
Surge in Private Muni Issuance Leaves Disclosure Black Hole.

CHICAGO (Reuters) – Potential U.S. tax law changes are spurring so many municipal debt issuers to come to market before year-end that a number of deals are being expedited through private debt sales, creating a disclosure gap that leaves investors in the dark.

While private muni deals have existed for years, legislation in the U.S. Congress to end tax breaks for private activity and advance refunding bonds starting in 2018 has ballooned the volume of these transactions.

States, cities, schools, hospitals and other issuers sold $15.2 billion of debt in the market the week of Nov. 26, $21.33 billion last week, and will sell an estimated $22.88 billion this week, according to Thomson Reuters data.

But billions of dollars of additional debt is being sold outside of the market through private transactions.

Unlike publicly sold debt, these deals are not subject to mandatory disclosure. Unless privately sold debt and its terms and conditions are voluntarily disclosed, the issuer's current and prospective investors may not know it exists.

The debt could have a "detrimental impact" on how investors view an issuer's credit quality, according to Richard Ciccarone, president and CEO of Merritt Research Services, which provides data and research on muni bonds.

"We don't know what we should know," he said.

The Municipal Securities Rulemaking Board (MSRB), the self regulator of the $3.8 trillion market, has been advocating for bank loans and other private deals to be disclosed on its EMMA website. This is where information about publicly sold deals, including pricing, trading data and issuer financial reports and material events, is posted.

"If you were a bondholder wouldn't you want to know the debt profile of the issuer?" said MSRB Executive Director Lynnette Kelly, adding that private transactions could contain priority of payment and other provisions that trump those of an issuer's public debt.

"Those are exactly the reasons and many more the MSRB board chose to speak out on this issue," she said.

Voluntary disclosure of these deals has been "pretty minimal," according to Kelly.

John Bonow, CEO of Public Financial Management, a municipal finance advisory firm, estimated last week that the amount of bonds currently being directly purchased by banks or temporarily sold to underwriters in lieu of a public offering could equal the amount of public debt transactions in the market.

On Thursday, the Illinois Finance Authority, a big conduit issuer of private activity bonds for nonprofit hospitals, colleges and other entities, approved nearly $1.2 billion of bonds in seven deals, with $625.5 million of that debt bypassing the market and headed straight to banks.

A proposed rule pending before the U.S. Securities and Exchange Commission since March, would make private debt and loan transactions subject to the MSRB’s disclosure requirement.

“There’s been a fair amount of push back because it’s so broad,” said Roger Davis, a partner in the San Francisco office of bond counsel Orrick, noting the rule could capture ordinary governmental functions.

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