PREDATORY PUBLIC FINANCE*

TOM SGOUROS†

ABSTRACT

It is a sad fact that in many ways the current landscape of the financial industry is a veritable minefield for taxpayers. A wide variety of commonly-used financial tools frequently become traps for governments and ways for irresponsible administrations to hide current costs, at the expense of future governments and taxpayers. Risk is difficult to judge and difficult to price, and the financial industry uses that difficulty in its dealings with municipalities and states. The resulting deals have become a major source of financial distress among municipalities across the country.

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PUBLIC FINANCE TRAPS

The Philadelphia school district is the eighth-largest in the country, with a $2.3 billion operating budget for 242 schools serving 150,000 children, over 80% of whom are poor.[2] The finances of the district, along with the rest of the city, are under a lot of pressure these days. That, of course, makes them no different than a lot of urban school districts.[3]

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† Tom Sgouros has worked as a budget analyst and public finance consultant for over twenty-five years for governments and candidates for office, and has written extensively on policy issues. He currently serves as Senior Policy Advisor in the Office of the Rhode Island General Treasurer.

This article was prepared by the author in his personal capacity. The views expressed here are solely those of the author and do not in any way represent the views of the Rhode Island General Treasurer, the General Treasurer's Office, or any other government entity of the State of Rhode Island.

1. "I fear money lenders bearing gifts." Not from Virgil's Aeneid, which had Laocoön fearing Greeks bearing gift horses.

2. ALT. BANKING GRP. OF OCCUPY WALL ST., OCCUPY FINANCE 69, 69-83 (2nd prtg. 2014), https://www.dropbox.com/s/jb3tvdcvysq7afp/Occupy%20Finance_secondprinting.pdf (free download of the book available) [hereinafter OCCUPY FINANCE]

3. *See generally* BRUCE D. BAKER, CTR. FOR AM. PROGRESS, AMERICA'S MOST FINANCIALLY DISADVANTAGED SCHOOL DISTRICTS AND HOW THEY GOT THAT WAY (2014), https://cdn.americanprogress.org/wp-content/uploads/2014/07/BakerSchool

With state aid unable (or unwilling) to keep up with their expenses, and local property taxes pushed up as high as politically possible, the department has been in dire straits for some years.[4]

From 2002 until 2007, the city executed a series of "interest-rate swap" agreements with Wall Street banks, including Wells Fargo, Morgan Stanley, Citigroup and Goldman Sachs, to transform their floating-rate debt into fixed-rate debt.[5] Under these agreements, the Philadelphia school district agreed to pay the dollar value of the fixed-rate debts of the banks, and in exchange those banks agreed to pay the floating-rate debts of the school district.[6] The intent was to make budgeting more predictable, and possibly to save some money.[7] Accounts of what motivated it (and whose idea it was) differ at this point, since things did not turn out well.

Unfortunately for Philadelphia, once the agreements were in place, interest rates plunged in the aftermath of the 2008 financial crisis, and they remain at historic low levels today, five years later. Philadelphia's payments to the banks at the fixed rates didn't plunge, but the payments the banks made to Philadelphia went down to nearly zero.[8] Suddenly, what seemed like a bright idea at the time had become a disaster, and as of 2013, the school district and the city had lost $331 million in these deals, including hundreds of millions of dollars in interest rate payments

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Districts.pdf (summarizing the most financially disadvantaged school districts in the country, many of which are in urban areas).

