

# TEXPERS OUTLOOK

## ISSUES IMPACTING PUBLIC PENSION FUNDS

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## Congressional Budget Office Analyzes State and Local Pension Underfunding

Many states and localities face extraordinary budgetary difficulties over the next few years due to the economic recession, but "structural shortfalls" in their pension plans pose a problem that is likely to endure for much longer, according to a new report by the U.S. Congressional Budget Office.

The report analyzes the two leading approaches pension funds use to value assets and liabilities, and finds that the reported amount of underfunding varies significantly depending on which one is used.

The CBO based many of its findings on the Public Fund Survey of 126 state and local pension plans, which held roughly \$2.6 trillion in financial assets in 2009 but had about \$3.3 trillion in liabilities for future pension payments.

Those assets covered less than 80 percent of liabilities, and unfunded liabilities

(the amount by which liabilities exceed assets) amounted to roughly \$0.7 trillion. By comparison, the amount of state and local governments' debt that was outstanding at the end of 2009 was \$2.4 trillion.

That estimate of unfunded liabilities is calculated on the basis of actuarial guidelines currently followed by state and local governments. Another approach for measuring pension assets and liabilities, which more fully accounts for the costs that pension obligations pose for taxpayers, yields a much larger estimate of unfunded liabilities for those plans in 2009 – between \$2 trillion and \$3 trillion, the CBO said.

"In any event, most state and local pension plans probably will have sufficient assets, earnings, and contributions to pay scheduled benefits for a number of years and thus will not need to address their funding shortfalls immediately," the CBO

*CBO continued on next page*

### *In this Issue:*

- Congressional Budget Office Analyzes State and Local Pension Underfunding ... **Front-2**
- Houston Municipal Employees Pension System Sues Highland Capital, JP Morgan ... **pg. 2**
- SEC Seeks Public Comment on Short Sale Disclosure ... **pg. 2**
- CalPERS Board Agrees to Divest from Eight Companies with Ties to Iran, Sudan ... **pg. 3**
- More Workers Delay Retirement Due to Recession ... **pg. 3**
- Social Security Trustees Predict Trust Fund Exhaustion One Year Sooner ... **pg. 3-4**
- Report Slams 'Revolving Door' at SEC ... **pg. 4-5**
- Appeals Court Dismisses Lawsuits Attempting to Hold Rating Agencies Liable for Bad Advice ... **pg. 5**
- Staff Retention is Top Concern Among Many for State and Local Government Workforce ... **pg. 5-6**
- UBS Settles Charges of Using Fraudulent Bidding Practices Investing Municipal Bond Proceeds ... **pg. 6**
- SEC Seeks More Transparency Among Credit-Rating Agencies ... **pg. 7**
- Texas Man Pleads Guilty to Running Commodities Ponzi Scheme ... **pg. 7**
- Senator Urges SEC to Make Sure New Whistleblower Office is Effective ... **pg. 7**
- Global Pension Fund Assets Grew by 12% in 2010, Study Finds ... **pg. 8**
- SEC Proposes Dollar Limits for Investment Advisers Who Charge Clients Performance Fees ... **pg. 8**
- Appeals Court Rules Labor Unions Must Produce Retirement Fund Documents ... **pg. 8-9**
- SEC Seeks Public Comment on Study of Assigned Credit Ratings ... **pg. 9**

*CBO continued from previous page*

said. "But they will probably have to do so eventually, and the longer they wait, the larger those shortfalls could become."

On the Web at: <http://www.cbo.gov/ftpdocs/120xx/doc12084/05-04-Pensions.pdf>. 

## Houston Municipal Employees Pension System Sues Highland Capital, JPMorgan

The Houston Municipal Employees Pension System (HMEPS) is suing Dallas-based Highland Capital Management and JPMorgan Chase & Co., alleging that officers at Highland caused the closure of Highland's flagship Crusader Fund by willfully "looting" the investment vehicle.

The lawsuit alleges that Highland co-founders James Dondero and Mark Okada caused the Crusader Fund to engage in "dozens of self-interested transactions" with Highland affiliates that benefited the firm at the fund's expense, HMEPS said in the complaint. JPMorgan was included because it administered the fund.

The Houston pension system, which invested \$15 million in the fund, is seeking the return of all administrative and management fees paid to the fund, as well as unspecified damages caused by the alleged wrongdoing.

