held at the Ritz Carlton Pentagon City on October 11-12.

The advanced seminar in January 2008 will cover bonds in the transportation sectors. Participants at the seminar, to be held at the Ritz Carlton Marina del Rey on January 17-18, should be able to access the seminar via airports, mass transit and toll roads in the area. If there are items you would like to have covered at either of the advanced seminars, please contact Mark Stockwell or Bob Donahue.

It is also expected that the Introduction to Municipal Bond Credit Analysis will be held in late October or early November in Philadelphia, two to three weeks after the October advanced seminar. The Intro Course provides an excellent opportunity to tap into the expertise of seasoned analysts in each of the municipal bond sectors.

*Mark Stockwell and Robert Donahue
Co-chairs*

MAGNY

Municipal Analysts Group of New York

MAGNY's Spring meetings featured hot topics: The Global Rating Scale where Naomi Richman, John Nelson and Bart Oosterveld from Moody's presented their new approach to mapping from the municipal rating scale to the global scale. This led to a very lively Q&A session. It was another successful event as over 100 analysts and other market participants were in attendance at the Yale Club.

In June, the Public Private Partnership (P3) meeting will feature Conor Kelly, MD and Head of P3 Americas for DEPFA Bank and Mary Francoeur, MD in FGIC's Project Finance Group. They will be discussing the bridging of infrastructure finance from traditional public ownership procurement to the different types of P3 projects that are emerging as well as where all this money is coming from, what the investors are looking for, and how and why the deals are being structured the way they are.

The current Board continues to seek interesting and timely topics for upcoming programs, and we will make sure that those of interest to the larger membership are posted on the NFMA website. We are also setting up a Program Committee to work with the Program Chair.

Linda Hird Chair 2007 - 2008

Kathy Evers, Immediate Past MAGNY Chair 2005 - 2006

MSMA

Minnesota Society of Municipal Analysts

For our first program in 2007, we organized a presentation on charter schools. Dick Ward from Dougherty & Company spoke from the investment banking perspective, and Dr. Karen Rusthoven, Executive Director/Principal of Community of Peace Academy, a charter school located in St. Paul, spoke from the issuer perspective. Their comments were informative and generated a lively question and answer session.

Programming for the remainder of the year has not been finalized, but we anticipate having speakers on local transportation issues, either roads or airlines now that Northwest Airlines has emerged from bankruptcy, as well as perhaps discussing stadium financing (the Twins have begun work on a new stadium in 2007, and the Vikings remain hopeful) and St. Paul's preparations for the Republican National Convention in 2008. We may also put together a panel on legal issues to highlight some of the expertise of some of our new members. In addition, we will try to host one summer and one winter social function during the year.

Paul Jungquist



NFMA Awards to Four in Las Vegas

The National Federation of Municipal Analysts (NFMA) presented four awards to individuals last month at the Awards Dinner during its 24th Annual Conference in Las Vegas. The NFMA selects individuals and/or organizations each year to recognize outstanding achievement, service to the organization or industry contribution.



This year, four municipal professionals were recognized by the organization. George Axlund, Executive Director of the Wyoming Community Development Authority, was presented with the 2007 Industry Contribution Award. The award to Mr. Axlund read as follows:

“In recognition of George’s dedication and commitment to improved disclosure and the provision of timely information to the municipal market. George pioneered the use of the internet as an efficient means of communication to the marketplace. He is a staunch proponent of disclosure and a friend to the analytical community. The NFMA is pleased to recognize George’s efforts in helping to make the marketplace for state housing finance authority bonds more transparent and accessible to all.”

Three NFMA members, *Donald King Cirillo*, *Gerry Lian* and *Anne G. Ross*, were presented with Meritorious Service Awards.

Donald King Cirillo, Principal, Municipal Disclosure Advisors, Inc., and past Chairman of the NFMA, was recognized for his outstanding efforts to establish an ongoing sponsorship effort for the group.

Gerard J. Lian, Executive Director, Morgan Stanley Investment Advisors, Inc, also a past Chairman of the NFMA, was presented with the award in appreciation for his various contributions in the areas of disclosure and advocacy.