4. OCCUPY FINANCE, *supra* note 2.

5. *Id.* Interest-Rate Swap agreements are agreements between parties where one party, typically a bank, exchanges a fixed-rate interest payment with another party for a floating-rate interest payment. *See What are Interest Rate Swaps and How do they Work?*, PIMCO (Jan. 2008), http://www.pimco.com/en/education/pages/interestrate swapsbasics1-08.aspx. The parties only swap the interest payments, not the underlying debt. *Id.* Regardless of whether the floating-rate rises or falls, the receiver of the fixed-rate payment will continue to pay the fixed rate. *Id.* In environments where either there are large fluctuations or the interest rate is expected to rise dramatically, a fixed rate allows a party to predict their debt load and to minimize the risk of interest rates rising. *Id.* However, if interest rates fall, the receiver must continue to pay a fixed rate above the market interest rate. *Id. See also* Press Release, Pa. Budget and Policy Ctr., Bank Swap Deals Continue to Cost Philadelphia City, School District (Jan. 17, 2012), http://pennbpc.org/bank-swap-deals-continue-cost-philadelphia-city-school-district [hereinafter Pa. Budget and Policy Ctr.] (noting that Wells Fargo, Morgan Stanley and Goldman Sachs have cost Philadelphia schools significant funds from their interest swap agreements).

6. *See* Pa. Budget and Policy Ctr., *supra* note 5.

7. SHARON WARD, PA. BUDGET AND POLICY CTR., TOO BIG TO TRUST? BANKS, SCHOOLS AND THE ONGOING PROBLEM OF INTEREST RATE SWAPS 3 (2012), http://pennbpc.org/sites/pennbpc.org/files/TooBigSwaps.pdf.

8. *Id.* at 5.

and cancellation fees.[9] They remain on the hook for hundreds of millions more, and the banks are utterly unwilling to forgive or renegotiate these deals. As of July 2013, the district had plans to close dozens of schools and lay off thousands of employees to deal with their ongoing fiscal crisis.[10]

It's a sad fact that a description of the relationship between banks and governments can't be considered complete without an examination of the many ways in which the current landscape of the banking industry is a veritable minefield for taxpayers. Governments need banks, and bankers know it—and frequently use that fact to their advantage. This, of course, is no different than any other supplier of services to a government—school districts need teachers, and teachers know it, too—until it goes over the line, past what used to be the bounds of propriety. In the case of Philadelphia's interest rate swaps, the abrupt decline in interest rates made what had seemed a prudent hedge into a phenomenally profitable deal.

"A deal's a deal," they say, but where is the line between profit and exploitation? Imagine a wealthy banker offering his neighbor some money for his cabin on a cruise because it's a little closer to the lifeboats. That's paying to hedge some risk. He's happy; the neighbor's happy. There's a mutual benefit: the banker has reduced his risk; the neighbor has a little extra money. Now imagine the ship has sunk, the neighbor is in the water, swimming towards the lifeboat the banker is in. The neighbor begs for the life jacket the banker is wearing. Is this part of the deal that must be honored? Does the banker have a right to refuse to give it up?

Financial transactions involving a government are often large and complex. A traditional bond sale can involve a small legion of bankers and lawyers, and take several steps to be executed.[11] This provides a multitude of nooks and crannies into which fees and profits can be tucked, especially where there is no tradition of fiduciary responsibility of the banker to his or her customer. There are also many other financial transactions between banks and customers, whose primary purpose involves the transfer of risk from a bank to a customer.[12] Usually for a

9. *Id.* at 1-3.

10. *Id.* at 6.

11. For example, a municipal bond is an instrument that allows state or local governments to borrow with interest from individuals to finance projects and raise capital. *See generally* JUDY WESALO TEMEL, BOND MKT. ASS'N, THE FUNDAMENTALS OF MUNICIPAL BONDS 1 (5th ed. 2001) (describing the roles of the teams of players in executing a bond instrument).

12. *See generally* BANK FOR INT'L SETTLEMENTS COMM. ON THE GLOB. FIN. SYS., CREDIT RISK TRANSFER REPORT (2003), http://www.bis.org/publ/cgfs20.pdf?noframes=1

fee, of course, but even when one wants to communicate the risk to another party, risk is hard to quantify and hard to communicate effectively. Far too often, our governments have been the victims of these transactions, not the beneficiaries.