The Crusader Fund "was harmed by virtue of being stuck with poor quality assets that it would not have had if the partnership had been managed in the best interests of the partnership and its limited partners," lawyers for the pension system said in the complaint filed in Delaware Chancery Court.

Highland Capital, which manages assets of about \$22 billion, in October 2008 announced plans to close both Crusader and its Highland Credit Strategies Fund over a three-year period after both funds posted losses, Bloomberg reported.

Since announcing that the funds would be shuttered, Highland and the two JPMorgan units that administered the funds have faced other lawsuits alleging that investors were misled about the health of the funds. They also were accused of failing to provide accurate monthly statements.


Highland Capital said in a statement that the lawsuit is "both without merit and misleading."

"In our view, this suit represents a single plaintiff's law firm attempting to create financial leverage for one party's benefit at the expense of all other investors and derail the investor-led mediation process that is substantially complete. In fact, this same law firm tried to

derail the successful, investor-driven process that led to the recent, equitable resolution for the Highland Credit Strategies hedge fund. Similarly, we do not expect this meritless suit to impede the approval of a final plan of distribution for Crusader in the coming weeks."

"Highland has worked tirelessly in the best interest of all investors. As soon as the resolution from the investor-led process is approved, which we believe will happen imminently, we expect this meritless lawsuit to be dismissed."

The case is *Houston Municipal Employees Pension System v. Highland Crusader Fund GP*, CA6510, Delaware Chancery Court (Wilmington, Del.).


On the Web at: <http://www.bizjournals.com/dallas/news/2011/05/25/houston-pension-system-sues-highland.html>, <http://www.bloomberg.com/news/2011-05-23/highland-capital-sued-by-houston-pension-plan-over-failed-crusader-fund.html> and <http://www.reuters.com/article/2011/05/24/idUS236963+24-May-2011+PRN20110524>. 

## SEC Seeks Public Comment on Short Sale Disclosure

The Securities and Exchange Commission is seeking public comment on two short-selling disclosure regimes as a part of a study mandated by the Dodd-Frank Wall Street reform act.

One of the two short sale disclosure regimes involves a transactions reporting regime that would add short sale-related marks to the consolidated tape in a voluntary pilot program. The second regime involves a position reporting regime that would entail real-time reporting of investors' short positions either to the public or to regulators only.

The agency is seeking public comment on both the existing uses of short selling in securities markets and the adequacy or inadequacy of the information regarding short sales available today. The request also seeks public comment on the likely effect of these possible future reporting regimes on the securities markets, including their feasibility, benefits, and costs.

On the Web at: <http://www.sec.gov/rules/other/2011/34-64383.pdf>. Submit comments at: [http://www.sec.gov/cgi-bin/ruling-comments?ruling=4-627&rule\\_path=/comments/4-627&file\\_num=4-627&action=Show\\_Form&title=Short%20Sale%20Reporting%20Study%20Required%20by%20Dodd%2DFrank%20Act%20Section%20417%28a%29%282%29](http://www.sec.gov/cgi-bin/ruling-comments?ruling=4-627&rule_path=/comments/4-627&file_num=4-627&action=Show_Form&title=Short%20Sale%20Reporting%20Study%20Required%20by%20Dodd%2DFrank%20Act%20Section%20417%28a%29%282%29). 

## CalPERS Board Agrees to Divest from Eight Companies with Ties to Iran, Sudan

The board of the California Public Employees' Retirement System (CalPERS) has agreed to a plan to divest shares of eight public companies doing business in Iran and Sudan.

The system owns shares valued at roughly \$160 million in the eight companies. CalPERS had \$2 billion invested in 47 companies that operate in Iran and Sudan when the California divestment laws were first enacted in 2006.

Since then, the retirement system has successfully put pressure on companies to withdraw from Iran and Sudan, leaving only eight companies left in CalPERS' portfolio.

"The cost of continuing to hold the stock of these eight companies is greater than the value of divesting them," said Rob Feckner, CalPERS board president. Many pension funds and other investors are divesting of companies doing business in the two countries to protest human rights abuses.

CalPERS officials have been spending \$425,000 a year to pay a consultant to monitor the system's investments in companies in the two countries, according to CalPERS investment committee documents.

