newsletter

Staying Ahead with Saul Ewing

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1. Introduction

In 1999, Saul Ewing LLP's Public Finance Department began "News and Views," a newsletter service in hard-copy form for issuers, underwriters, solicitors and other Public Finance professionals. Our newsletter was so well received that we have decided to take our News and Views to the next level. Trailblazer eNews & Views is a streamlined version of News and Views, with an emphasis on timely information in a comprehensive yet condensed and easy to use electronic format. Click on the links throughout this document to jump to corresponding pertinent information. Print this document as an e-mail to retain it for future consultation. We welcome your feedback. Click any of the following links to open an e-mail to let us know what you think about eNews & Views, to suggest a colleague who may be interested in being added to our recipient list for eNews & Views, or to remove yourself from our list.

2. Audit Alert: IRS to Focus on Retirement Plans of School Districts and State Agencies

At a recent meeting in Philadelphia, officials of the

Tip of the Month: Form 8038's:

Don't forget: For bonds issued in the first quarter of calendar year 2004, Forms 8038 need to be filed by May 15.

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Internal Revenue Service indicated that they will increase their audit activities with respect to employee benefit plans, and that one of their targets will be the Section 403(b) annuity plans and Section 457 deferred compensation plans that are sponsored by School Districts and State Agencies. Based on the results of prior audits, the IRS believes that there might be problems in how these types of plans are being administered. To avoid penalties or disqualification of the plans, it is important that they be brought into compliance with the requirements of federal pension law. Saul Ewing's retirement plan administration service, Retirement Plan Services @ Saul Ewing, can assist in correcting errors and helping to avoid problems that might arise from an audit. For more information, please contact Denise Menna at dmenna@saul.com mailto:dmenna@saul.com or 215-972-7766.

3. The Possibility That the Treasury Department's Circular 230 Could to Apply to Tax-Exempt Bonds Is Causing Headaches for Issuers, Underwriters and Bond Counsel

The Treasury Department has proposed applying the provisions of its Circular 230 (which governs the rules applicable to "tax shelter opinions") to certain municipal bond opinions. Aside from the primary concern that tax-exempt bonds would resultantly be classified as "tax shelters," the character of the customary unqualified opinion of bond counsel could change drastically, since the opinion arguably would require disclosure of all of

the tax risks associated with federal tax shelters. Ultimately, the costs associated with this proposed change, if implemented by the Treasury Department, will be borne by an issuer in the form of higher costs of issuance. The National Association of Bond Lawyers has issued comments, as recently supplemented, on the application of Circular 230 to tax-exempt bond opinions. The text of these comments, as well as the text of the existing and proposed forms of Circular 230, may be obtained by clicking here. Recently, perhaps in an effort to assuage the concerns of bond market participants, the Treasury Department and the IRS announced that if final regulations would apply Circular 230 to bond counsel opinions, then, at a minimum, Circular 230 would not apply to those opinions rendered less than 120 days after the publication of such final regulations. The text of the announcement granting this 120-day "grace period" may be viewed by clicking here.

4. Disclosure: National Federation of Municipal Analysts Issues White Paper on Disclosure Practices for Interest Rate Swaps

The National Federation of Municipal Analysts recently issued a white paper describing various disclosure considerations with respect to derivative transactions generally, and swaps (including swaptions) in particular, to be used as further guidance in conjunction with Rule 15c2-12 of the Securities Exchange Commission. The full text of the white paper may be viewed by clicking here.

5. Municipal Securities Rulemaking Board Issues Q&A for Dealers Regarding Political Contributions and Use of Consultants

The Municipal Securities Rulemaking Board (the "MSRB") has issued answers in the form of Notice 2004-8 to address additional questions involving the requirements of MSRB Rules G-37 (dealing with political contributions and prohibitions on municipal securities business) and G-38 (dealing with consultants). The MSRB's answers provide guidance to dealers completing MSRB Form G-37/G-38 to report items required by the corresponding Rules. The full text of Notice 2004-8 may be viewed by clicking here.

6. MSRB Issues Notice on Deliveries of Step Out Transactions Through the Automated Comparison System

In an effort to clarify the reporting obligations of dealers associated with inter-dealer deliveries where no inter-dealer transaction has occurred (commonly known as "step out" transactions), the Municipal Securities Rulemaking Board (the "MSRB") has issued Notice 2004-9, which provides guidance to dealers on how to properly submit step out transactions to the MSRB's current Transaction Reporting System. The MSRB has previously stated that an improper submission of a step out transaction constitutes a violation of MSRB Rule G-14. The full text of Notice 2004-9 may be viewed by clicking here.