Here, then, is another short and incomplete list of bank and municipal transactions, containing some of the ways in which banks have recently profited in an unseemly fashion from their government customers.

SWAPTION

Philadelphia's interest-rate swap was bad enough, but in 2004, Northampton County, a rural county in eastern Pennsylvania's Lehigh Valley, sold an interest rate "swaption" to Merrill Lynch (now Bank of America).[13] A swaption is a promise to enter into an interest rate swap, and in this case, Merrill Lynch paid the county about $1.9 million up front (less $300,000 in fees) for the right to swap fixed for floating interest rates in 2012.[14] By 2012, it was clear this was a really bad idea, but terminating the agreement on the eve of the swap invoked penalty clauses that cost the county $27 million.[15]

BOND CHURNING

In 2005, the state of Louisiana sold $650 million of bonds to refinance existing debt at a lower interest rate.[16] About $45 million of that debt had only been issued three months earlier, in October, at more or less the same interest rate.[17] Citigroup, the underwriter of the earlier bond, and one of the underwriters of the bigger sale, essentially sold the

(providing an overview of some of the financial instruments available to banks to transfer risk).

13. CTY. OF NORTHAMPTON EASTON PA. DEP'T OF FISCAL AFFAIRS, COMPREHENSIVE ANNUAL FINANCIAL REPORT 60 (2011), http://www.northamptoncounty.org/northampton/lib/Northampton/depts/fiscalaffairs/2010CAFR.pdf.

14. Samantha Marcus, *Northampton County will pay $27.3 million to end swaption deal*, MORNING CALL (June 22, 2012), http://articles.mcall.com/2012-06-22/news/mc-northampton-county-swaption-revisited-20120622_1_swaption-interest-rates-council-president-john-cusick; *see also* BRIAN ANTHONY EALES & MOORAD CHOUDHRY, DERIVATIVE INSTRUMENTS: A GUIDE TO THEORY AND PRACTICE 91 (2003) ("*Swaptions* are options on swaps. The buyer of a swaption has the right but not the obligation to enter into an interest rate swap agreement during the life of the option.") (emphasis in original).

15. Marcus, *supra* note 13.

16. Darrell Preston, *Citigroup "Double-Dipped" Louisiana Taxpayers with No-Bid Bond*, BLOOMBERG NEWS (Feb. 24, 2005), http://www.munibondadvisor.com/Bloombergbondsalesdoubledip.pdf.

17. *Id.*

same bond twice, earning $665,000 in fees for the first sale, and $104,000 in fees for refinancing just those October bonds.[18]

LETTERS OF CREDIT

Municipal bond borrowers frequently use a letter of credit from a bank to prop up their own bond rating and lower the interest to be paid on a bond. Essentially the bank is offering a guarantee for the bond, and so its bond rating becomes more material than the municipality or agency issuing the bond.[19] The problem is that letters of credit expire, typically in three or four years, while a bond might not be paid off for 30 years. When the letter of credit expires, the municipality must get another, or be forced to pay the bond back immediately. Unfortunately, with the demise of several large banks in the 2008 crisis, letters of credit are harder to come by now, and the fees banks charge for them have risen dramatically.[20] In 2010, the Port of Oakland saw a $2 million increase in their LOC fees to back up a $200 million line of credit using the commercial paper market.[21]

PENSION OBLIGATION BONDS

The idea with a pension obligation bond (POB) is to borrow at a low rate, put the resulting money into the pension funds investments, and convert a 7.5–8.5% debt to the pension fund into a 5-6% debt to address the unfunded liability. This amount would be more aligned with what a municipality might expect to pay on a taxable bond. In short, a POB allows a municipality to borrow against future tax revenue to eliminate currently unfunded pension liabilities.[22] This might sound like a great idea, but in the end it's just gambling, since the 7.5–8.5% target on pension investments is the discount rate for the obligations, which is ever

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18. *Id.*; *see* SEC. AND EXCH. COMM'N ET AL., INVESTOR ALERT: INVESTMENT PRODUCTS AND SALES PRACTICES COMMONLY USED TO DEFRAUD SENIORS: STORIES FROM THE FRONT LINE 6, https://www.sec.gov/spotlight/seniors/elderfraud.pdf.