The \$236 billion system did not give a timetable for selling off the shares. "We plan to mitigate and compensate for the cost of executing trades by implementing sales over time rather than precipitously," said George Diehr, chair of the CalPERS Investment Committee. "We also will use the sales of these company shares to adjust an allocation overweight in our Global Equity portfolio, and avoid the continuing engagement costs."

On the Web at: <http://www.calpers.ca.gov/index.jsp?bc=/about/press/pr-2011/may/divest-iran-sudan.xml>.

## More Workers Delay Retirement Due to Recession

Since the mid 1990s, U.S. workers have been retiring later and later, and the recent global recession has put even greater pressure on employees to keep working, according to a new report by The Conference Board, a global, independent business membership and research association.

Retirement rates declined significantly during and after the global recession, according to "U.S. Workers Delaying Retirement: What Businesses Can Learn from

the Trends of Who, Where and Why."

The report found that the choice to delay retirement depends a lot on what occupations and industries the workers are in. The healthcare industry, for example, experienced the largest decline in retirement rates in recent years. Conversely, there was almost no retirement delay among government workers, likely because these workers tend to receive defined benefit pension plans, the report said.

Mature workers in high-paying jobs were much more likely to delay retirement than workers in low-paying ones. Those in higher-paying jobs tended to have higher financial expectations for their retirement years. Also, high-paying occupations tended to have limited physical requirements, making it easier to continue working, according to the report.

Retirement trends such as these can inform employers who are developing their workforce strategies by incorporating retirement trends specific to their overall operations.

"For example, delayed retirement provides relief for several more years in industries that will suffer significant 'brain drain' from baby boomers leaving," the report says. "Alternatively, for companies that would like to reduce headcount, slash labor costs, hire new workers or promote younger workers, delayed retirement could be viewed as a negative development."

On the Web at: <http://www.conference-board.org/press/pressdetail.cfm?pressid=4200> and <http://www.conference-board.org/publications/publicationdetail.cfm?publicationid=1940>.

## Social Security Trustees Predict Trust Fund Exhaustion One Year Sooner

In its annual report released in May, the Social Security Board of Trustees said the Social Security Trust Funds will be exhausted in 2036, one year sooner than projected last year.

In a "message to the public," the trustees said the financial conditions of the Social Security and Medicare programs "remain challenging" and "should be addressed soon."

"Projected long-run program costs for both Medicare and Social Security are not sustainable under currently scheduled financing, and will require legislative modifications if disruptive consequences for beneficiaries and taxpayers are to be avoided," they said.

Republicans framed the report in the overall debate about the nation's climbing debt and debt ceiling

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and urged cuts to the entitlement programs. Meanwhile, Democrats said the programs, while in need of reforms to guarantee their long-term solvency, would be gutted by the Republican proposals.

“With the release of this report, I hope the White House has a change of heart and puts our entitlement programs – the largest drivers of our debt – on the table in discussions over deficit reduction.” said U.S. Sen. Orrin Hatch (R-Utah), ranking member of the Senate Finance Committee.

U.S. Sen. Mike Johanns (R-Neb.) said the trustees report provided “powerful evidence of the need for serious action on entitlements.” He added that the report “rebutts the false notion that Social Security and Medicare – which constitute one-third of the federal budget – are in fine shape and not part of our debt crisis.”

Under a statement headed “A Call to Action,” U.S. Senate Republican Leader Mitch McConnell (R-Ky.) said the report shows that Social Security and Medicare are “unsustainable” and said President Obama’s request to raise the debt limit “is the perfect time to pass significant spending reductions and reform entitlement programs.”

But House Democratic Leader Nancy Pelosi (D-Calif.) said the report shows that “Social Security and Medicare are strong, but Republican economic and fiscal policies have taken a direct hit at their finances.”


“Republicans have now voted to end Medicare while giving billions to Big Oil and millionaires,” Pelosi said. “Republicans have long been up to the same tricks with Social Security, putting the economic security of America’s seniors at risk. Democrats created Social Security and Medicare; we have sustained them for generations; we are working to strengthen, not end them.”

The trustees’ report “confirms that Social Security has nothing to do with our current budget deficits,” U.S. Rep. Charlie Rangel (D-N.Y.) said. “There’s no doubt we have to do something to fix the system if the revenues are not coming in and more expenses are going out. By any analysis, the social security system will be able to pay everybody ... until 2035.”

