Florida's Prohibitions Against ESG

In May, Governor Ron DeSantis signed HB 3, instituting prohibitions against the proliferation of the environmental, social, and corporate governance (ESG) movement. A summary of the provisions impacting rating agencies, market participants, and Florida municipal issuers are provided below.

Rating Agencies

Current rating agency criteria indicate ESG scores are an output of a general credit analysis and do not independently influence the credit ratings of issuers.

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.

Rating agencies continue to have the ability to analyze and discuss credit risks they believe are relevant, such as providing feedback on potential risks from natural disasters, such as hurricanes, or other risks that that are relevant or may potentially be relevant to an issuer's credit rating.

Rating changes following a natural disaster, such as a hurricane, are not considered an ESG metric under HB 3 and these events or factors independently do not trigger the contracting prohibition.

The Division will continue to monitor and alert issuers of actions by rating agencies that may result in a formal contracting prohibition and encourages issuers to continue to monitor actions to ensure compliance with Florida law.

Designated or Labeled Bonds

HB 3 formally prohibits issuers from offering ESG designated or labeled bonds, regardless of whether the designation is made by the issuer or a third-party entity. This prohibition also applies to the payment or use of a third-party verifier to certify bonds as Green, Social, or ESG, etc.

Bonds that are routinely issued for specified purpose will continue to be allowable under HB 3. Issuers are still able to issue bonds for infrastructure, including storm hardening and resiliency improvements, housing, and projects which may have an environmental purpose, such as for stormwater management.

Municipal Underwriting and Disclosure

HB 3 does not prevent or prohibit licensed financial institutions from underwriting bonds issued by governmental entities.

Issuers should continue to disclose environmental risks and other risk factors to the market if the issuer deems them to be material.