19. Carrick Mollenkamp & Michael Corkery, *Banks Get Tough with Municipalities*, WALL ST. J. (Jan. 27, 2011), http://www.wsj.com/articles/SB10001424052748704062604576106282512683312.

20. *Id.*

21. PORT OF OAKLAND CAL. FIN. SERV. DIV., COMPREHENSIVE ANNUAL FINANCIAL REPORT 10, 36 (2012), http://www.portofoakland.com/pdf/about/PortofOakland CAFR2012Final.pdf (reporting figures). In 2012, with competition in the LOC market somewhat restored, Oakland's LOC fees came down somewhat. *Id.*

22. Eric Schulzke, *Pension Obligation Bonds: Risky Gimmick or Smart Investment?*, GOVERNING (Jan. 2013), http://www.governing.com/topics/public-workforce/pensions/gov-pension-obligation-bonds-risky-or-smart.html.

so slightly different from the expected rate of return. That is, everyone fondly hopes the pension fund managers will earn an expected rate of return equivalent to or exceeding the 7.5%-8.5% target, and the evidence is that they do a decent job of it on average, but there is no guarantee.[23] In 2008, Connecticut borrowed *$2.28 billion* to top up its teachers retirement fund. That was the moment the stock market, in which most of those funds were invested, tanked.[24] When the bond was issued in April, the Dow Jones average stood at 13,000, and by the following November, it was just over 6,600.[25] As of this writing, the investments may have almost returned to near their original value, but Connecticut has been paying 5.88% interest in the meantime, along with ample fees to the banks that underwrote the bonds in the first place.[26] There are years left on the terms to those bonds, so there is time to catch up, but the risks remain immense.[27]

CAPITAL APPRECIATION BONDS

A capital appreciation bond is sort of like a zero-coupon bond, but instead of being sold at a discount from the face value, the bond is sold as returning a fixed rate of interest.[28] In both cases, the value of the bond plus all the accrued interest is paid in one lump at the end.[29] From a government's point of view, the important distinction is that the face value of the bond is the discounted number, so if you're worried about the total debt of your town, this can make it look smaller. For example, you might sell a $1,000 zero-coupon bond with a ten-year term for $558 to someone who bids a 6% interest rate. The bond will count as a $1,000 debt in the municipality's accounting. A capital appreciation bond of the same amount would count as a $558 debt in the accounting. The math is

23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. A zero-coupon bond is a bond in which an investor purchases at a value lower than the amount that will be due when the bond matures or is due. It does not pay interest throughout the life of the bond. *See* U.S. SEC. AND EXCH. COMM'N, ZERO COUPON BONDS, http://www.sec.gov/answers/zero.htm (last visited Oct. 19, 2015) [hereinafter ZERO COUPON BONDS]. In contrast, a capital appreciation bond is a bond in which the return on the initial principal amount (or purchase value) is reinvested until the bond matures. At maturity the investor receives a lump sum amount, including the face value (principal) and the interest accrued. *See* Marc K. Fudge, *A Poor Decision Made Worse? The Use of Capital Appreciation Bonds by School Districts*, PA TIMES, http://patimes.org/poor-decision-worse-capital-appreciation-bonds-school-districts/ (last visited Apr. 4, 2015).
29. *See* ZERO COUPON BONDS, *supra* note 28; Fudge, *supra* note 28.

precisely the same, but somehow relabeling it makes a difference to accountants. It's a great way for a mayor to hide how much debt has been taken on, that doesn't sound completely terrible until you do the math. Unfortunately, the unpaid interest compounds, essentially becoming part of the principal, so the costs add up quickly.[30] Starting at $558, and making ten years of semi-annual interest payments at 6% (the way a coupon bond would work) would cost $750 in total. This would include only $192 in interest, less than half the $442 of the capital appreciation bond.