Treasury Secretary Timothy Geithner said the report “makes clear that while both Social Security and Medicare have sufficient resources to meet their obligations for at least the next decade, it is important that we put in place reforms to strengthen these programs.”

“Beyond the doom-and-gloom news headlines and calls to cut these programs in order to ‘save’ them, the fiscal facts in this annual report show that Social Security has

a \$2.6 trillion surplus which continues to grow,” said Max Richtman, executive vice president/acting CEO of the National Committee to Preserve Social Security & Medicare. “The bottom line is Social Security is not in crisis and further reforms to our healthcare system are necessary to bring down costs nationwide, not just in Medicare.”

On the Web at [www.socialsecurity.gov/OACT/TR/2011/](http://www.socialsecurity.gov/OACT/TR/2011/), <http://www.ssa.gov/pressoffice/pr/trustee11-pr.htm>, <http://www.socialsecurity.gov/OACT/TRSUM/index.html>, [http://hatch.senate.gov/public/index.cfm/releases?ContentRecord\\_id=08ca8d26-4e81-4a72-b77e-62861617e06b&ContentType\\_id=7e038728-1b18-46f4-bfa9-f4148be94d19&Group\\_id=e5b4c6c5-4877-493d-897b-d8ddac1a9a3e](http://hatch.senate.gov/public/index.cfm/releases?ContentRecord_id=08ca8d26-4e81-4a72-b77e-62861617e06b&ContentType_id=7e038728-1b18-46f4-bfa9-f4148be94d19&Group_id=e5b4c6c5-4877-493d-897b-d8ddac1a9a3e), [http://johanns.senate.gov/public/?p=PressReleases&ContentRecord\\_id=40863995-4f86-4166-abe1-8925273bfa7a&ContentType\\_id=bc82adff-27b4-4832-8fd6-aecbe3e7d8e3](http://johanns.senate.gov/public/?p=PressReleases&ContentRecord_id=40863995-4f86-4166-abe1-8925273bfa7a&ContentType_id=bc82adff-27b4-4832-8fd6-aecbe3e7d8e3), [http://mccconnell.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=59e08a6e-193e-47b8-be63-0446a09a754f&ContentType\\_id=c19bc7a5-2bb9-4a73-b2ab-3c1b5191a72b&Group\\_id=0fd6ddca-6a05-4b26-8710-a0b7b59a8f1f](http://mccconnell.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=59e08a6e-193e-47b8-be63-0446a09a754f&ContentType_id=c19bc7a5-2bb9-4a73-b2ab-3c1b5191a72b&Group_id=0fd6ddca-6a05-4b26-8710-a0b7b59a8f1f), <http://pelosi.house.gov/news/press-releases/2011/05/pelosi-statement-on-report-of-the-social-security-and-medicare-board-of-trustees.shtml>, <http://rangel.house.gov/statements/2011/05/rangel-social-security-is-not-broken.shtml>, and <http://www.treasury.gov/press-center/press-releases/Pages/tg1176.aspx>. 

## Report Slams ‘Revolving Door’ at SEC

More than 200 former Securities and Exchange Commission (SEC) employees who quit their jobs during the past five years have taken jobs representing Wall Street clients before the Commission, the Project on Government Oversight (POGO) said after reviewing post-employment filings obtained under the Freedom of Information Act.

POGO found that the SEC’s enforcement of its post-employment rules is “spotty.” In some cases, POGO said, SEC workers lined up Wall Street job opportunities while still working at the Commission. The report analyzes whether the SEC lacks adequate policies to limit the revolving door between agency employees and the businesses that the agency oversees on behalf of investors.

In addition to the report, POGO also published an “SEC Revolving Door Database” that tracks employees who filed post-employment statements, which the SEC requires from former employees who plan to represent

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a client before the SEC within two years of leaving the agency.

“The revolving door to high-paying jobs representing Wall Street can undermine the integrity of the SEC,” said Michael Smallberg, the POGO investigator who created the database. “It’s not a stretch for the public to wonder whether the promise of future employment affects how SEC regulators treat certain firms.”

The report and database caught the attention of lawmakers.

