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- [Ducking the Culture Wars Isn't an Option for Companies Anymore. Fighting Back Is.](#)
- [In re Financial Oversight and Management Board for Puerto Rico](#) - Court of Appeals holds that lack of specific legislation permitting the plan to modify Commonwealth's pension obligations to public school teachers did not bar confirmation of plan. **Ed. Note:** This one is instructive in that the Court of Appeals laid out the omissions to the Plan of Adjustment that would have obviated this particular litigation.
- And finally, [Mel Brooks, Driving Instructor](#) is brought to us this week by [Battaglia v. Lombardi](#), in which the Supreme Court of Rhode Island provided us with a comprehensive description of an exotic, heretofore unknown, vehicular maneuver, stating that, "plaintiff positioned his vehicle in the spot, shifted the vehicle into park, and shut the vehicle off." It is our understanding that this is also known as, "parking." Fortunately, it has a happy ending. As the plaintiff explained, "I lifted up the pallet to push it against the chain link fence, and my whole body just went right down this open manhole that I had no idea was there." It is our understanding that this is also known as, "hilarity."

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## EMINENT DOMAIN - FEDERAL

### [ATS Ford Drive Investment, LLC v. United States](#)

**United States Court of Federal Claims - April 1, 2022 - Fed.Cl. - 2022 WL 986300**

In rails-to-trails case, owners of real property adjacent to railroad corridor filed suit against United States, claiming Fifth Amendment taking by Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU) authorizing conversion of railroad line into recreational trail pursuant to National Trail Systems Act, thus acquiring owners' property by inverse condemnation.

Parties cross-moved for summary judgment.

The Court of Federal Claims held that:

- Owners adjacent to corridor along public road lacked cognizable property interest;
- Owners adjacent to corridor acquired by railroad through court decision had cognizable property interest;
- Owners adjacent to corridor acquired by railroad via lost conveyance instruments had cognizable

- property interest;
  - Owners adjacent to corridor acquired by railroad via warranty deed lacked cognizable property interest;
  - Summary judgment was precluded as to property interest of owners adjacent to corridor acquired by railroad via quitclaim deed;
  - Owners adjacent to corridor acquired by railroad via releases lacked cognizable property interest;
  - Owners of parcels adjacent to street running parallel to corridor had cognizable property interest up to centerline of street; but
  - Owners of parcels adjacent to street lacked cognizable property interest in other half of street.
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## **EMINENT DOMAIN - FLORIDA**

### **[Orlando Bar Group, LLC v. DeSantis](#)**

**District Court of Appeal of Florida, Fifth District - April 8, 2022 - So.3d - 2022 WL 1051484 - 47 Fla. L. Weekly D827**

Restaurant group which operated several bars brought suit against the governor, in his official capacity, the Department of Business and Professional Regulations, and a county, alleging the temporary COVID-19 restrictions enacted by defendants amounted to inverse condemnation entitling the group to compensation.

The Circuit Court granted defendants' motion to dismiss with prejudice and without leave to amend. Restaurant group appealed.

The District Court of Appeal held that:

- *Penn Central* test applied to the determination of whether temporary COVID-19 restrictions on restaurant group's bars constituted a regulatory taking;
- Temporary COVID-19 restrictions did not amount to a categorical regulatory taking;
- Temporary COVID-19 restrictions did not amount to an as-applied regulatory taking; and
- Restaurant group failed to preserve for appeal issue of whether dismissal of its complaint with prejudice and without need to amend was improper.

*Penn Central* test applied to the determination of whether the temporary COVID-19 restrictions on restaurant group's bars, enacted by governor, Department of Business and Professional Regulations, and county, constituted a regulatory taking, in restaurant group's suit to recover damages for its alleged losses caused by the restrictions; the COVID-19 restrictions did not result in a physical appropriation and per se taking of restaurant group's property, but were merely regulations affecting restaurant group's use of their properties.

Temporary COVID-19 restrictions enacted by governor, Department of Business and Professional Regulations, and county, which prohibited restaurant group from selling alcohol completely for 17 days in its various bars, and incrementally removed these restrictions over the following six months, did not amount to a categorical regulatory taking; the COVID-19 restrictions did not result in a complete or permanent loss of restaurant group's ability to do business.

Under the *Penn Central* test, temporary COVID-19 restrictions enacted by governor, Department of Business and Professional Regulations, and county, which prohibited restaurant group from selling alcohol completely for 17 days in its various bars, and incrementally removed these restrictions over the following six months, did not amount to an as-applied regulatory taking; even though the COVID-19 restrictions economically impacted the restaurant group's various bars, the governor was

empowered by the state's emergency powers statute to prohibit the sale of alcohol, and the COVID-19 restrictions were a valid use of the State's police power to protect the general welfare.

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## **COUNTIES - MISSISSIPPI**

### **[Board of Supervisors of Jackson County v. Qualite Sports Lighting, LLC](#)**

**Supreme Court of Mississippi - May 5, 2022 - So.3d - 2022 WL 1420151**

Unsuccessful bidder for project involving athletic field lighting system appealed decision of county board of supervisors, which awarded contract to competing bidder.

The Circuit Court denied unsuccessful bidder's motion for entry of scheduling order to extent that it requested a discovery period, denied board's motion to quash subpoenas issued by unsuccessful bidder, and ordered supplementation of record. Board petitioned for interlocutory appeal, which was granted.

The Supreme Court held that statute providing for appeal of a decision of a county board of supervisors, stating that the notice of appeal must designate "all matters that the appellant desires to be made part of the record," does not permit consideration of new evidence on appeal.

On appeal from a decision of a county board of supervisors, if the parties disagree as to what matters should or should not be included as part of the record for the appeal, then the differences should be settled by the circuit court; the circuit court should conduct a hearing to determine which matters are necessary to convey a fair, accurate, and complete account of the proceedings before the board.

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## **PUBLIC PENSIONS - PUERTO RICO**

### **[In re Financial Oversight and Management Board for Puerto Rico](#)**

**United States Court of Appeals, First Circuit - April 26, 2022 - 32 F.4th 67**

In Title III debt restructuring proceedings brought pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Financial Oversight and Management Board for Puerto Rico filed motion for confirmation of modified eighth amended proposed joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority.

Creditors objected. The United States District Court for the District of Puerto Rico overruled objections, and confirmed plan. Teachers' associations appealed and filed motions for stay pending appeal. The District Court denied stay motions.

In a case of first impression, the Court of Appeals held that:

- Forward-going teachers' pension obligations under existing retirement regime were a contractual commitment which Commonwealth could reject;
- Notice and hearing was properly provided for rejection of teachers' pension obligations in joint plan of adjustment;
- PROMESA preempted Commonwealth laws calling for forward-going teachers' pension obligations under existing retirement regime;

- Lack of specific legislation permitting the plan to modify Commonwealth's pension obligations to public school teachers did not bar confirmation of plan; and
- New bond legislation authorized issuance of new bonds, conditioned on further accruals or cost-of-living eliminations for participants in teachers' pension plan.

In Title III debt restructuring proceedings brought pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), forward-going teachers' pension obligations under existing retirement regime, while effected by statute, were a contractual commitment as between the Commonwealth of Puerto Rico and its covered employers, which Commonwealth could reject in joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority.

In confirming proposed joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority, in Title III debt restructuring proceedings, Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) preempted Commonwealth laws calling for forward-going teachers' pension obligations under existing retirement regime.

In Title III debt restructuring proceedings brought pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), lack of specific legislation permitting the plan to modify Commonwealth of Puerto Rico's pension obligations to public school teachers did not bar confirmation of proposed joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority; PROMESA only required any approval necessary under applicable law and did not by its plain terms require enabling legislation for every component of the plan, and plan's adjustment of pension obligations was in fact authorized by enabling legislation.

In Title III debt restructuring proceedings brought pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), new bond legislation authorized issuance of new bonds, conditioned on further accruals or cost-of-living eliminations for participants in teachers' pension plan, in joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority.

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## **IMMUNITY - RHODE ISLAND**

### **[Battaglia v. Lombardi](#)**

**Supreme Court of Rhode Island - May 5, 2022 - A.3d - 2022 WL 1416719**

Pedestrian who was injured when he fell into manhole brought negligence action against city.

After jury verdict for pedestrian, the Superior Court granted city's motion for judgment as a matter of law. Pedestrian appealed, and city cross-appealed.

The Supreme Court held that:

- Trial justice plainly erred by making factual determinations to determine the applicability of the egregious conduct exception to public duty doctrine at the "judgment as matter of law" stage of trial, and
- Whether egregious conduct exception to the public duty doctrine applied was for jury.

Trial justice plainly erred by making factual determinations to determine the applicability of the egregious conduct exception to public duty doctrine at the “judgment as matter of law” stage of trial in negligence action brought against city by pedestrian who was injured when he fell into manhole; factual determinations were impermissibly drawn by the trial justice, who also failed to consider the evidence in the light most favorable to pedestrian as nonmovant and draw all reasonable inferences that supported his position.