Anne G. Ross, Senior Vice President and Manager, Roosevelt & Cross, Inc., was presented with the final Meritorious Service Award of the evening. Anne has served as the chair of the NFMA’s Introduction to Municipal Bond Credit Analysis for several years, and has also served the NFMA as Board member, Constitution Committee Chair and representative to the Governmental Accounting Standards Advisory Committee.

The Awards Committee was chaired by Eric Friedland, Director, FSA. Committee members included Paul Flynn, Deutsche Asset Management, Alex Fraser, Standard & Poor’s, Doug Nelson, Janus Capital Group, Alan Polsky, Dougherty & Company, Peter Stettler, Fitch Ratings, and Lisa Zuckerman, Catholic Healthcare West.



NFMA Awards - Four Seasons Las Vegas



2007 Board of Governors



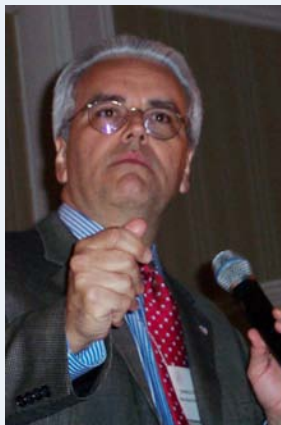
Anne Ross



"Blues Brothers" perform at the Awards Dinner.



George Axlund



Don Cirillo



Gerry Lian

Twenty-Fourth Annual Conference
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DISCLOSURE COMMITTEE

The Disclosure Committee is reviewing our Recommended Best Practices (RBP) documents to determine which of these may need to be updated. We have selected to date Housing Revenue Bonds and Land Secured Transactions; these efforts are being chaired, respectively, by Susan Dushock and Ron Mintz. If you have any ideas or comments for the Disclosure Committee, please feel free to contact us at any time.

*Greg Clark and Greg Aikman,
Co-Chairs*

Request for Member Participation on Sub-Committee to Address GASB

The Industry Practices and Procedures Committee is looking for NFMA members willing to participate in a review of the Governmental Accounting Standards Board (GASB) and its current strategic plan to determine whether the NFMA should take a position with regard to GASB in general and its recent activity in the area of reporting standards. The Committee is currently forming a sub-committee to address this project. If you are interested, [please contact Lisa Good at lgood@nfma.org](mailto:lgood@nfma.org).

TRAINING COMMITTEE

The Training Committee is proceeding with our plan to provide on-line training for various credit sectors. Our first such effort, on CCRCs, is being co-chaired by Marie Pisecki and Ed Merrigan, who will be working with their own committee over the summer on this project. Please let us know if you have any ideas for other credit sectors or topics that might be suitable for on-line training.

*Greg Clark and Howard Mischel,
Co-chairs*

DID YOU KNOW

- There is an online membership directory is at www.nfma.org
- You can manage your own profile, including change of address and password?
- When you register online for conferences (the only way to register for NFMA events) your contact information will automatically be entered for you when you login with your username and password?
- You will receive the member discount for events automatically when you login?
- Membership belongs to the individual? If you change firms, you do not have to reapply for membership.

NFMA CALENDAR

June 28, 2007

CMAS Roundtable on Illinois Fiscal Condition

June 29, 2007

SMFS Panel Discussion on TOBs
Charlotte, NC

July 18-20, 2007

CSMA Conference
Yountville, CA

October, 2007

NFMA Advanced Seminar on Legal and Regulatory Issues
Ritz Carlton Pentagon City
Arlington, VA

October, 2007

NFMA Introduction to Municipal Bond Credit Analysis
Philadelphia, PA

January 17-18, 2008

NFMA Advanced Seminar on Transportation
Ritz Carlton Marina del Rey, CA

May 6-9, 2008

NFMA Twenty-fifth Annual Conference
Loews Miami Beach Hotel
Miami Beach, Florida

May 5-8, 2009

Twenty-sixth Annual Conference
Grand Hyatt Seattle
Seattle, Washington

May 4-7, 2010

Twenty-seventh Annual Conference
Hyatt Regency Tamaya Resort
Santa Ana Pueblo, New Mexico

If you are traveling and would like to attend another society's meeting, please contact Lisa Good or the applicable society.

NFMA

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