“Today, the SEC’s revolving door seems to be more active than ever,” said U.S. Sen. Chuck Grassley (R-Iowa). “Revolving door restrictions that apply to the rest of government must be made to apply to the financial regulatory agencies. Along with the restrictions, there should be public disclosure of where these former financial regulators are working and what issues they are working on. Transparency is a proven backstop to enforce ethics rules.”

On the Web at: <http://www.pogo.org/pogo-files/reports/financial-oversight/revolving-regulators/fo-fra-20110513.html>, <http://www.pogo.org/pogo-files/alerts/financial-oversight/fo-fra-20110513.html> and [http://grassley.senate.gov/news/Article.cfm?customel\\_dataPageID\\_1502=34491](http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=34491). 

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## Appeals Court Dismisses Lawsuits Attempting to Hold Rating Agencies Liable for Bad Advice

The 2nd Circuit Court of Appeals has dismissed three lawsuits that sought to hold rating agencies liable for misstatements or omissions in securities offering documents.

Between 2005 and 2007, the plaintiffs, which included the Wyoming Retirement System and several public retirement systems in Detroit, bought about \$155 billion worth of mortgage pass-through certificates that were sponsored and underwritten by Lehman Brothers and rated by either Standard & Poor’s, Moody’s Investors Service, Inc., or Fitch, Inc.

The plaintiffs sought to hold these rating agencies liable for misstatements or omissions in the securities offering documents connected with the certificates.

The thrust of the plaintiffs’ lawsuits was that these rating agencies, “which ordinarily serve as passive evaluators of credit risk, exceeded their traditional roles


by actively aiding in the structuring and securitization process.”

The plaintiffs had alleged that the rating agencies could be held liable under various provisions of the Securities Act of 1933 as either underwriters or “control persons” with respect to the securities. The United States District Court for the Southern District of New York ultimately dismissed all of the plaintiffs’ suits against the rating agencies. It held that the rating agencies did not qualify as either underwriters or control persons.

The 2nd Circuit affirmed the decision. First, the court looked to the statute’s express text as well as case law to conclude that the rating agencies were not underwriters in these cases.

The court also rejected the plaintiffs’ alternative argument: that the rating agencies could be held liable under Section 15 of the Securities Act, which imposes liability on “every person who...controls any person” liable under Section 11.

The court noted that the plaintiffs had adequately pled Section 11 violations by the parties who actually issued or deposited the certificates, and therefore the key question in these cases was whether the rating agencies could be seen as controlling those primary violators. It concluded that they could not.

To read the opinion, visit: [http://www.ca2.uscourts.gov/decisions/isysquery/4677bfee-4cc4-48a1-be66-3251f9b7f512/1/doc/10-712\\_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/4677bfee-4cc4-48a1-be66-3251f9b7f512/1/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/4677bfee-4cc4-48a1-be66-3251f9b7f512/1/doc/10-712_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/4677bfee-4cc4-48a1-be66-3251f9b7f512/1/hilite/). 

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## Staff Retention is Top Concern Among Many for State and Local Government Workforce

The top workforce issues facing state and local governments include retaining staff needed for core services, reducing employee health care costs, and addressing employee morale and workload problems, according to a new study by the Center for State and Local Government Excellence.

The study, based on an electronic survey, also found that one-quarter of respondents reported that employees were accelerating their plans for retirement and 71 percent said their workforce has shrunk since the 2008 economic downturn.

The workforce changes most commonly cited were shifting more health care costs to employees (72

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percent); pay freezes (62 percent); hiring freezes (54 percent); layoffs (41 percent); creating wellness programs (33 percent); shifting more health care costs to retirees (23 percent), and raising contributions to pension plans (23 percent, new hires; 22 percent, current employees).


“As they face hiring freezes, morale issues, layoffs, and accelerating retirements, more than 70 percent of state and local governments say staff development is a priority issue,” said Center President and CEO Elizabeth Kellar. “This takes on added importance as you examine trend data. The number of retirement-eligible employees who have moved up their retirement date has more than doubled in the last year.”

The survey, “State and Local Government Workforce: 2011 Realities,” is a follow-up to one the Center conducted in late fall 2009, “The Great Recession and the State and Local Government Workforce.”

Respondents reported that they continued to have a hard time filling a number of positions, including police and firefighters, middle and top managers and social workers.