Whether egregious conduct exception to the public duty doctrine applied was for jury in negligence action brought against city by pedestrian who was injured when he fell into manhole, given that there were factual disputes as to whether city created circumstances that would force a reasonably prudent person into position of extreme peril, whether city had actual or constructive notice of the perilous circumstances, and whether it failed to remedy that condition after a reasonable amount of time.

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## **PUBLIC UTILITIES - RHODE ISLAND**

### **[Freepoint Solar LLC v. Richmond Zoning Board of Review](#)**

**Supreme Court of Rhode Island - May 11, 2022 - A.3d - 2022 WL 1482502**

Solar company sought review of decision of town zoning board of review denying company's application a special use permit to construct a ground-mounted solar energy system in residential zoning district.

The Superior Court reversed. Town petitioned for writ of certiorari.

The Supreme Court held that special use permit requirement of system being within two miles of utility substation did not mean only a substation of specific named utility that provided electricity in area.

Term “utility substation,” in town zoning ordinance allowing for ground-mounted commercial solar energy systems within an R-3 residential zoning district by special use permit if certain requirements were met including location of entire lot on which the solar energy system was placed being within two miles of a utility substation, could include an electrical substation with three transformers and did not mean only a substation of a specific named utility that provided electricity in area.

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## **IMPACT FEES - WASHINGTON**

### **[Viking JV, LLC v. City of Puyallup](#)**

**Court of Appeals of Washington, Division 2 - May 10, 2022 - P.3d - 2022 WL 1467526**

Commercial builder filed Land Use Petition Act (LUPA) petition challenging city hearing examiner's decision denying builder's request to reduce park impact fee assessed by city as condition of commercial building permit for commercial warehouse.

City filed motion to dismiss, and the Superior Court denied the motion and subsequently denied builder's petition on the merits. Builder appealed, and city cross appealed.

The Court of Appeals held that:

- City's two-tiered hearing examiner review process for reviewing local project permits was not preempted by state law, and
- Builder failed to exhaust its administrative remedies and thus lacked standing to bring LUPA petition.

City's two-tiered hearing examiner review process for reviewing local project permits was not preempted by state law; city code's allowance for no more than one open record hearing and one closed record appeal was consistent with statute governing local government review of project permit applications, city's designation that each examiner's decision may be given effect of final decision of legislative body was consistent with statute governing legal effect of decisions made by examiner, and nothing in statute governing hearing examiner system expressly prohibited two-tiered internal review system.

Commercial builder failed to exhaust its administrative remedies and thus lacked standing to bring Land Use Petition Act (LUPA) petition challenging city hearing examiner's decision denying builder's request to reduce park impact fee assessed by city as condition of commercial building permit for commercial warehouse; city's appellate examiner review process was lawful, builder failed to procure a final determination by city's officer with highest level of authority to make determination so there was no land use decision under LUPA that would permit judicial review of builder's claims, and there were no equitable exceptions to LUPA's exhaustion requirement.

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## **[GFOA Updates Economic Indicator Dashboards.](#)**

GFOA's economic indicator dashboards provide one location for local government finance officers to stay up-to-date on an array of data to help forecast revenue, expenditures, debt issuance, and more. Dashboards have been updated with inflation data, employment data, economic/market data, housing data, income and personal debt data, and local tax revenue data.

[LEARN MORE](#)

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## **[Conning Publishes 2022 State of the States Municipal Credit Report, Maintains Stable Outlook for State Credit Quality Despite Concerns About Inflation, Rising Interest Rates.](#)**

### **Interactive Access to Report Data Enables Deeper Understanding of Metrics**

- Strong tax collections and unprecedented federal stimulus benefit states, although surplus spending could lower reserves and reduce recession preparedness.
- Less favorable borrowing conditions need to be watched as well.
- Florida, New Hampshire, and Texas break into the top five ranking bucking a historic trend toward Western and Mountain states.
- Housing markets strengthen in the West and South as Americans continue to migrate from the Northeast and Midwest - rural and suburban areas did especially well.
- Interactive features enable a closer look at the report's 13 metrics by state and region.

[Continue reading.](#)

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## **S&P U.S. Not-For-Profit Health Care Rating Actions, April 2022**

S&P Global Ratings affirmed 24 ratings without revising the outlooks and took nine rating actions in the U.S. not-for-profit health care sector in April 2022. There were 10 new sales in April. The nine rating and outlook actions consist of the following:

- Two downgrades on two health systems;
- Three upgrades on two standalone hospitals and one health system;
- One favorable outlook revision (to stable from negative); and
- Three unfavorable outlook revisions (all to negative from stable).

The table below summarizes S&P Global Ratings' monthly bond rating actions for U.S. not-for-profit health care providers in April. We based the credit rating affirmations and rating actions on several factors within enterprise and financial profiles, including business position, utilization, financial performance, debt levels, bond-issuance activity, physician relationships, and the external regulatory and reimbursement environment. This also incorporates our stable sector view and our assessment of COVID-19, staffing pressures, economic developments, and market volatility.

[Continue reading.](#)

16 May, 2022

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## **The SEC's Proposed New Cybersecurity Disclosure Requirements for Public Companies: What Do They Mean for Municipal Issuers and Borrowers? - Orrick**

- Governmental entities have increasingly experienced cybersecurity incidents impacting their operations and finances over the last few years, with some breaches costing upwards of \$40 million.
- Many issuers and borrowers of municipal bonds are taking steps to defend themselves against such attacks, and may also need to determine how and when to disclose such efforts and any material cybersecurity incidents to the municipal market.
- While the SEC's recently proposed disclosure rules for public companies regarding cybersecurity incidents and related policies do not apply to municipal issuers and borrowers (unless the borrower is a public company) and are not final, they do provide helpful context and guidance for how the SEC may view cybersecurity disclosures in the municipal market.

In light of these considerations, issuers and borrowers in the municipal market should:

- Review the SEC's proposed cybersecurity disclosure rules and their implications for the municipal market, specifically around incident reporting and periodic disclosure of risk management, strategy, and governance.
- Focus on their own cyber defenses and mitigation strategies, since this has been a particular focus of rating agencies on public companies when assessing the strength of a particular credit.



## A Growing Problem

In recent years, governmental entities have increasingly experienced cybersecurity incidents impacting their operations and finances. According to a [white paper](#) published by KnowBe4 in 2020, the median cost of a data breach for a state was \$1.87 million, with some breaches costing upwards of \$40 million. Many issuers and borrowers of municipal bonds (“issuers and borrowers”) are taking steps to defend themselves against such attacks. They may wonder how and when to disclose such efforts and any material cybersecurity incidents to the municipal market.

The SEC has proposed [new disclosure rules](#) for public companies regarding cybersecurity incidents and related policies and procedures. Since the SEC does not have the power to adopt similar rules for issuers and borrowers (unless the borrower is a public company), the proposed rules **do not** apply to issuers and borrowers. They do, however, provide useful context and guidance for how the SEC may view cybersecurity disclosures in the municipal market, specifically around incident reporting and periodic disclosure of risk management, strategy, and governance.

Our governance and data privacy teams published an [article](#) summarizing the proposed rules as applied to public companies generally and proposing steps public companies could consider taking now. Our public finance and data privacy teams have prepared this supplement to that article, summarizing the key takeaways for issuers and borrowers. **We encourage you to read this supplement together with the underlying article.**

## Applying the SEC’s Proposed Rules to the Municipal Market

The SEC’s proposed rules fall into two categories: (1) incident reporting; and (2) periodic disclosure of cybersecurity risk management, strategy, and governance. We will treat each category separately.

### Incident Reporting

*Public Company Rules:* The SEC’s proposed rules reveal its focus on timely disclosure of material cybersecurity incidents on a public company’s Form 8-K by requiring that material cybersecurity incidents are reported within four business days from the materiality determination.

The SEC’s proposed rules do not provide specific guidance for what constitutes a material cybersecurity incident. They do provide that the required timing of a public company’s Form 8-K filing is tied to the company’s determination that the incident is material rather than to its discovery of the underlying incident.

Additionally, the requirement applies to compromises of the company’s “information system,” which includes systems owned or used by the public company and may include third-party information resources such as cloud infrastructure and service providers.

Finally, the SEC’s proposed rules require periodic updates reflecting material changes or additions to previously disclosed incidents. That would include information regarding remediation.

*Application to the Municipal Market:* In the municipal market context, the disclosure analogue for a public company’s Form 8-K is an issuer or borrower’s material event notice filed pursuant to its continuing disclosure undertakings and SEC Rule 15c2-12.

Rule 15c2-12 does not specifically require issuers and borrowers to disclose material cybersecurity incidents. Such entities may disclose incidents through voluntary event notices on the MSRB’s Electronic Municipal Market Access (“EMMA”) website.



In addition, when issuers and borrowers speak to the market through offering documents,[1] quarterly and/or annual continuing disclosure reports, or other communications, they may want to consider disclosing recent material cybersecurity incidents. Issuers and borrowers may also want to consider focusing on developing and/or improving internal reporting systems to facilitate the discovery of and determinations of materiality regarding internal and third-party cybersecurity incidents.