7. An Issuer Established by Two Government Agencies May Not Be a "Related Party" for Purposes of Section 150 of the Internal Revenue Code

In a private letter ruling, the IRS has ruled, based on relevant facts and circumstances, that an issuer purchasing the tax-exempt bond-financed assets of two joint exercise of powers agencies which originally had created the issuer, would not be considered a "related party" with respect to those agencies for purposes of Section 150 of the Internal Revenue Code of 1986 (the "Code"). Section 150 of the Code and the Regulations thereunder generally could classify a seemingly "new money" issue as a refunding issue if certain tests are met, one of which involves an inquiry into whether the parties involved in the transaction are "related." This is an important concept for municipalities and authorities who are contemplating asset transfers, such as the sale or other disposition of a previously bond financed water or sewer system, for example. The full text of Private Letter Ruling 2004-04024 may be viewed by clicking here.

8. New Anti-Spam Legislation May Cause Some e-Mailers to Think Twice Before Hitting the "Send" Button

The "Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003" (the "Act"), which became effective January 1, 2004, regulates the use and content of unsolicited

commercial e-mail. The Act imposes stiff penalties for e-mailers that send e-mails constituting, among other things, advertisements to prospective or existing clients which do not meet the requirements of the Act. Because the Act does not make distinctions among the categories of senders that are within its reach (i.e., businesses, municipalities or individuals), arguably, any individual or entity sending a "commercial e-mail" could violate the Act. An article discussing the Act and its implications, including what constitutes a "commercial e-mail," may be viewed by clicking here.

9. Records Retention in the Electronic Era: Don't Delete That e-Mail!

Should municipalities, agencies, underwriters and lawyers, to name a few, be concerned about records retention? In the age where we read the bulk of our mail on a computer screen, must we be concerned about what we do with our e-mail once we no longer need it? Recent developments in the law may suggest the answer to both questions is a resounding "yes!" Records retention policies are becoming increasingly important for businesses and entities of all kinds, including municipalities and governmental instrumentalities. In the event of any litigation or an investigation against such an entity, the lack of a firm records retention policy may result in serious civil or even criminal penalties. In Pennsylvania, for example, there are specific statutes and regulations governing record retention for local governments. An article describing the importance of a records retention

policy and the dangers associated with the lack thereof may be viewed by clicking here.

10. IRS Issues Proposed Regulations Regarding Remedial Actions for Qualified Zone Academy Bonds

The IRS recently released Proposed Regulations which would, if adopted, provide guidance to issuers of qualified zone academy bonds ("QZABs") by amending the final QZAB Regulations. QZABs are bonds which provide annual tax credits to the holders thereof in lieu of current interest payments. Among other requirements for QZABs set forth in the Internal Revenue Code of 1986 and the corresponding Treasury Regulations, the proceeds of QZABs must be used for the benefit of certain "qualified" public schools, and may only be used for certain qualifying purposes, such as building renovations or teacher training programs. The Proposed Regulations would, among other things, elucidate the requirements as to what constitutes a "qualifying purpose" and would provide remedial steps for issuers to cure an unanticipated failure to use the proceeds of a QZAB for a qualifying purpose. The text of the official press release, which contains a link to the text of the Proposed Regulations, may be viewed by clicking here.

11. Disclosure: National Federation of Municipal Analysts Releases Draft Recommended Best Practices in Disclosure for the Public Power

Sector

The National Federation of Municipal Analysts recently issued a draft paper recommending certain disclosure practices and considerations for the public power sector, to be used as further guidance in conjunction with Rule 15c2-12 of the Securities Exchange Commission. The full text of the draft paper may be viewed by clicking here

12. Out-of-Bounds Utility Service: A Potential Regulatory Foul in Pennsylvania

If you are a Pennsylvania municipality and offering or actually providing utility services outside of your municipal boundaries, you likely need regulatory approval from the Pennsylvania Public Utility Commission ("PUC"). Likewise, if your municipal government substantially controls a municipal authority rendering utility services outside of your boundaries, you may need PUC approval. Failure to obtain the necessary state approvals could result in fines or even refunds of rates charged to customers. The PUC regulates both rates charged and standards of service. For more information, please contact an attorney from Saul Ewing's Utility Regulation, Commerce, and Development Group.

13. Pennsylvania's First Great Electric Distribution Rate Case

PPL Electric Utilities ("PPL") has announced that it will be filing a distribution rate increase request with the Pennsylvania Public Utility Commission at

the end of March 2004. It will be the first major electric distribution rate case since Pennsylvania restructured its retail electricity markets in the late 1990's. The major issue will likely be "rate structure" -- that is the allocation of costs to the various rate classes (including residential, commercial, industrial, municipal, etc.). The Utility Regulation, Commerce, and Development Group of Saul Ewing is assembling a coalition of PPL's municipal customers to participate in the proceeding on the limited issue of street and traffic lighting. More information about the coalition can be obtained by contacting Joe Malatesta (717-238-7672), Louise Knight (717-238-7655), or Dave Zambito (717-257-7526) at Saul Ewing.