“The survey results confirm that the public sector continues to face extremely challenging times, with difficult workforce issues that need to be addressed,” said Neil E. Reichenberg, executive director of International Public Management Association for Human Resources, which helped conduct the survey. “One of the key challenges for the public sector will be to remain an employer of choice that can compete for talent, especially in critical high skills areas.”

The survey included 363 respondents, 80% of whom worked for local government and 14% of whom worked for state government.

On the Web at: <http://www.slge.org/vertical/Sites/%7BA260E1DF-5AEE-459D-84C4-876EFE1E4032%7D/uploads/%7BF398ED77-7946-4D30-A75A-B5735A672C2F%7D.PDF> 

## **UBS Settles Charges of Using Fraudulent Bidding Practices in Investing Municipal Bond Proceeds**

The Securities and Exchange Commission (SEC) has charged UBS Financial Services Inc. with fraudulently rigging at least 100 municipal bond reinvestment transactions in 36 states and generating millions of dollars in ill-gotten gains.

To settle the SEC’s charges, UBS has agreed to pay \$47.2 million, which will be returned to the affected municipalities. UBS and its affiliates also agreed to pay \$113 million to settle parallel cases brought by other federal and state authorities.

When investors purchase municipal securities, the municipalities generally temporarily invest the proceeds of the sales in reinvestment products before the money is used for the intended purposes.


Under IRS regulations, the proceeds of tax-exempt municipal securities must generally be invested at “fair market value.” The most common way of establishing fair market value is through a competitive bidding process in which bidding agents search for the appropriate investment vehicle for a municipality.

The SEC alleges UBS used fraudulent practices and misrepresentations to undermine the competitive bidding process and affect the prices that municipalities paid for the reinvestment products being bid on by the provider of the products.

UBS allegedly played various roles in these “tainted” transactions, the SEC said. UBS illicitly won bids as a provider of reinvestment products, and also rigged bids for the benefit of other providers while acting as a bidding agent on behalf of municipalities. UBS at times facilitated the payment of improper undisclosed amounts to other bidding agents, the complaint alleges. In each instance, UBS made fraudulent misrepresentations or omissions, thereby deceiving municipalities and their agents.

This fraudulent conduct jeopardized the tax-exempt status of billions of dollars in municipal securities because the supposed competitive bidding process that establishes the fair market value of the investment was corrupted, the agency said.

The UBS business unit involved in the misconduct closed in 2008 and its employees are no longer with the company.

On the Web at: <http://www.sec.gov/litigation/admin/2011/34-64398.pdf>, <http://www.sec.gov/litigation/complaints/2011/comp21956.pdf>, <http://www.sec.gov/litigation/litreleases/2011/lr21956.htm>, <http://www.sec.gov/litigation/litreleases/2011/lr21956-judgment.pdf>, and [http://www.sec.gov/news/press/2011/2011-105-ubs\\_transactions.pdf](http://www.sec.gov/news/press/2011/2011-105-ubs_transactions.pdf). 

[www.texpers.org](http://www.texpers.org)


## SEC Seeks More Transparency Among Credit-Rating Agencies

Commissioners at the Securities and Exchange Commission (SEC) voted 5-0 May 18 to release a proposal that would make it easier for investors to assess the quality of credit ratings and identify potential conflicts of interest.

Under the proposal, each rating would have to include background on how grades were determined, including information on the likelihood of default and any third-party due-diligence services used to examine asset-backed securities. Firms would be required to send the SEC annual reports about the effectiveness of their internal controls.

The proposal would implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act – the regulatory overhaul bill enacted last July – and enhance the SEC’s existing rules governing credit ratings and Nationally Recognized Statistical Rating Organizations (NRSROs). Dodd-Frank seeks to force changes in the credit-rating industry after lawmakers faulted the ratings firms’ inflated grades for fueling the housing bubble before the 2008 credit crisis.

“In passing the Dodd-Frank Act, Congress noted that credit ratings applied to structured financial products proved inaccurate and contributed significantly to the mismanagement of risks by financial institutions and investors,” said SEC Chairman Mary L. Schapiro. “Our proposed rules are intended to strengthen the integrity and improve the transparency of credit ratings.”

On the Web at: <http://www.sec.gov/news/press/2011/2011-113.htm>. 

## Texas Man Pleads Guilty to Running Commodities Ponzi Scheme


The U.S. Commodity Futures Trading Commission (CFTC) obtained a federal default judgment order against Richard D. Theye of Austin, Texas, after he and his company, Micind Capital Management, Inc., were charged with fraud in connection with running a multi-million dollar commodity pool Ponzi scheme.