Issuers and borrowers may want to consider the following questions when developing and/or improving reporting systems relating to cybersecurity incidents:

- Do you have a current and tested incident response plan?
- Do you have cybersecurity policies and procedures in place that require employees to quickly escalate cybersecurity incidents to those empowered to make materiality and disclosure determinations?[2]
- Do you have a process in place to assess the range and magnitude of financial impacts of a cybersecurity incident, as they become available, and memorialize materiality determinations?
- Do your contracts with third parties that make up your “information system” provide for incident reporting and the cooperation necessary to make materiality and disclosure determinations regarding third-party cybersecurity incidents?
- Do you have a process in place to track updates regarding previously disclosed cybersecurity incidents and provide such updates to those empowered to make materiality and disclosure determinations?
- Have you discussed with bond or disclosure counsel the implications of any cybersecurity incidents and possible voluntary disclosures?

### **Periodic Disclosure of Risk Management, Strategy, and Governance**

**Public Company Rules:** The SEC’s proposed rules also reveal a focus on public companies’ internal risk management, strategy, and governance. Specifically, the proposed rules include changes to Regulation S-K, and corresponding changes to Form 10-K and Form 10-Q to require additional disclosures.

The proposed rules would require a public company to periodically disclose information about the processes of its board of directors and key management relating to cybersecurity issues. Specifically, the SEC proposes disclosure relating to “whether or how the board or board committee considers cybersecurity risks as part of its business strategy, risk management, and financial oversight.” The agency would also require disclosure of whether or not a company has a Chief Information Security Officer (including that person’s background and reporting line). In addition, the SEC’s proposed rules require a public company to periodically disclose whether any members of its board have expertise in cybersecurity, and to provide detail regarding the nature of that expertise. The SEC’s proposed rules reveal its increasing desire to obtain detailed and specific disclosures regarding a public company’s internal processes and expertise relating to cybersecurity.

**Application to the Municipal Market:** In the municipal market context, the disclosure analogue for a public company’s Form 10-K and Form 10-Q is an issuer or borrower’s annual report and quarterly report (if any), respectively, filed pursuant to its continuing disclosure undertakings. As with cybersecurity incident reporting, there is no specific requirement that issuers and borrowers include in annual or quarterly reports information regarding internal risk management, strategy, and governance. However, given the SEC’s marked focus on cybersecurity-related disclosure (including the two SEC enforcement actions in 2021 relating to data privacy incidents referenced in footnotes 1 and 2), issuers and borrowers may want to evaluate the quality of their disclosures in this area whether through voluntary event filings, annual and/or quarterly continuing disclosure reports,

offering documents, or other communications to the market.

More broadly, issuers and borrowers should review and update their cybersecurity policies and disclosure procedures. They may also want to focus on developing disclosures relating to existing cybersecurity policies and procedures they can update and adapt for quarterly and annual reports and offering documents. Given the SEC's focus on the expertise of individual directors or employees, issuers and borrowers may also consider collecting information regarding cybersecurity expertise that members of their governing bodies and key staff members possess and consider whether an internal Chief Information Security Officer position exists or can be created. In undertaking such efforts, we recommend that issuers and borrowers consider the following questions:

- Do you have comprehensive information security policies
- Have you had any privacy or security incidents that involve confidential or personal data?
- How does your governing body evaluate cybersecurity risk and what role does cybersecurity risk play in its decision-making process?
- Do you have a Chief Information Security Officer, or other individual designated as responsible for information security?
- Which members of your governing body and staff, including the Chief Information Security Officer, if any, possess expertise relating to cybersecurity matters?
- Do you have cyber insurance, and if so, what does it cover and what are the retention and limits?
- Do you conduct periodic risk assessments, and if so, have any identified risks been remediated or added to a security roadmap?
- Have there been any third-party security assessments, and if so, have the identified issues been remediated or added to a security roadmap?

## **Additional Considerations for the Municipal Market**

### National Federation of Municipal Analysts

The National Federation of Municipal Analysts published a [white paper](#) in November 2020 calling for municipal bond issuers to “conduct a cybersecurity assessment to start the process of addressing cybersecurity risks as soon as possible” and recommending best practices for cybersecurity risk disclosures. Issuers and borrowers may want to review the paper to understand the views of municipal investors in this area.

### Rating Agencies

While the SEC's proposed rules focus on enhancing and standardizing cybersecurity disclosure for public companies, rating agencies remain focused on public companies' cyber defenses and mitigation strategies when assessing the strength of a particular credit. A recent Moody's survey revealed that approximately 93% of organizations surveyed have a cybersecurity manager, and approximately 57% of North American organizations surveyed maintain cyber insurance.[3] To remain competitive, issuers and borrowers may want to consider implementing a cybersecurity manager, maintaining cyber insurance, and instituting cyber defenses and mitigation strategies to maintain their relative credit strength.

## **What's Next?**

The SEC's proposed disclosure rules for public companies regarding cybersecurity incidents and related policies are not yet final. Orrick will continue to monitor the proposed rules and any related enforcement actions by the SEC, along with potential implications for issuers and borrowers in the municipal market.

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[1] In *In re Pearson plc* (2021), the SEC imposed a penalty of \$1,000,000 against Pearson plc because its risk factor disclosure implied only that the company faced a hypothetical risk of a data privacy incident and failed to disclose that the company had in fact already experienced such a data breach.

[2] In *In re First American Financial Corporation* (2021), the SEC imposed a penalty of \$487,616 against First American Financial Corporation because, despite an employee's discovery of a security vulnerability, the company's reporting system was insufficient to ensure that the fact of the vulnerability was communicated to senior executives responsible for disclosure.

[3] See Cyber risk survey of issuers finds growing investments, but gaps in preparedness, Moody's Investors Service (March 31, 2022).

by Joseph Santiesteban, Sean Yates

May 17, 2022

**Orrick, Herrington & Sutcliffe LLP**

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## **[Fitch: U.S. State Tax Collections Outperform National GDP and Personal Income](#)**

Fitch Ratings-New York/San Francisco-17 May 2022: State tax revenue collections are outperforming U.S. GDP growth, as states with high population growth and those with high personal income taxes were the best performers, according to Fitch Ratings.

"Idaho, Arizona, California, New Hampshire and Utah saw the fastest coronavirus pandemic-era personal income growth, principally from wage growth," said Olu Sonola, Head of U.S. Regional Economics. "Idaho stands out as the top performer overall, with its tax collections up nearly 40% in 2021 compared to 2019."

An unexpected surge in consumer spending and personal income has powered state tax revenues out of the deep, albeit short-lived, pandemic-induced recession of 2020. Retail sales expanded by 18% yoy in 2021 as U.S. consumers shifted discretionary spending into tangible goods, many of which are taxable.

All state economies grew in 2021, with most states also experiencing sufficient growth to erase GDP losses from 2020. The median state lost just over 3% of GDP in 2020 before rebounding over 5%, for net growth of 2% from 2019 through 2021.

Utah, New Hampshire, Washington and Idaho exhibited the highest cumulative GDP growth. Hawaii lags all states in net economic recovery. Oil and gas-rich Alaska, Wyoming, Oklahoma and North Dakota had four of the 10 slowest GDP growth rates. This is likely to change with the recent surge in oil prices.

Wyoming, Alaska, New York and Hawaii experienced the lowest wage growth through the pandemic. Wyoming experienced major downward pressure in its extraction industries, while Alaska, New York and Hawaii saw sustained contraction in the leisure and hospitality sectors.

Idaho, Montana, Utah, Arizona and Texas are notable beneficiaries of sustained positive population trends that are likely to continue, aided by strong economic growth. The pandemic exacerbated the trend in population loss for New York and Illinois, which realized the steepest population declines of the pandemic.

For more information, a special report titled “U.S. States — Revenue and Economic Monitor 1Q22” is available at [www.fitchratings.com](http://www.fitchratings.com).

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## **[New Digital Advancement Municipal Index Shows the Importance of Digital Access for U.S. Cities' Prosperity.](#)**

- The Digital Advancement Municipal Index uses 16 key indicators to profile U.S. cities’ prosperity in the digital economy.
- The index provides a resource for cities and states to uncover opportunities for targeted action as they prepare to respond to historic federal investments in broadband infrastructure and digital equity.
- The index shows that while digital access and adoption are foundations for a vibrant city, they work jointly with other factors to improve quality of life.

**[Continue reading.](#)**

May 18, 2022

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## **Fitch: ESG Relevance Limited for Most US Public Finance Ratings**

Fitch Ratings-New York-16 May 2022: A small portion, 7%, of US public finance ratings (USPF) are affected by environmental, social and governance (ESG) considerations, Fitch Ratings says. Fitch's ESG Relevance Scores (ESG.RS) communicate the extent to which ESG factors affect ratings but do not provide commentary on the ESG practices or qualities of issuers. ESG factors are manageable for most USPF issuers. Fitch's report Where ESG Matters for U.S. Public Finance reviews 12 case studies that illustrate how ESG issues can affect ratings and highlights current ESG focus areas, including issuer disclosure, the transition to a lower-carbon economy and cybersecurity.

Governance is the most important factor, on a singular basis, assessed to have a medium or high relevance for 3% of issuer ratings. This reflects the influence of governance structure and effectiveness, policy formation, and financial performance on credit quality.