For a longer bond term, it's quite easy for the interest to exceed the principal significantly. In 2011, the Poway Unified School District which serves the city of Poway, California, and part of San Diego, borrowed $105 million on a 40-year capital appreciation bond.[31] They will make some interest payments starting around the year 2031, but otherwise no payments are due until maturity, in 2051.[32] When the bond is done, they'll have repaid the principal and $877 million in interest, *eight times* the principal.[33]

BOND FLIPPING

There is a conflict in incentives in the bond underwriting business. The issuer of the bond wants as low an interest rate as possible (as high a price as possible at the initial bond sale), but the underwriter wants to stay friends with its big institutional clients, who want to purchase the bonds as cheaply as possible. And, a big part of the reason they want them cheap is to resell them. If a bond dealer or big institutional investor can buy a bunch of newly-issued bonds from some city at 5% and then turn around and sell them at 4.5%, he has made a tidy profit, but he's also proven that there are people who would have bought them from the city at 4.5%.[34] The higher interest rate is money paid by taxpayers, not going to a public purpose, but only to make a profit for the underwriter's friends.[35] The underwriter's compensation is independent of the bond

30. For this reason and others, some states (including Michigan) have prohibited municipalities from using Capital Appreciation Bonds. *See* Fudge, *supra* note 28.

31. Will Carless, *Where Borrowing $105 Million Will Cost $1 Billion: Poway Schools*, VOICE OF SAN DIEGO (Aug. 6, 2012), http://voiceofsandiego.org/2012/08/06/where-borrowing-105-million-will-cost-1-billion-poway-schools/.

32. *Id.*

33. *Id.*

34. Vincent Fernando, *How Muni Bond Underwriters Screw Over Taxpayers and Retail Investors*, BUS. INSIDER (Aug. 11, 2009), http://www.businessinsider.com/muni-bond-underwriters-screw-over-taxpayers-and-retail-investors-2009-8.

35. *Id.*

rate pricing.[36] Banks have been accused of giving preference to certain dealers during bond sales, filling their orders at low prices while there are still other orders unfilled.[37] The SEC and FINRA have discussed new rules to prevent this in the past couple of years, but the obscurity of the bond sale process has prevented any real oversight.[38]

PADDING BOND SALES

It is very difficult to get more than a vague picture of the underwriting profit earned from an issuer for any specific bond transaction. The bond prospectus is supposed to answer such questions, and some of the fees may be outlined, but to understand the amount earned usually requires understanding the whole transaction.[39] This makes it relatively easy for banks to include costs that have nothing to do with the bond. In December 2012, FINRA fined five banks $3.3 million for padding the fees they collected from bond sales with dues they paid to Cal PSA, a California lobbying association.[40] The banks, including Citigroup, Goldman Sachs, JPMorgan, Merrill Lynch (Bank of America), and Morgan Stanley, were also forced to pay $1.13 million in restitution to a number of municipal and state issuers in California.[41] Cal PSA was billing its members according to the volume of bonds they underwrote, so apparently members found it easy just to tack the bills onto their underwriting fees.[42]

TAX ANTICIPATION NOTES

Tax revenues have an ebb and a flow each year. Income taxes tend to bump in April, despite the withholding rules, and sales tax collections bump in December and January after the Christmas shopping binge. A government that depends on income taxes might find itself short in March, and can sell a tax anticipation note (TAN) to get through the