Theye pled guilty to criminal felony charges and was sentenced to 144 months at a federal correctional institution. He also must pay more than \$6.2 million in restitution and civil monetary penalties for defrauding investors.

The judgment found that Theye fraudulently solicited members of the general public to invest millions of dollars in two commodity pools, RYCO Group, LLC and First

RYCO, LLC. Theye encouraged prospective investors to roll over their 401(k)s, IRAs and pension funds into the RYCO pools. Theye solicited investors through false representations during face-to-face meetings at his church in Austin and in advertising the RYCO pools’ purported historical profits trading commodity futures, according to the order.

Theye then misappropriated the vast majority of pool participants’ funds to perpetuate a Ponzi scheme by paying false “profits” to pool participants using other pool participants’ funds and that Theye’s commodity futures trading resulted in losses of hundreds of thousands of dollars since 2006. Theye issued fictitious account statements to investors showing trading profits when, in fact, no profits were realized, according to the order.

On the Web at: <http://www.cftc.gov/PressRoom/PressReleases/pr6046-11.html>. 

## Senator Urges SEC to Make Sure New Whistleblower Office Is Effective

U.S. Sen. Chuck Grassley (R-Iowa) is asking the chairman of the Securities and Exchange Commission (SEC) to reconsider proposed regulations for the whistleblower provisions created by the Dodd-Frank financial regulation law enacted last summer.

“These changes were supposed to strengthen the ability of whistleblowers at the SEC to help correct wrongdoing,” Grassley said. “But, so far, the regulations that have been proposed would unravel the good of the legislation.”

The SEC’s rules for its whistleblower office are “overly complex and overly restrictive. They emphasize internal compliance over accuracy, and they perpetuate an environment hostile to whistleblowers by failing to provide any guidance to prevent retaliation against SEC employees who speak up,” he said.

In a May 10 letter to SEC Chairman Mary Schapiro, Grassley said the SEC whistleblower program does not comply with what Congress intended for whistleblowers under the Dodd-Frank law.

“The SEC has a bad track record when it comes to using valuable information from whistleblowers, and the changes to the law last year were intended to turn that around,” he said. “We’ve seen how SEC failures can hurt anyone with a pension plan or money in a retirement fund.”

On the Web at: <http://grassley.senate.gov/about/upload/051011-Letter-to-Chairman-Schapiro.pdf> and <http://www.sec.gov/news/press/2011/2011-116.htm>. 

## Global Pension Fund Assets Grew by 12% in 2010, Study Finds

A study by Towers Watson of the 13 largest pension markets in the world finds that institutional pension fund assets increased by 12% during 2010 to reach a new high of US\$26 trillion.


The 13 markets, including Australia, Canada, Brazil, France, Germany, Hong Kong, Ireland, Japan, Netherlands, South Africa, Switzerland, the United Kingdom and the U.S., account for more than 85% of global pension assets.

The growth is a continuation of a trend that started in 2009 when assets grew 17%, but in sharp contrast to a 21% decline during 2008 when assets fell to 2006 levels.

Pension fund balance sheets globally continued to strengthen during 2010, although the global asset-to-liability ratio was still down from its 1998 level, according to the “Global Pensions Asset Study – 2011.”

Global pension assets now amount to 76% of the global GDP (71% in 2009), substantially higher than the equivalent figure of 61% in 2008.

The study also analyses asset size, including growth statistics, a comparison of asset size with GDP and liabilities, asset allocation, defined benefit and defined contribution share of pension assets and public and private sector share of pension assets.

On the Web at: <http://www.towerswatson.com/assets/pdf/3761/Global-Pensions-Asset-Study-2011.pdf>. 

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## SEC Proposes Dollar Limits for Investment Advisers Who Charge Clients Performance Fees

The Securities and Exchange Commission (SEC) plans to raise certain dollar thresholds that would need to be met before investment advisers can charge their clients performance fees.


Currently, Rule 205-3 under the Investment Advisers Act allows an adviser to charge its clients performance fees in certain circumstances. Two of the circumstances are: The client has at least \$750,000 in assets under management with the adviser and the adviser reasonably believes the client has a net worth of more than \$1.5 million.