Social factors have become more prominent with the assignment of ESG.RS in the community development and social lending (CDSL) sector, conveying the positive rating effect for certain credits of federal agencies' support of housing agencies and the negative effects of unsafe environmental conditions among some housing providers. Overall, social factors influence 2% of Fitch's USPF ratings.

[Continue reading.](#)

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## **The States That Could be Headed for a 'Fiscal Cliff'**

**Three of them, in particular, may see difficulties in the years ahead as federal aid runs dry, according to a good government group.**

California, Illinois and Pennsylvania could run into budget trouble in a few years, because they've been using a one-time surge of money from the federal government to pay for long-term expenses, fiscal experts warned Wednesday.

The sobering warning comes even as states are flush with cash, thanks to strong consumer spending and low unemployment. Some states are reaping the rewards of booming oil prices and, until recently, people trading high-flying tech stocks.

The Volcker Alliance, a nonprofit group that promotes responsible government spending, said the three states are among the most vulnerable for budget stresses when funds from the American Rescue Plan run out in 2026. President Biden signed the coronavirus relief law during his first few months in office. It contained \$350 billion for state and local government relief.

[Continue reading.](#)

### **Route Fifty**

By Daniel C. Vock

MAY 11, 2022

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## **BondLink Partners with InspereX to Connect Municipal Issuers to Independent RIAs.**

### **BondLink's integration with InspereX's BondNav trading platform will boost transparency for wealth advisors, demand for municipal bond issuers**

BOSTON, MA / ACCESSWIRE / May 10, 2022 / BondLink, the cloud-based investor relations and debt management platform for the municipal bond market, today announced a new partnership with InspereX. This new integration will provide thousands of independent registered investment advisors (RIAs) with access to the financial data and reports that municipal bond issuers share via BondLink directly within the leading fixed income platform, BondNav®.

"The muni bond market is in the midst of a digital transformation and most major organizations have a platform for the transparent exchange of information. But, until now, the 50,000 government bond issuers had been excluded from this shift," said Colin MacNaught, CEO and co-founder of BondLink. "We're excited to combine the necessary and in-depth information that issuers share on BondLink with the trusted BondNav tools to streamline the research of RIAs. This level of transparency and exposure, for both issuers and investors, is crucial, especially in a volatile market."

Last quarter, the municipal bond market experienced a 6.4% loss, its worst quarter in nearly 40 years. As investors pull money out of the traditionally stable asset class, issuers increasingly are turning to platforms such as BondLink to differentiate their bond offerings and provide transparency to investors.

The new partnership will allow registered investment advisers to view BondLink's hosted research pages without leaving the BondNav platform, allowing users to learn about the issuer and their new projects in progress. Users also will be able to quickly access important documents, such as preliminary official statements/official statements, capital improvement plans, voluntary disclosure documents, and more on the integrated platform. The BondNav and BondLink integration will also introduce BondLink's municipal issuers' debt management programs to a new segment of investors.

"We're excited about our partnership with BondLink to allow our users access to vital issuer information which will help them make more informed decisions. This insight into the muni market is especially critical during a period of high volatility like we've seen this past quarter," said David Rudd, President at InspereX.

BondLink has similar integrations with a number of the municipal bond market's leading platforms, including Ipreo, Fidelity Investments, ICE Bonds, and the MSRB's EMMA website.

To learn more about the partnership between BondLink and InspereX, please visit [www.BondLink.com](http://www.BondLink.com) and request a demo.

#### About InspereX

InspereX is transforming how fixed income securities and market-linked products are accessed, evaluated, and traded. Home to the pioneering BondNav® platform – one of the first cloud-native bond aggregation platforms – InspereX provides financial advisors, institutional investors, issuers, and risk managers deep access to fixed income markets across asset classes, as well as industry-leading origination, distribution, and education in market-linked products. Focused on delivering true price transparency, liquidity, best execution targeting price improvement, and the information advantage gained through data-aggregation – InspereX inspires greater confidence through the

power of technology. The firm is a leading underwriter and distributor of securities to more than 2,000 broker-dealers, institutions, asset managers, RIAs, and banks. InspereX represents more than 400 issuing entities and has underwritten more than \$670 billion in securities. The firm has seven trading desks and more than 200 employees with principal offices in Delray Beach, San Francisco, Chicago, and New York City.

#### About BondLink

BondLink, a cloud-based investor relations and debt management platform for the municipal bond market, helps issuers engage more bond investors through transparency and actionable insights. Founded by CEO Colin MacNaught, who spent seven years issuing nearly \$25 billion in bonds on behalf of the Commonwealth of Massachusetts, and CTO Carl Query, BondLink went live in 2016. BondLink clients issued more than \$50 billion in bonds in 2021. BondLink provides its issuer clients with tools to manage their capital financing programs more efficiently while providing investors with the interim financial reports and data they need to close information gaps and make informed decisions through a single platform. The company is backed by top investors within the municipal bond market, including Intercontinental Exchange and Franklin Templeton. Headquartered in Boston, BondLink recently was named to the 2022 GovTech 100, marking its fourth consecutive appearance on the annual list. For more information, visit [www.bondlink.com](http://www.bondlink.com), and connect on LinkedIn and Twitter.

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### **[New Online Hub to Help Cities Apply for Federal Infrastructure Funding.](#)**

**The \$50 million initiative will provide advice and resources to municipalities, especially small towns, through public sector groups and nonprofits, according to Bloomberg Philanthropies.**

A \$50 million initiative to aid cities in accessing billions in federal infrastructure funding was announced this week by its sponsors.

The [Local Infrastructure Hub](#) is bringing together public sector groups and nonprofits to help local leaders navigate the complicated Infrastructure Investment and Jobs Act application process in order to win grants. Experts will provide free coaching, data analysis and support, among other things, in developing the applications.

Local governments are eligible for funding for a wide range of projects through the \$1.2 trillion infrastructure act signed into law last fall. But with nearly 400 separate grants to be doled out over the next 24 months, many communities will struggle to identify and apply for all the funding available to them, according to Bloomberg Philanthropies.

[Continue reading.](#)

#### **Route Fifty**

By Jean Dimeo



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## [Understanding the Effects of School Funding.](#)

### **Key Takeaways**

Funding for California's schools has reached record-high levels, although the pandemic has exacerbated longstanding inequities in student outcomes. As policymakers grapple with questions around how much to fund schools and how that funding should be distributed, existing research can provide insights into where and how to use additional funds to improve outcomes. In this review of the research, several key themes emerge:

- **Several years of sustained spending increases improved student outcomes.** A robust body of research shows that across a variety of outcomes such as test scores, graduation rates, and college attendance, student performance improves with greater spending. Over the long term, students gain important benefits on economic outcomes such as wages. Benefits tend to be greater for lower-income students and districts.
- **How—and to whom—spending is targeted matters.** Policies that target district characteristics may not fully address gaps in spending and student outcomes, depending on how funding is targeted across students and schools within the same district. In California, spending is higher for low-income, Black, and Latino students—but current spending progressivity is not enough to close existing test score gaps.
- **The labor market for educators may constrain spending policies and create tradeoffs.** Often, high-poverty schools rely on lower-paid and less experienced teachers, but have smaller class sizes. Large-scale policies to increase spending on new staff—such as the class size reduction of the 1990s—may adversely affect experience and credentials over the short run, limiting potential benefits per dollar.
- **Cost pressures in California schools affect the efficiency of funding.** Declining enrollment, rising employee benefit costs, and staffing shortages in some areas limit how efficiently funding translates into better school resources.

[Continue reading.](#)

### **Public Policy Center of California**

Julien Lafortune, with research support from Joseph Herrera

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## [Democrats Renew School Bond Push in \\$130 Billion Infrastructure Bill.](#)

- **H.R. 604 would revive school infrastructure tax credit bonds**
- **Effort marks fresh push after Build Back Better stalled**

Congressional Democrats are looking to invest \$130 billion in the nation's crumbling schools, partly by reviving a type of debt financing killed by tax reform during the Trump administration.

The Rebuild America's Schools Act, which went to committee markup Wednesday, would establish a \$100 billion grant program and authorize \$30 billion of school infrastructure tax credit bonds, both aimed at high-poverty schools around the country where shabby infrastructure poses a health risk to

students and staff.

The bill, introduced by Virginia Democrat Bobby Scott, marks a renewed push to pass school infrastructure funding through a gridlocked Congress after a similar measure folded into President Joe Biden's Build Back Better Act failed. Democrats argue schools desperately need repair, and federal Covid-19 stimulus should be used for emergency purposes, not long overdue projects.

The somewhat obscure securities would likely be embraced by investors in the \$4 trillion muni market, and schools would get a new tool for borrowing. "Issuers like having flexibility, and this is a structure that has had a long history in the market," said Jamie Iselin, head of muni fixed income for Neuberger Berman. "There is typically an investor for every type of security."

The debt portion of the proposed bill would reauthorize tax credit bonds, or TCBs, for school construction purposes after former President Donald Trump's Tax Cuts and Jobs Act eliminated them. Unlike tax exempt muni-bonds, which exclude interest from federal taxes, TCBs give a credit or payment to the issuer or investor.

Passage could be politically challenging, especially with midterm elections around the corner. "I can't foresee any type of dynamic that develops in the coming months that makes something like this a potential reality," said Tom Kozlik, head of municipal research and analytics at Hilltop Securities.