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36. *Id.*
37. *Id.*
38. *Id.*
39. *See Information Available to Investment Company*, U.S. SEC. AND EXCH. COMM'N (Apr. 15, 2010), http://www.sec.gov/answers/mfinfo.htm (outlining the information required to be included in an investment prospectus).
40. *FINRA Sanctions Five Firms $4.4 Million for Using Municipal and State Bond Funds to Pay Lobbyists*, FIN. INDUS. REG. AUTH. (Dec. 27 2012), http://www.finra.org/Newsroom/NewsReleases/2012/P197554.
41. *Id.*
42. *Id.*

month until the April tax returns start rolling in.[43] (You'll also see them as "revenue anticipation notes.") In an earlier, more innocent time, the chance of a shortfall would be the reason a government would maintain a cash reserve. This reserve would be idle most of the year, when it could be invested in T-bills, and only used for a short time.[44] A government that relies on TANs not only gives up that investment income, but also pays all the bond issuance costs each year. San Diego pays about $200,000 each year on TAN issuance fees alone.[45] As of 2014, they expect to pay $2,500,000 more in interest, though that is thankfully down from $5 million in 2008.[46]

LIBOR RIGGING

The London interbank interest rate (LIBOR) is a benchmark interest rate, to which millions of other interest rates in hundreds of *trillions* in investments refer.[47] When a group of banks admitted to rigging LIBOR in 2012,[48] they were essentially admitting to having stolen money from the parties involved in thousands of these agreements. Some $200 billion of municipal interest rate swaps sold before the 2008 crisis were tied to LIBOR, and rigging the rate made the swaps themselves more expensive and getting out of them more expensive, too.[49] Bloomberg news estimated that the additional costs to municipalities exceeded $6 billion.[50]

In addition to all these, there are the more pedestrian sorts of fees, the sort that plague any modern bank customer. Because many government bank accounts have very high traffic, the fee income can be quite substantial. Furthermore, because a city or county government can be quite complicated, it is usually a major undertaking to change banks. A government thus has very little leverage in the banking market.

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43. *See* Richard H. Rosenbloom, *A Review of the Municipal Bond Market,* ECON. REV., Mar./Apr. 1976, at 11.

44. A T-bill is a Treasury bill, which a municipality can invest in a short-term bill (a few days to a few weeks) which will accrue interest when the bill matures. *See Treasury Bills,* TREASURY DIRECT, https://www.treasurydirect.gov/indiv/products/prod_tbills_glance.htm (last visited Apr. 4, 2015).

45. *See* CITY OF SAN DIEGO, FISCAL YEAR 2014 ADOPTED BUDGET 640 (2014).

46. *Id.*

47. John Kiff, *What is LIBOR?* 49 FIN. & DEV. 32, 32 (2012).

48. *Id.* at 32-33.

49. Darrell Preston, *Rigged Libor Hits States-Localities With $6 Billion: Muni Credit,* BLOOMBERG (Oct. 9, 2012), http://www.bloomberg.com/news/2012-10-09/rigged-libor-hits-states-localities-with-6-billion-muni-credit.html.

50. *Id.*

Again, the purpose behind enumerating these different forms of bad behavior is not to revel in the villainy of some bankers, but to be specific about the problems that need solving. Governments entered many of these deals because they felt they were going to get something useful out of them—some extra income from the interest-rate swaps, low (or hidden) payments from the capital appreciation bonds, lower interest rates from the letters of credit, the ability to spend their cash reserve on something else, and so on. Understanding what governments truly need is an important step in designing institutions to serve those needs, and understanding the specifics of bank excesses is an important step in designing regulations and laws to prevent those abuses in the future.

What's remarkable about the conduct on display here is not simply the lack of consideration for schoolchildren, taxpayers, and so on, but that many governments, if not most, *have* the assets they need to conduct their own financial business. Our governments' ends could be handled with their own means. Unfortunately, the wealth controlled by those governments is seldom organized in such a way that they can do so easily, if at all.

