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*Don't Mess with Texas: Paxton Drives Major Municipal Bond Writers
Out of Business*

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The phrase “everything’s bigger in Texas” certainly applies to their municipal bond market: Texas is currently the largest municipal debt issuer of any state.¹ While every year cities and school districts float more and more bonds, fewer and fewer banks will be able to underwrite these deals. In 2021, Texas passed a pair of laws prohibiting state agencies and local governments from entering into certain contracts with businesses that “discriminate” against or “boycott” the oil and gas or firearms industries.² These so-called anti-BDS laws have stood up against constitutional challenges in court³ and bar municipalities from contracting with listed banks to underwrite their bond issuances.⁴

Attorney General Ken Paxton has not shied away from enforcing these statutes. Texas law requires Paxton’s office to advise all municipalities on the legal issues relating to their bond issuance.⁵ The Texas Attorney General must also sign off on all municipal issues in the state.⁶

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¹ With issuance totaling \$59 Billion, Texas issuance accounted for over 15% of nationwide bond sales. Karen Pierog, *Texas Wins 2023 Muni Bond Issuance Rodeo for First Time in 42 Years*, THE BOND BUYER, (Dec. 29, 2023), <https://www.bondbuyer.com/news/texas-tops-states-in-bond-volume-for-first-time-in-42-years>.

² Ken Paxton, Att’y Gen., *Advisory on Texas Law Prohibiting Contracts and Investments with Entities that Discriminate Against Firearm Entities or Boycott Energy Companies or Israel*, (Oct. 18, 2023), <https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/OAG%20advisory%20on%20SB%2013%20and%2019%2010.18.23.pdf>.

³ E.g., *A&R Eng’g & Testing, Inc. v. Scott*, 72 F.4th 685 (5th Cir. 2023).

⁴ Paxton, *supra* note 2.

⁵ Tex. Gov’t Code § 402.044.

⁶ *Id.*

Financial giants such as BlackRock, HSBC, Société Générale, and UBS are on divestment lists for boycotting energy companies.⁷ Texas's anti-BDS laws stretch beyond firearms and energy boycotters. In the aftermath of the October 7th attacks, Texas reiterated that their divestment lists also include several other financial services companies for being deemed boycotters of Israel.⁸ Texas has taken a somewhat measured approach. While conducting a review of Wells Fargo's standing, Texas found that the bank did not improperly discriminate against firearms entities and that Wells can continue to underwrite deals in the state.⁹

Last January, Paxton's office issued an opinion stating that any municipal bond underwritten by Citi would not be approved following a finding that Citi discriminated against a firearms business.¹⁰ In the wake of being banned from the Texas municipal market, Citigroup announced a decision to close their municipal underwriting and market-making businesses.¹¹ It's not clear that Citi's decision to shutter their group is based solely on their ban in Texas. Banks often point to their municipal underwriting business as a "do good" line of business. While underwriting municipal bonds doesn't produce enormous fees like other capital markets businesses, it creates a certain amount of goodwill with governments and regulators. Citi, under CEO Jane Fraser, has been committed to reducing the banks size, business lines, and middle management.¹²

Similarly, UBS made the decision to unwind their negotiated municipal underwriting business earlier in 2023.¹³ While UBS has stated their plans to rebuild their muni practice focused on competitive underwriting, the loss of business in Texas, particularly being dropped from a 3.4 billion dollar bond floated by one state agency, is likely to permanently scar UBS's municipal business.¹⁴ This is not the first time UBS has cut their municipal business. Following the 2008 financial crisis, UBS cut the firms entire municipal

⁷ Paxton, *supra* note 2.

⁸ *Id.*

⁹ Leslie Brock, Assistant Att'y Gen., *All Bond Counsel Letter*, (Aug. 25, 2023), <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC%20Letter%20Wells%20Fargo%2008-25-23.pdf>.

¹⁰ Leslie Brock, Assistant Att'y Gen., *All Bond Counsel Letter*, (Jan. 18, 2023), <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC%20Jan%2018%202023%20%20Citi%20Status.pdf>.

¹¹ Tatiana Bautzer, *Citigroup Closes Municipal Underwriting and Market-Making Unit*, REUTERS, (Dec. 14, 2023), <https://www.reuters.com/business/finance/citigroup-closes-municipal-underwriting-market-making-unit-memo-2023-12-14/>.

¹² Justin Baer, *Citigroup Plans to Cut 20,000 Jobs*, WALL STREET JOURNAL, (Jan. 12, 2024), <https://www.wsj.com/finance/banking/citigroup-plans-to-cut-20-000-jobs-71619fd0>.

¹³ Amanda Albright, *UBS to Exit Key Muni Investment Banking Business, Plans Job Cuts*, BLOOMBERG, (Oct. 10, 2023), <https://www.bloomberg.com/news/articles/2023-10-10/ubs-to-exit-key-muni-investment-banking-business-plans-job-cuts>.

¹⁴ Jessica Lerner, *UBS Exiting Negotiated Muni Underwriting Business*, THE BOND BUYER, (Oct. 10, 2023), <https://www.bondbuyer.com/news/ubs-to-exit-negotiated-underwriting-business>.

underwriting business until a key hire from Wells Fargo in 2017 allowed the firm to reenter the market.¹⁵

Other states have followed Texas's lead. Oklahoma has enacted laws nearly identical to the two Texas statutes. Oklahoma State Treasurer Todd Russ issued a list of thirteen banks that were deemed energy boycotters.¹⁶ Notable banks including Wells Fargo, JPMorgan Chase, and Bank of America were listed and are now unable to underwrite bonds in the Sooner State.¹⁷ Kentucky has also taken action to divest state business from certain banks over their decision to limit financing to coal companies.¹⁸

Partisanship around ESG investing is clearly being felt in the municipal securities world. It is unclear if and how democratic states will take action to counter the trend started by Texas. What is clear is that financial institutions are now more than ever under the political microscope at every level.

¹⁵ *Id.*

¹⁶ Karen Pierog, *Three Big Muni Banks Land on Oklahoma Fossil Fuel Boycotter List*, THE BOND BUYER, (May 4, 2023), <https://www.bondbuyer.com/news/muni-broker-dealers-are-on-new-oklahoma-fossil-fuel-boycotter-list>.

¹⁷ *Id.*

¹⁸ Nic Querolo, *BlackRock, Citigroup Among Firms Named Fossil-Fuel Boycotters by Kentucky*, BLOOMBERG, (Jan. 3, 2023), <https://www.bloomberg.com/news/articles/2023-01-03/kentucky-lists-blackrock-citi-and-others-as-energy-boycotters>.