TCBs, in some form, have drifted in and out of tax legislation since they were first issued in 1998 as qualified zone academy bonds, or QZABs. The American Recovery and Reinvestment Act of 2009 created qualified school constructions bonds, as well as Build America Bonds, which like TCBs, allowed the federal government to subsidize state and local borrowing.

They were popular among investors because they offered taxable exposure to good credits at attractive spreads, Kozlik said. Many issuers, however, were frustrated when the federal subsidy was cut during the 2013 budget sequestration.

Over half of U.S. school districts need infrastructure overhauls, such as new heating or ventilation systems, in the majority of their buildings, according to a June 2020 report from the Government Accountability Office.

The Covid-19 pandemic threw that need into greater focus, with more than 40% of districts planning to spend American Rescue Plan funds on HVAC improvements, according to Burbio, a school data firm.

Republicans criticized the bill, calling additional funding superfluous in the wake of roughly \$200 billion in pandemic aid given to schools with few guardrails. "Forcing schools to start construction projects during record-high inflation and major supply chain crises is completely irresponsible," said Michigan Representative Tim Walberg.

## **Bloomberg Markets**

By Nic Querolo

May 20, 2022

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## **America's Political Right Has a New Enemy No. 1: ESG Investors**

### **The popular investing strategy is drawing new partisan attacks ahead of the US midterm elections**

Heading into the hotly contested midterm elections, the American political right has a new rallying cry: Down with ESG.

Conservatives have identified the popular investing strategy, which accounts for environmental, social and governance risks, as part of a broader narrative about left-wing overreach and “wokeness” run amok. Utah Treasurer Marlo Oaks calls it “corporate cancel culture.” Behind the rhetoric lie policies designed to sap the momentum of one of Wall Street’s most successful initiatives in recent years, now worth \$35 trillion globally. If it works, it will firmly ensconce ESG in the culture wars, galvanize voters and weaken the resolve of big asset managers to act on climate change and other big, societal issues.

West Virginians are already all too familiar with ESG, according to state treasurer Riley Moore. He’s preparing a list of banks that, he says, will lose the state’s business unless they declare they aren’t boycotting the coal industry and other fossil fuels. “Certainly ‘woke capitalism’ is something they are very familiar with,” he said. “We’re facing threats from that in my state, right now.”

The attacks on ESG escalated last week when former Vice President Mike Pence made the strategy a key theme in an energy-policy speech in Houston. A potential candidate for the 2024 Republican presidential nomination, Pence said large investment firms are pushing a “radical ESG agenda” and took aim at BlackRock Inc., whose Chief Executive Officer Larry Fink is a champion of sustainable investing, and others who have pressed for progress on climate change.

Pence added to the growing public attacks on ESG. On Wednesday, Tesla Inc. founder and libertarian influencer Elon Musk told his 94 million Twitter followers that “ESG is a scam,” building on a March tweet in which he labeled the practice “the Devil incarnate.” Republican megadonor Peter Thiel called ESG a “hate factory for naming enemies” in a speech at a Bitcoin conference in April, and the Twitter bio of right-wing pundit Glenn Beck now reads, “Against ESG before it was cool.”

With gas prices rising and energy a key factor in Russia’s invasion of Ukraine, it’s becoming easier for Republicans to tie ESG to pocketbook issues of their constituents. Just as Critical Race Theory grew from a catchall for parents unhappy or worried about what their children were learning in public schools to successful efforts to seize control of local school boards, ESG opponents see an opportunity to aim voters’ fears of inflation at the finance industry’s efforts to combat global warming and other social ills.

It’s also a new front in a longstanding battle against further restrictions on fossil-fuel industries, which give generously to Republican party candidates, and more corporate accountability. At the state level, Republican governors and other officials are finding new ways to block major Wall Street firms from state business, including managing pension funds and bond issues, if they apply ESG principles to other parts of their portfolios.

Nationally, the broadsides against ESG bolster calls to abandon, or at least relax, environmental standards in favor of “energy independence.” It’s also a partisan issue at the US Securities and Exchange Commission, which is trying to require companies to report on their greenhouse gas emissions. In a virtual meeting on the plan in March, the agency’s only Republican commissioner, Hester Peirce, turned off her camera in protest, saying that she was trying to reduce her carbon

footprint.

Republicans are increasingly using banks and “woke” companies as cudgels for their base voters, said Reed Galen, a co-founder of the anti-Trump group, The Lincoln Project. “If you’re taking on a company who has environmental and social justice goals, you don’t have to explain ESG to the voters. All you have to do is say ‘woke corporation.’”

In the past few years, as the world became more aware of the risks posed by global warming and social unrest, financial firms have rushed to offer investments that promise to account for those risks — and maybe even minimize them. With an ESG slant on everything from loans to complex derivatives, assets are set to balloon to \$50 trillion worldwide by 2025, according to estimates from Bloomberg Intelligence.

In the US, a big proportion of that is via public pension funds, which are overseen by state or local officials, or in private sector retirement plans, and receive preferential tax treatment. In response to new federal rules that would allow pension funds to consider ESG alongside traditional fiduciary factors in making investing decisions, almost two dozen states registered their objection, saying the rules would allow investments to be guided by “social causes and corporate goals, even if it adversely affects the return to the employee.”

Those states are increasingly considering legislative action. State lawmakers and treasurers have for years been concerned that politically motivated investing strategies reduce long-term profits, said Jonathan Williams, chief economist at the American Legislative Exchange Council. The conservative group, which writes model legislation, is looking to prevent public pensions from making investments using ESG.

Credit ratings agency S&P Global Inc. also has come under fire for using ESG information to evaluate municipal debt. In West Virginia, Moore joined several state treasurers last month to demand the ratings agency drop ESG factors from its rating system. His state got a negative social score and a moderately negative environmental score, signaling higher risk than the vast majority of states, which are rated neutral.

“The ESG movement is nothing but a slippery slope,” Moore said, cautioning that states will be forced to “bend the knee to the woke capitalists or suffer financial harm.”

S&P Global declined to comment on specific states and instead referred to a paper it published May 9 explaining how its ESG credit indicators work.

Kentucky, Texas and West Virginia have passed legislation that requires financial firms to say whether they have policies that limit doing business with oil, gas and coal companies, a common practice for firms that have made pledges to reduce their own carbon footprint. Banks that demur could lose their licenses in those states. Another 12 states are considering similar measures.

“Once ESG becomes commingled with corporate wokeness, it can become a powerful way for anti-corporate right wingers to talk about it and galvanize voters,” said Chris Stirewalt, an expert in US politics, voting trends and public opinion at free-market think tank American Enterprise Institute.

In addition to shunning oil, gas and coal producers as part of climate change policies, investors and employees have encouraged companies in recent years to take positions on LGBTQ rights, gun control and other issues that add to rancor among Republican voters.

Most recently, companies have begun to address the third rail of political issues: abortion. In March, Citigroup Inc. made waves when it said it would cover the travel and medical costs for any of its

employees who needed to cross state lines to seek an abortion or other reproductive health care. In response, a Texas lawmaker said the bank could face criminal charges under that state's abortion law, and Republican members of Congress called for the cancellation of US government contracts with Citigroup, which provides the credit cards that members of the US House of Representatives use to pay for flights, supplies and other goods.

Spokespeople for Citigroup and BlackRock declined to comment. A spokesman for Thiel didn't respond to messages, nor did representatives for Tesla, run by Musk.

Few expect the Republican attacks on ESG to vaporize the industry. As of now, roughly \$3.4 trillion of public retirement money is invested in line with ESG strategies of some sort, according to the sustainable-investing industry group US SIF. Some of the bigger, more liberal states like California and New York are pushing for more restrictive ESG screens for state funds, not less. What's more, many of the world's biggest financial institutions have their own goals to cut emissions, which include reducing the amount of business they do with heavy polluters — whether they bill it as ESG or not. Many also have set targets for workforce diversity and elevating women in management, neither of which are politically popular among the right.

Still, the political pressure seems to be taking a toll. BlackRock sent a letter this week to the Texas state comptroller, rebutting the assertion that the firm boycotts the oil and gas industries, and Fink has made it clear he opposes divesting from fossil-fuel companies. The firm also said this year that it won't back as many shareholder efforts to push companies to reduce their emissions compared with 2021. JPMorgan Chase & Co. is also taking steps to re-establish itself in Texas's muni-bond market, about eight months after a new law forced that bank out of most deals because of its policies on guns and fossil fuels.

And if Wall Street's usual suspects can't be persuaded, others are eager to step in. With the backing of hedge fund manager Bill Ackman and Thiel, Vivek Ramaswamy, a pharmaceutical investor and author of "Woke Inc.," has started an investing firm that attempts to be an antidote to the "political agendas" and "stakeholder capitalism" of bigger money managers.

In Utah, state treasurer Oaks pointed to real pain points for his constituency. Dixie Power, for example, which delivers power to roughly 25,000 customers, recently learned its longtime auto insurer wouldn't renew coverage. The utility owns a coal-burning power plant and has stakes in two others, and the insurance company is phasing out business with companies that derive profits from coal, according to Colin Jack, the firm's chief operating officer. The co-op is also set to lose insurance coverage for its coal mine from Lloyd's of London for the same reason.