The Dodd-Frank Act requires the SEC to issue an order to adjust these dollar amount thresholds for inflation by July 21, 2011, and every five years thereafter.

The SEC said it intends to issue an order to revise the dollar amount tests to \$1 million for assets under management and \$2 million for net worth.

The Commission also proposed to amend Rule 205-3 to provide a method for calculating future inflation adjustments of the dollar amount tests; to exclude the value of a person’s primary residence from the determination of whether a person meets the net worth standard; and to modify the transition provisions of the rule to take into account the performance fee arrangements that were permissible at the time the adviser and the client entered into their advisory contract.

On the Web at: <http://www.sec.gov/rules/proposed/2011/ia-3198.pdf>.

Public comments on the plan can be posted at: [http://www.sec.gov/cgi-bin/ruling-comments?ruling=s71711&rule\\_path=/comments/s7-17-11&file\\_num=S7-17-11&action=Show\\_Form&title=Investment%20Adviser%20Performance%20Compensation](http://www.sec.gov/cgi-bin/ruling-comments?ruling=s71711&rule_path=/comments/s7-17-11&file_num=S7-17-11&action=Show_Form&title=Investment%20Adviser%20Performance%20Compensation). 

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## Appeals Court Rules Labor Unions Must Produce Retirement Fund Documents

The 4th Circuit Court of Appeals has affirmed a lower court decision requiring labor unions to produce retirement fund documents to U.S. Dept. of Labor investigators.

The case, *Solis v. United Food & Commercial Workers Union Pension Fund*, was appealed to the 4th Circuit after the district court granted a petition by the Secretary of the U.S. Department of Labor (DOL) to enforce administrative document subpoenas.

The Secretary served the subpoenas on two multi-employer employee benefit plans, the Food Employers Labor Relations Association and United Food and Commercial Workers Pension Fund and the Food Employers Labor Relations Association and United Food and Commercial Workers Health and Welfare Fund, as part of an investigation into possible mismanagement of fund assets.

Claiming attorney-client and work product privileges, the funds objected to the production of some documents. After the Secretary sought judicial enforcement of the subpoenas, the district court ordered the funds to produce the withheld documents, applying the fiduciary exception to the claimed privileges. The funds appealed. Finding no error in the district court’s order enforcing the subpoenas, the appeals court affirmed the decision.

The DOL investigation into the management of

*Documents continued from previous page*

the funds arose out of a \$10.1 million loss of ERISA plan assets as a result of the funds' investments in entities related to Bernard L. Madoff, who has since been convicted of securities fraud for organizing a multi-billion dollar Ponzi scheme.

On the Web at: <http://pacer.ca4.uscourts.gov/opinion.pdf/101687.P.pdf>. 

## **SEC Seeks Public Comment on Study of Assigned Credit Ratings**


The Securities and Exchange Commission is seeking public comment on the feasibility of a system in which a public or private utility or a self-regulatory organization would assign a nationally recognized statistical rating organization (NRSRO) to determine credit ratings for structured finance products.

The Dodd-Frank Act directs the SEC to study the credit rating process for structured finance products and the conflicts associated with the "issuer-pay" and the "subscriber-pay" models.

The Act also requires the SEC to study the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns NRSROs to determine the credit ratings for structured finance products.

The study also must address the range of metrics that could be used to determine the accuracy of credit ratings for structured finance products, and alternative means for compensating NRSROs that would create incentives for accurate credit ratings for structured finance products.

The SEC is required to submit the findings of the study to Congress by July 21, 2012, along with any recommendations for regulatory or statutory changes that the Commission determines should be made.

On the Web at: <http://www.sec.gov/rules/other/2011/34-64456.pdf>. Comments may be submitted at: [http://www.sec.gov/cgi-bin/ruling-comments?ruling=4-629&rule\\_path=/comments/4-629&file\\_num=4-629&action=Show\\_Form&title=Solicitation%20of%20Comment%20to%20Assist%20in%20Study%20on%20Assigned%20Credit%20Ratings](http://www.sec.gov/cgi-bin/ruling-comments?ruling=4-629&rule_path=/comments/4-629&file_num=4-629&action=Show_Form&title=Solicitation%20of%20Comment%20to%20Assist%20in%20Study%20on%20Assigned%20Credit%20Ratings). 

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