SPECIAL ADVERTISING FEATURE TO COLUMBUS BUSINESS FIRST

COLUMBUS BAR ASSOCIATION

Legal Connections

CBA www.cbalaw.org

LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

OCTOBER 1-7, 2021

For detailed information about Franklin County Judicial Candidates, visit www.JudgeTheCandidates.org

Jill Snitcher McQuain, Esq.
Executive Director
jill@cbalaw.org

ENVIRONMENTAL, SOCIAL AND GOVERNANCE DISCLOSURE IN MUNICIPAL BOND ISSUES

EMMA MULVANEY, ESQ.,
Frost Brown Todd LLC

Environmental, Social and Governance (ESG) is not a new concept to the investment world. It encompasses many facets of investing, including investments focused on sustainability (such as a green bond) or social improvement (such as a social bond). Some investors view ESG as a broader social movement and target their funding of projects to align with specific ESG goals or their personal beliefs and interests. Additionally, this movement has been newly adapted as a best practice for disclosure in the municipal market. Municipal issuers should consider an exercise in understanding their ESG risks and benefits and disclosing any ESG-related material risks in offering documents moving forward.

While no formal process for issuing such green or social bonds currently exists, the market has established standards, as published by the International Capital Market Association:

1. Use of Proceeds should be for a clear environmental or social benefit;

2. Process for Project Evaluation and Selection should be described to the investors;

3. Management of Proceeds should be allocated to green or social projects; and

4. Reporting annually on use of proceeds should be provided to investors.

Additionally, ICMA recommends external review to verify the issuer's green or social claims through second opinion, verification, certification and/or scoring or rating as a green or social bond. When considering the issuance of a green or social bond, municipal issuers should weigh the potential market interest in a green or social bond designation compared to the additional costs of such a designation and more robust annual reporting.

Recent publications by both the Securities and Exchange Commission and the Government Finance Officers Association have signaled preferences for ESG disclosures. On March 8, the GFOA adopted ESG disclosures as a best practice for inclusion in municipal bond offering disclosures. The GFOA recommends three elements in crafting suitable ESG disclosure: "(1) vulnerability assessment, or recognition of ESG related risks, (2) plans/preparedness for mitigating such risks, and (3) progress updates, including impacts of recent ESG elements/events and how they shape future response."

As ESG concerns and risks grow in significance in both the corporate and municipal worlds, municipal issuers can look to guidance from public bodies, as well as corporate issuers and filings.

This burgeoning trend in disclosure has not been widely incorporated in municipal offering documents. As such, issuers may struggle to determine materiality of ESG-related issues and related disclosures. The GFOA acknowledged such disclosure should be considered on a case-by-case basis based on the characteristics of the issuer, stating: "The key for municipal issuers is to determine which ESG factors are material to their own credit profile and relevant to investors." Accordingly, GFOA has not provided any standard disclosure language.

Bond markets will likely continue to see growth in various ESG-targeted bonds, as well as a continued discourse related to ESG disclosures in offering documents and post-issuance disclosures. Municipal issuers should begin to consider ESG risks and associated disclosures, if material, as part of their offering documents. Within the ESG risk analysis framework, municipalities and other public issuers must determine which ESG risks or opportunities are material, then provide necessary disclosure and demonstrate a mechanism for fostering financial resiliency.

Read the full article at cbalaw.org/news.

JOIN THE CBA FOR OUR APPELLATE ADVOCACY SERIES! LEARN MORE: CBALAW.ORG

OHIO RENEWS 10% INCOME TAX CREDIT FOR OPPORTUNITY ZONE INVESTMENTS

On June 30, Ohio governor Mike DeWine signed into law a state budget that renews funding for the Ohio OZ income tax credit for an additional two-year term. Here is what OZ investors need to know:

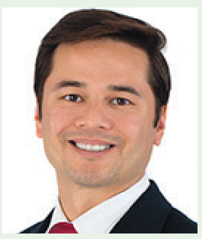
- Successful applicants receive a certificate for a non-refundable income tax credit equal to 10 percent of the amount invested into Ohio opportunity zone property.

- Investments of eligible gains and ordinary after-tax cash qualify for the credit.

- The Ohio OZ tax credit is capped at $2 million per taxpayer, and up to $50 million for all taxpayers, during the 2021-2022 biennium period.

- The tax credit certificate may be used for up to five years, or transferred in whole on a one-time basis, meaning they can be sold for an immediate cash return on investment.

- The application period is in January of each year and the tax credits are awarded on a first-come, first-served basis.



ANDREW P. DOUP,
Kegler Brown Hill + Ritter

According to state public records, in 2020, Ohio taxpayers saved approximately $120 million in income tax by investing into 73 opportunity zone projects throughout the Buckeye State. These investors received an immediate 10 percent state income tax credit and will be eligible to exit these investments after a minimum 10-year holding period. Ohio's OZ tax credit complements the federal OZ laws by providing a dollar-for-dollar credit against state income tax for calendar-year investments made into Ohio opportunity zones.

However, there are strict procedural rules that investors must follow under Ohio law. For example, an Ohio qualified opportunity fund must hold 100 percent of its assets in Ohio qualified opportunity zone property and deploy investor capital in the same calendar year that it received investor funds. Investors should consult their professional advisors for advice on the structuring and timing of funds transfers to ensure eligibility.