Fueled by frustration with that and what he sees as other government intrusion into the energy sector, Jack is running as a Republican for a seat in the Utah state legislature.

He may be in line for a powerful endorsement. On Wednesday, less than three hours after tweeting that ESG is a scam, Musk wrote that although he'd voted Democrat in the past, "I can no longer support them and will vote Republican."

## **Bloomberg**

By Jeff Green and Saijel Kishan

May 20, 2022

— *With assistance by Benjamin Bain, and Mark Niquette*

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## **Princeton Joins School Bond Wave With \$600 Million for Expansion.**

- **Deal to be split between taxable, tax-exempt securities**
- **Proceeds will help prepare for addition of 500 undergrads**

Princeton University plans to bring its sterling credit rating to a battered bond market with a sale of \$600 million of debt to help finance an expansion of its New Jersey campus as it prepares to accommodate hundreds more undergraduate students.

The Ivy League school will issue half as tax-exempt debt through the New Jersey Educational Facilities Authority as soon as Tuesday. The remainder will be taxable, sold through the Trustees of Princeton University. That will make it the latest university to offer taxable securities this year, after schools including Harvard University, the Massachusetts Institute of Technology and Washington University in St. Louis.

Name recognition, top credit ratings and a relatively slow week of tax-exempt issuance will help Princeton's bond sale stand out during a tumultuous stretch for fixed-income. Munis are off to their worst annual start on record, driving benchmark 10-year yields to the highest in eight years.

"Compared to everything else in the market, it should get a great price," said Daniel Solender, head of municipals at Lord, Abbett & Co., who said he has bought Princeton debt in the past and is interested in the tax-exempt portion. "There should be plenty of demand."

When the school sold tax-exempt debt last year, it obtained yields that were below top-rated munis, data compiled by Bloomberg show. Its securities are still trading tight to the benchmark index: Last week, debt maturing in 2029 with a 5% coupon traded at an average yield of 2.81%, or 10 basis points above the BVAL AAA curve. It originally priced in March 2021 at 0.89%, or 2 basis points below the benchmark.

Proceeds of this month's sale will help fund two new groups of dorms under construction as the school plans to add 500 undergrads over four years, beginning this fall.

The bonds are also paying for the phase-out of steam generation for a more efficient hot-water heating system on the existing campus and an efficient system on a new campus in the adjacent township of West Windsor, according to Michael Hotchkiss, a spokesman.

The new campus, the first major expansion in West Windsor, will be built on lands Princeton has owned for more than 100 years and will include by 2023 a geo-exchange facility to heat and cool structures, graduate student housing and a 600-space garage. By 2025, the school will build a tennis and racquet center, a softball stadium, playing fields for rugby and recreational sports and a cross-country course.

In 2021-22, Princeton enrolled 8,382 undergraduate and graduate students. It admitted only 4% of undergrad applicants for that academic year, down from 6% the prior year, according to offering documents.

Strong endowment returns have helped bolster schools' balance sheets, driving the borrowing surge by giving them more leeway to take on debt, according to CreditSights. Taxable debt allows schools more flexibility in how they spend proceeds, but often requires issuers pay higher interest rates.

Princeton is among the richest universities measured by endowment per student, with a fund that

was valued at almost \$40 billion as of June 2021. Its 47% investment return for the year ended June 2021 ranked it second in the Ivy League behind Brown University.

“Demand in the market seems to be fairly selective, but Princeton is a solid gold name,” said Patrick Luby, a municipal strategist at CreditSights.

## **Bloomberg Markets**

By Nic Querolo and Janet Lorin

May 16, 2022, 7:30 AM PDT

— *With assistance by Danielle Moran, and Kenneth Hughes*

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### **[Ducking the Culture Wars Isn't an Option for Companies Anymore. Fighting Back Is.](#)**

The culture wars are heating up for U.S. businesses. Many will duck. But those who want to stand their ground should look to Citigroup, the company that messed with Texas and lived to tell the tale.

In March 2018, after a gunman killed 17 people at Marjory Stoneman Douglas High School in Parkland, Fla., then Citigroup CEO Michael Corbat announced a new firearms policy for the bank. The policy, with some caveats, prohibits retailers that are customers of the bank from offering bump stocks or selling guns to people who haven't passed a background check or are younger than 21.

As reported by Bloomberg News, the national gun lobby went into overdrive, accused Citi of being “woke” and lobbied for a law passed last year by Texas Republicans that forbid the state from working with any companies that “discriminate” against the firearms industry.

At stake for Citi and other banks that adopted similar policies was \$58 billion in debt underwriting fueled by population growth and infrastructure needs. Citi's ranking as the largest Texas munis manager plummeted while the bank hashed out a recognition from the state attorney general that the policy did not discriminate.

In December, Citi, without making any change to its gun policy, finally resumed business with the state of Texas. It is now leading underwriting for a \$1.2 billion bond sale for the Dallas Fort Worth International Airport.

Citi quickly found itself fighting on another front in Texas. Corbat's successor, CEO Jane Fraser, in response to a Texas law banning abortions after six weeks of pregnancy, announced that Citi would pay travel expenses for employees needing to travel out of state to have access to adequate medical resources. “What we did here was follow our past practices. We respect everyone's view on this subject,” Fraser said.

Texas state Rep. Briscoe Cain warned Citi that employees who travel outside Texas for an abortion could face criminal charges. He said he would introduce legislation to bar Citigroup from underwriting municipal bonds—again.

Citi has not issued any comments in response. But by standing up to Texas on guns Citi has set a precedent for ignoring the grandstanding and carrying on business as usual. For all the companies



that want to demonstrate social purpose and care for employees' needs, but worry about alienating government stakeholders, breaking through the political noise to stand up for values isn't too hard.

In 2019, 181 CEOs of America's biggest companies signed on to a commitment by the Business Roundtable redefining the purpose of the corporation to serve all stakeholders, including workers, as well as shareholders.

The commitment covered rewarding hard work and helping workers adjust to the rapid pace of change in the economy. "We foster diversity and inclusion, dignity and respect," the statement says.

The statement was a reversal of economist Milton Friedman's popular view that shareholders are the only ones who count. It invited debate as to whether companies really should think about their stock price less and pay more attention to their employees. Perhaps without realizing it, the statement also placed them squarely in the middle of the so-called culture wars.

Advocates have pointed out that many of the signatories to the statement have fallen short in their pledges to uphold the interests of all stakeholders. Companies have faced pressure to engage on voting rights, Black Lives Matter, abortion, LGBTQ issues, climate, and #MeToo. Covid-19 vaccination requirements also entered the debate.

This has set companies up to enter politics in a way they studiously avoided before, and not just in Texas. Republican governors in Florida and Georgia are now policing business, as the columnist Heather Cox Richardson puts it.

Disney's confrontation with Gov. Ron DeSantis over education legislation his opponents have labeled the "Don't Say Gay" law put CEO Bob Chapek to the test. He signed the Roundtable commitment. But he first tried to avoid getting involved, saying he didn't want the controversy to become a political football.

His workforce revolted and forced him to apologize to them and stand up to Gov. DeSantis.

Now Chapek is fighting Florida to retain tax breaks and governance of the special district created for Disney, the state's largest employer, since its inception.

The abortion fight has raised the stakes even higher.

The draft under consideration by the Supreme Court to overturn *Roe v. Wade* has turned the social purpose debate upside down. The landmark ruling in 1973 gave women the freedom to decide if they wanted an abortion. If the ruling takes away that right on a federal level, states like Texas, Georgia, Alabama, Arkansas and Florida have strong anti-abortion laws that will kick in. Other states that would also have the power to decide may follow.

For companies that offer healthcare plans that cover abortion and follow federal guidelines of offering equal healthcare to all their employees, this is a practical problem, as much as a moral one. Many operate in states where abortion would become illegal. Companies such as AT&T, which signed the Business Roundtable statement, may not believe it obligates them to take a stance on abortion. The company has stayed with a policy of public silence on the topic.

But nearly 200 CEOs have recognized that the right of women to make their own decision about abortion rights is good for business. It's an important part of Americans deserving a life of "meaning and dignity," as the Business Roundtable statement put it. Like Citi, Amazon, Starbucks and Tesla have all announced they would help their Texas employees travel for out-of-state abortion services.

For companies that don't live up to their social-purpose commitments, there's a good chance their employees will hold them accountable. Ducking is no longer an option. Citi's experience shows they can put their money where their mouth is and live another day.

## **Barron's**

By Laurie Hays

May 20, 2022

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### **['Woke Bond Rating'? The Muni Finance Fight Over ESG Scores.](#)**

**Utah officials recently lashed out at a rating agency's use of environmental, social, governance rankings. Investors have an appetite for the metrics, but critics say they're too subjective.**

Welcome back to another edition of Route Fifty's Public Finance Update! I'm Liz Farmer and this week, I'm looking at the latest squabble over ESG evaluation—assessing governments' long-term environmental, social or governance risks. As always, send feedback and tips to: [publicfinance@route fifty.com](mailto:publicfinance@route fifty.com).

