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New Florida ESG Law Impacts Rating Agencies, Market Participants, Municipal Issuers: Holland & Knight

The Florida Division of Bond Finance published a notice (the Notice) on June 29, 2023, providing guidance on Florida House Bill 3 (HB 3), which was signed into law on May 2, 2023, by Gov. Ron DeSantis. HB 3, in part, restricts the use of environmental, social and corporate governance (ESG) factors in connection with municipal debt issuances within the state of Florida. For a more general look at HB 3, see Holland & Knight's alert, "New Florida Law Prohibits Use of ESG Factors in Government Investment and Procurement Decisions," June 30, 2023.

Florida's Prohibitions Against ESG

Pursuant to HB 3, issuers are prohibited from contracting with "any rating agency whose ESG scores for such issuer will have a direct, negative impact on the issuer's bond rating." The Notice clarifies that "current rating agency criteria indicates ESG scores are an output of a general credit analysis and *do not independently influence the credit rating of issuers*." According to the Notice, HB 3 "institutes taxpayer protections against government issuers contracting with rating agencies that attempt to transition to a paradigm that maps ESG scores directly to an issuer's credit rating." The Notice further provides that HB 3 does not prevent rating agencies from analyzing and discussing "credit risks they believe are relevant, such as providing feedback on potential risks from natural disasters, such as hurricanes, or other risks that are relevant or may potentially be relevant to an issuer's credit rating." Furthermore, the Notice states that any rating change following a natural disaster such as a hurricane is not considered an ESG metric under HB 3 and therefore such events or factors "independently do not trigger the contracting prohibition."

HB 3 also prohibits issuers from issuing ESG Bonds. ESG Bonds are defined as "bonds that have been designated or labeled as bonds that will be used to finance a project with an ESG purpose, including, but not limited to, green bonds, Certified Climate Bonds, GreenStar designated bonds, and other environmental bonds marketed as promoting a generalized or global environmental objective; social bonds marketed as promoting a social objective; and sustainability bonds and sustainable development goal bonds marketed as promoting both environmental and social objectives." HB 3 also prohibits the expenditure of public funds or bond proceeds to pay for the services of any third-party verifier related to the designation or labeling of bonds as ESG Bonds.

The Notice provides that bonds routinely issued for a specific purpose such as resiliency are not prohibited by HB 3. The Notice encourages issuers within the state to continue to disclose material risk factors.

The Notice also clarifies that HB 3 does not prevent financial institutions from underwriting bonds issued within the state.

We Can Help

Holland & Knight attorneys are working with issuers, borrowers, underwriters and lenders to address the impact of HB 3. If you have any questions regarding this alert, please contact the authors or another member of Holland & Knight's Public Finance Team.

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