For example, the state of Rhode Island, with an approximately $8 billion annual budget, has around a half-billion dollars in investments on hand at any one time and more than that amount in cash and bank balances, scattered around the state government and its component units.[51] This does not count over $8 billion in the state's pension fund. But with over a billion on hand, so little of it is available to invest for its own purposes that the state had to borrow from (sell bonds to) insurance companies like Allstate and State Farm to finance investments like $20 million in drinking water improvements in 2013.[52] Bonds issued to out of state buyers represent interest payments sent beyond the state's borders, lost to the state's economy, and they also represent substantial issuance costs as well. The state paid over $1 million in bond counsel fees alone in 2014,[53] and that's not counting the underwriter's counsel, the disclosure counsel, the escrow agent, the trustee fees, and the underwriter's share, which usually includes a fee, usually around 0.5%[54]

51. STATE OF R. I., COMPREHENSIVE ANNUAL FINANCIAL REPORT 37 (2015).

52. This was only one of several bonds issued that year, randomly chosen to illustrate the point.

53. SETH MAGAZINER, OFFICE OF THE GEN. TREASURER STATE OF R. I., FISCAL YEAR 2014 REPORT ON DEBT MANAGEMENT AND NOTICE OF DEBT ISSUANCES TO THE PUBLIC FINANCE MANAGEMENT BOARD (2015).

54. Tonya Chin, *Muni Underwriter Fees Continue to Decline*, THE BOND BUYER (May 28, 2013, 3:59 PM), http://www.bondbuyer.com/issues/122_102/municipal-bond-underwriting-fees-continue-to-decline-1052064-1.html.

plus whatever spread appears between the issue price and the first sale of the bonds.[55]

Numbers as large as this can seem too abstract. Let's scale it down a bit. Imagine you're rich enough to have over a million dollars in your checking and savings accounts, but your accountant has arranged your finances so that you need to take out a car loan to buy a $20,000 car. And then imagine you have to pay a few hundred dollars in loan fees, on top of the interest you'll pay. Would you put up with that? Would you not find a new accountant?

Those considering the creation of alternative financial institutions can think of the above list as a collection of potential business opportunities for those new institutions. Here is demand, these examples say; is there a more seemly way to meet it? Others who are not considering creating an institution can simply marvel at the variety and the ingenuity on display.

Some of this work is already underway. For example, in 2012, the Build America Mutual bond insurance company was formed to insure municipal bonds. It is a mutual insurance company, so is owned by the municipalities whose bonds it insures. It is also brand-new, so whether it can maintain a level of service and accountability better than its for-profit competitors is an open question, presumably to be answered over the next few years.[56]

Other small reforms are also feasible. Simply creating a legal requirement that banks act in a fiduciary capacity for their customers would go a long way. For example, in Vermont, mortgage brokers can be legally liable if a loan goes bad due to fraud or inadequate disclosure.[57] Consequently, Vermont saw virtually no increase in foreclosures before or during the 2008 crisis, while the rest of the country was inundated.[58]

It is crystal clear that in many ways, banks regard our state and local governments as marks to whom they can sell the newest, shiniest, financial gimmick, no matter how risky or rigged. Really, though, if a bank is paying you to take some risk they don't want to take, there is a warning hiding in there, and not too deep. The good news about this is that state and local governments can be fairly accessible places, and even occasionally responsive to public pressure. Our cities, towns, counties,

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55. A useful explanation for underwriter earnings can be found at: *Municipal Bond Underwriting Spreads–How Underwriters Make Money*, WM FIN. STRATEGIES, http://www.munibondadvisor.com/UnderwritingSpread.htm (last visited Feb. 19, 2016).

56. *See* BAM, http://buildamerica.com (last visited Jan. 4, 2015).

57. Gary Fields, *Vermont Mortgage Laws Shut the Door on Bust – and Boom*, WALL ST. J. (Aug. 18, 2009), http://www.wsj.com/articles/SB125054188939938015.

58. *Id.*

and states have the financial wherewithal to avoid being preyed upon, but it seems we need to force them to act that way.