ESG evaluation has always been a somewhat contentious issue in the investment community because data on those metrics are not standardized. But a recent move by S&P Global to assess states' ESG exposure is sparking new debate, and has conservative lawmakers and interest groups fighting back in one of the most concerted efforts yet to discredit the practice.

At issue are new "ESG credit indicators" S&P released in late March. Each state was given a report card on its environmental, social and governance factors and assigned a ranking of 1 (positive) to 5 (very negative) on each factor. States all generally scored twos and threes for each category. "ESG credit indicators," said S&P in a recent [FAQ](#), "provide additional transparency on what's already incorporated into our credit rating analysis."

[Continue reading.](#)

## **Route Fifty**

By Liz Farmer

MAY 17, 2022

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### **[SEC's Sanchez Offers Guidance on ESG.](#)**

Issuer fears that ESG regulation will lead to disclosure trouble are overblown, the Securities and Exchange Commission's muni office chief said Wednesday.

Dave Sanchez's comments were part of the National Federation of Municipal Analysts' 2022 Annual Conference, where panelists spent considerable time discussing the recent ESG initiatives underway at the SEC and Municipal Securities Rulemaking Board.

Sanchez addressed industry concerns that any disclosure regime centered around ESG will be an exercise in over-disclosure.

The SEC's 2020 guidance on voluntary disclosures related to COVID-19 has received mostly positive marks from the market, but the Commission may be considering expanding some of the provisions on cautionary language going forward.

"We lean heavily on the 2020 SEC statement from the chair and the director of the Office of Municipal Securities talking about cautionary language about your disclosure," said Emily Brock, director of the federal liaison center at the Government Finance Officers Association. "Always very glad to hear Dave mention that there is thinking at the SEC about maybe expanding that information beyond COVID-19 disclosures."

Panelists also used their time to work through how regulators, investors and issuers handle materiality.

"As a practitioner, I kind of always thought of it as like you're trying to cross a river from the information you're holding to disclosing it and there's really one rock in the middle and that's materiality," Sanchez said. "Part of the job of the SEC really is to provide additional touch points in different contexts that help people get across the river to actually disclose this information."

Panelists agreed that some issuers feel they have the right to define materiality on their terms, which is not the standard as defined by the SEC.

"As a former issuer myself, I actually think I suffered from a misunderstanding of securities law as I thought I got to define materiality," said Mark Kim, chief executive at the MSRB. "It's the investors decision to make."

The Supreme Court has ruled that information is material if it would matter in the investment decision of a reasonable investor.

"It's not really in the eye of the beholder," Sanchez said. "There is a standard, it has to be reasonable investors, it's not any investor."

But Sanchez ultimately believes that ongoing dialogue with underwriters, bond counsel or others around materiality, and if it's well-documented, will provide some protection from the SEC.

"If you have a good-faith discussion about whether something is material or not, that ends up providing a lot of protection under securities laws," Sanchez said.

The MSRB's controversial request for information on ESG also served as an important pillar for the discussion. Kim expressed that he was surprised by comments that questioned why the MSRB was asking these sorts of questions, when he thought market participants would be asking why the board didn't do this sooner.

Kim compared the ESG RFI to the RFI issued in 2018 on third-party yield curves, which is still a concern that persists today.

"While I'll be the first to admit that we have absolutely no regulatory authority over third-party vendors that are offering yield curves and benchmarks to the industry, we do have the responsibility to ask that question," Kim said.

SOURCE MEDIA

By Connor Hussey

May 18, 2022

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## **[A Muni Minute: Tit-for-Tat](#)**

Municipal investors often sift through various issues that include underfunded pensions, a lack of market liquidity, and inconsistent financial disclosure. However, there is a new area of concern that is causing indigestion among market participants: political and corporate agendas.

On April 22, Florida Governor Ron DeSantis signed a bill dissolving a handful of special taxing districts created prior to 1968, most notably the Reedy Creek Improvement District (Reedy Creek). The move was significant since Reedy Creek allows The Walt Disney Company to exert considerable governmental autonomy over the area within and around its nearly 25,000-acre theme park. Interestingly enough, the legislation was introduced not to provide any sort of societal or economic benefit, but to penalize Disney for denouncing a controversial gender bill that was signed into law earlier this year.

While the ability of the special district legislation to withstand legal challenges remains uncertain, questions still remain regarding the treatment of nearly \$1 billion of municipal bonds issued by Reedy Creek. State law dictates that outstanding bonds from a dissolved special district will be transferred to overlapping municipalities, which in this case largely includes Orange County, FL. However, whether the county chooses to honor the bonds is unclear, potentially creating a larger issue for the state and more importantly, for investors.

More troubling is that this is not the first instance in which politics have collided with the municipal market. In 2018, multiple large financial institutions began implementing policies that restricted business relationships with certain firearms manufacturers. In response, Texas Governor Greg Abbott, along with the governors of several other states that derive a material amount of economic activity from the firearms industry, signed laws that prohibited municipalities from having contractual relationships with companies that discriminate against the firearms industry. The Texas bill effectively prevented Citi Group, the largest municipal underwriter in the state, from doing business with local municipalities. Both actions caused concern in the capital markets, with the former showing the power that major financial institutions can wield to effectively cut off financing to certain sectors of the market, and the latter effectively reducing competition amongst municipal underwriters, possibly resulting in increased borrowing costs for public finance issuers.

Legislation and corporate actions fueled by political agendas that unnecessarily rile the capital markets represent a policy mistake, in our opinion, especially when the measures effectively restrict consumer choice. Investors can abstain from investing in securities that do not meet their investment criteria, and issuers have the ability to work with whichever financial institution that they believe will help them best accomplish their objectives. However, corporate policies and legislation that instead make these choices for the end user generally do more harm than good in that they tend to limit competition, push higher costs onto consumers, and are typically met with retaliatory measures.

While it is nearly impossible to predict the next target of a political attack, investors should be wary of municipalities with an overreliance on any one specific industry or company, potentially leaving them in the crosshairs of political battle between corporate America and state legislatures. We do

not foresee any related issues with municipal sectors that rely on state appropriations for a significant portion of their funding, including K-12 schools and public higher education institutions. This is because education-related funding cuts are typically politically unpalatable, and generally are only utilized in the event of a state budget shortfall. Nevertheless, we view these politically charged disruptions as one-off events, and municipal bonds remain an excellent option for investors looking for tax-exempt income with very limited credit risk.

## SAGE ADVISORY

By Brett Adelglass, Sage Portfolio Management

MAY 10, 2022

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### **How to Avoid Political Jockeying With ESG Bond ETFs.**

374Like so many current issues, environmental, social, and governance (ESG), at least in the eyes of some experts, has an element of political polarization to it.

That situation is amplified by lack of clarity and uniformity pertaining to how index providers score securities on the basis of ESG, prompting some experts to speculate that this could be a legitimate issue to contend with as the universe of fixed income assets aiming for ESG consideration grows.

As reflected by exchange traded funds like the newly minted SPDR Nuveen Municipal Bond ESG ETF (MBNE), there is demand for fixed income strategies that combine bonds and ESG principles. In fact, despite its rookie status, MBNE could be at the right place at the right time because issuance of green munis is soaring, while some state financial regulators are clamoring for more clarity on exactly what constitutes ESG.

For example, Utah recently clashed with index giant and credit ratings agency Standard & Poor's (S&P) over ESG ratings, asserting that the firm's standards are too ideological.

"In addition to rating governments on meaningful financial criteria, in March the biggest of the top three credit-rating firms began to apply an environmental, social and governance, or ESG, rating system. But Utah isn't about to submit to these subjective standards. State officials, including myself, recently wrote a letter to S&P objecting to the ESG indicators and ratings it has assigned to Utah and calling for the company to withdraw them," writes Utah Treasurer Marlo Oaks in an op-ed for the Wall Street Journal.

Regarding MBNE, the ETF can allay concerns on both sides of the aisle. For starters, Utah isn't one of the top 10 state exposures in the new ETF, and that group combines for about 70% of the fund's roster.

Second, MBNE is actively managed, indicating that it can skirt some of the thorny political issues associated with some parts of ESG investing while focusing on the business of identifying the best opportunities among green municipal bonds.

That's not to say MBNE doesn't have standards — it does. Bonds entering the fund must meet certain ESG traits. However, as an actively managed fund, MBNE has flexibility in a space that needs it.

Markets “encapsulate many different views of the future and their organic structure allows for quick adaptation. ESG scores, by contrast, rigidly hold to one viewpoint and are slow to pick up on changes in the world,” adds Oaks.

ETF TRENDS

by TOM LYDON

MAY 12, 2022

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### [Announcing GFOA's First Annual Fundamentals Virtual Forum.](#)

GFOA’s First Annual Fundamentals Virtual Forum will be held **July 11-15, 2022**. This virtual training opportunity is designed for new government finance staff who are either starting their career journey or transitioning to public finance from the private sector. Seven of the ten virtual forum sessions will be based on topics from GFOA’s Certified Public Finance Officers (CPFO) program.

[LEARN MORE](#)

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### [The Muni Market is Becoming More Concentrated.](#)

**Retail investors are a staple of the municipal bond market, holding about three-quarters of the nearly \$4 trillion in outstanding bonds. But, according to recently released Federal Reserve data, the value of muni bonds directly held by retail investors fell by \$18 billion during the fourth quarter of 2021, reaching their lowest levels since 2008.**

Many retail investors are turning toward mutual funds and, increasingly, exchange-traded funds (ETFs) for exposure, which offer more diversification and better liquidity than direct ownership. In addition, actively-managed funds can tailor strategies to reduce risk during specific economic cycles or capitalize on opportunities as they arise.

This article will look at how the rise of muni bond funds could impact the market and the most significant funds in the space.

[Continue reading.](#)

**municipalbonds.com**

by Justin Kuepper

May 19, 2022

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### [Florida’s DeSantis Says Control of Disney District Will Likely Go to State.](#)

Florida Governor Ron DeSantis said on Monday that control of Walt Disney Co.'s special government district would likely go to the state and not local governments if it's dissolved next year.

"After seeing them threatening to raise taxes on their citizens, we are not going to be in a situation where we're just going to be giving them, locally control," he said during a press briefing when asked about the possibility of property taxes rising as a result. "More likely that the state will simply assume control and make sure that we're able to impose the law and make sure we're collecting the taxes."

DeSantis signed legislation last month that will dissolve in 2023 the Reedy Creek district, where Disney's Florida amusement parks and hotels are based, unless it's explicitly reauthorized by the state's legislature. The new law emerged after a month-long feud between the Republican governor and Disney in which the entertainment giant criticized a law DeSantis backed that limits school instruction about gender identity and sexual orientation.

DeSantis said that he is working on proposals and will collaborate with the state legislature. While he didn't provide any concrete details, he said that Disney would be responsible for paying back the nearly \$1 billion in municipal bonds issued by the special district.

"That debt will not end up going to any of these local governments," he said. "It's not going to go to the state government, either. It's going to absolutely be dealt with, with the taxpayers who are currently in that district."

## **State Takeover**

The Florida governor made the comments amid ongoing concern by some residents that dissolving Disney's special district could lead to tax increases if municipalities have to take on the burden of the company's debt and provide additional services.

Reedy Creek is governed by a five-member board of supervisors, elected by local landowners. A state takeover could put control of the district, which provides water, sewer, power and other services to Disney World, in the hands of gubernatorial appointees. The district collected revenue of \$306 million last year from taxes and user fees, according to its annual report.

While some of other special districts in the state that were affected by the legislation signed last month may be amended or re-authorized, DeSantis said Disney would not maintain control of the government.

"Obviously with Reedy Creek, the path forward is Disney will not control its own government in the state of Florida," he said. "They will pay their fair share of taxes, and they will be responsible for paying the debts. At the end of the day, all we're doing is putting them on a level playing field with all the other companies in Florida, making sure there's no special privileges, no special deals, but that debt will be honored."

## **Shares Down**

DeSantis said that local taxes would not rise as a result, as the local governments will not see any additional liabilities.

"We're working on some proposals," DeSantis said. "I think we've got it pretty much what we want to do, but I'm going to work with the legislative leaders for, who are going to come in after the election to make sure that we're all in agreement."



Disney shares fell 1.2% to \$106.04 at 1:47 p.m., extending its decline this year to 31.6%. Still, Disney reported last week that subscribers to its Disney+ streaming service beat Wall Street estimates and that the company more than doubled of its theme park revenue thanks to surging attendance. The results suggest that DeSantis' criticism of the company is not discouraging average Americans from using the company's products.

## **Bloomberg Politics**

By Nathan Crooks

May 16, 2022

— *With assistance by Christopher Palmeri*

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### **[Why Disney's Special District Is Harder To Dissolve Than It Seems.](#)**

**Florida Gov. Ron DeSantis signed a bill to dissolve a Disney special district, but now many wonder what this means for future debts and taxes.**

In the latest political battle brewing in Florida, Gov. Ron DeSantis signed a bill revoking the Walt Disney Company's special district status, and he didn't waste time — it was signed just days after the legislation was introduced in late April.

The bill is widely seen as retaliation for the company taking an official stance against the governor's so-called "Don't Say Gay Bill."

"But then for Disney to come out and put a statement and say the bill should have never passed and that they are going to actively work to repeal it, I think, one: was fundamentally dishonest, but two: I think that crossed a line," DeSantis said.

But the bill has brought up questions about what exactly happens when a special district suddenly dissolves. Although there isn't a good precedent for this, a number of legal experts have suggested this may end up backfiring for the governor.

To explain why, let's go back to how this all started.

Walt Disney first began buying up marshland in Central Florida in the 1960s. The company quietly bought the acres through shell corporations and cash transactions, because if news broke that Disney was making a park, the price of land would skyrocket. By the time the secret got out, Walt Disney was meeting with legislators and business leaders to secure tax breaks, other benefits, and of course, the special district status.

In 1967, Disney got the state to approve of the Reedy Creek Improvement District, and the agreement was made "in perpetuity." Disney would still pay its state and federal taxes, but it would also fund and run its own government of Reedy Creek. It did that by levying its own taxes to pay for services like power, water, roads and fire protection as they built the parks.

And that continues today: Tax revenue from Disney properties fund Reedy Creek's services like waste management and recycling or its own emergency services.

A key part of this structure is that the government can issue its own municipal bonds to pay for

infrastructure projects. They're essentially loans from Disney's many investors, and because municipal bonds are usually exempt from federal taxes, they're often cheaper to borrow. And Disney is continually paying some back: \$60 million of the district's \$170 million budget last year went to debt payments on bonds that were issued to fund projects like roads and a pedestrian bridge.

It's worth noting there are actually tens of thousands of special districts in the country. Disney is unusual because it's the only taxpayer in the entire district, and Disney is the largest employer in a state that is pretty dependent on tourism. It wields a unique "Walt Disney World is the economic engine that drives Central Florida and indeed much of Florida's tourism business," Lori Rozsa, reporter with the Washington Post, said. "Walt Disney World has been a huge influencer of politics in Florida since its inception, clearly since they got this treatment that they were able to get pretty much what they wanted from the legislature. A lot of local politicians and some people in Tallahassee call them bullies because they have a legion of lobbyists."

Now, the big question is: What will actually happen when this powerful mini-government suddenly dissolves?

The state was able to circumvent that "in perpetuity" requirement by targeting any special districts made *before* the year the state constitution was ratified.

"... But they also will be considering termination of all special districts that were enacted in Florida prior to 1968, and that includes the Reedy Creek Improvement District," DeSantis said.

So, while this move might be legal, the bill doesn't address those pesky municipal bonds mentioned earlier — since bonds are debts, and someone always has to pay debts.

State law dictates that when a special district is dissolved, paying its debt falls to the area's local government. For Reedy Creek, there are four local governments that would get the burden.

The state has one year to figure out where those debts are going, since the law goes into effect in June 2023. Though DeSantis insists Disney will eat the cost, the bill doesn't detail how, and it's unclear what legislative options he has left.

"It's clear that this was not thought through on the legislative level either by the governor's office and certainly not by the legislators," Rozsa said. "They barely debated it. Disney has the strong hand here. Reedy Creek Improvement District has a strong hand."

Taxes in the surrounding counties could rise up to 25%. Now all eyes are on DeSantis to see if this deal may cement his status as a rising GOP star or politically backfire for his re-election campaign later this year.

By Newsy Staff

May 11, 2022

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## **[U.S. Bond Funds See Outflows for 19th Straight Week.](#)**

May 20 (Reuters) – U.S. bond funds continued to face huge outflows in the week to May 19 on fears that the Federal Reserve would raise interest rates higher than previously expected to keep inflation under control.

According to Refinitiv Lipper data, investors offloaded U.S. bond funds worth \$8.39 billion in the 19th straight week of net selling.

U.S. Federal Reserve Chairman Jerome Powell said this week that the central bank will “keep pushing” to tighten U.S. monetary policy until it is clear that inflation is declining.

Investors sold U.S. municipal bond funds worth \$3.05 billion in their biggest disposal in three weeks and exited taxable funds worth \$5.52 billion.

U.S. high yield bond funds saw \$2.93 billion worth of liquidation, which was the biggest weekly net selling in five weeks, and short/intermediate investment-grade funds posted outflows of \$3.74 billion.

Meanwhile, U.S. short/intermediate government & treasury funds obtained inflows for a second straight week, worth \$3.4 billion.

U.S. equity funds suffered a sixth consecutive week of outflow, amounting to \$3.85 billion, although selling reduced 54% compared with a week ago.

U.S. large-cap equity funds received inflows of \$2.59 billion after five straight weeks of net selling, but small- and mid-cap funds faced outflows of \$1.83 billion and \$0.69 billion respectively.

U.S. growth and value funds, both witnessed net selling of \$1.7 billion and \$200 million, respectively.

Among sector funds, financials, and consumer discretionary posted outflows of \$1.34 billion and \$0.61 billion, but utilities and healthcare lured inflows worth \$0.78 billion and \$0.69 billion.

Meanwhile, investors drew \$20.31 billion out of U.S. money market funds as selling continued for a second week in a row.

*Reporting by Gaurav Dogra and Patturaja Murugaboopathyin Bengaluru; Editing by Hugh Lawson*