



In response to MSRB notice# 2021-17

Third Party Green/ESG Designation

Prefer that every bond issue has a third party opinion on the merits of an ESG/Green bond designation. The third party opinion would become a part of the Official Statement similar to a legal opinion that is included in current bond offering documents. This would greatly reduce the possibility of self-labeled green washing of muni bonds that currently come to the market. The aim would be to limit the very low hurdle methodology that munis inherently are ESG/Green by nature as they provide a benefit to their surrounding community. Understanding this will result in additional costs for issuer, we would prefer this be phased in over time. If the cost is too prohibitive, consider a minimum bond issue size as a threshold for third party designation.

Continuing Disclosure

Would like to see annual disclosure documentation posted to EMMA MSRB and Bloomberg that provides detailed updates on the progress of ESG/Green bond financed projects. For example, if the bond offering finances an affordable housing development updates on the construction progress, costs relative to budget and progress relative to certain milestones. Once construction has been completed annual updates on occupancy rate, turnover, etc. Similar documentation could be created for LEED projects financed with municipal bonds. For example, updates on energy savings and pollution reduction.

Robert Fisher

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Comment on Notice 2021-17

from Dan Aschenbach, AGVP Advisory

on Tuesday, January 18, 2022

Comment:

From the municipal issuer perspective they are being hit by numerous ESG methodologies and data requests.

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Smith article on ESG[2305843009457152084].docx

ESG Municipal Issuer Self-Certification; Is it a Value Added for the Municipal Bond Sector?



Have you ever been disorientated and a google search does not find your bearings? Ask most municipal bond issuers about how they plan to meet and report Environmental, Social and Governance factors, ESG, and most will scratch their heads. It is not that issuers do not want to report ESG factors, but for many there are so many approaches which creates disorientation and questions about what is material or important.

Before the myriad of ESG frameworks proceed further into the US municipal bond market, there should be a focus on what investors need in their understanding of ESG factors and what is expected of municipal issuers. Currently, the Principles for Responsible Investing (PRI), the Sustainability Accounting Standards Board (SASB), Global Research Initiatives(GRI), Task Force on Climate Related Financial Disclosure (TCFD) or the Climate Disclosure Project (CDP) among others, are announcing every day new standards and approaches to ESG. Adding to the myriad of these ESG frameworks, there are several US institutional municipal investment firms also asking for information from municipal debt issuers that are based on their own ESG definitions, and often the data requested is widely different from one firm to the next. And there is limited transparency of what the weights or values that are placed on each factor that is considered.

Many of the ESG approaches permit self-certification that the municipal issuer is in compliance with ESG standards. This raises lots of questions about how rigorous the self-examination is and whether the reporting is sufficient. For example, self-certification or examination in the private sector resulted in "greenwashing" and now there are calls for disclosure regulation on what gets

published. Greenwashing is reporting data that suggests the company is carbon neutral when it is not. The SEC is expected to be addressing this issue in 2021. The question remains in the private sector on what is material and relevant. The municipal bond sector should recognize the potential for “municipal greenwashing” and with limited municipal staffs, understand the strain on ESG self-reporting.

For the municipal bond sector there are two main uses for ESG factor evaluation:

ESG factor impact on credit presents a need for better disclosure so that municipal issuers can ensure the factor is reported accurately as it is weighed as a pressure that could affect bond repayment. ESG has always been a part of the credit assessment process. Questions about carbon transition, social justice and voting rights have made the credit evaluation of ESG factors more complicated and potentially more political.

Sustainable or impact investing is now the most significant activity that has brought ESG into the municipal limelight. Climate change impacts and the global push towards carbon reduction have raised the bar for what data is being asked for and how it is interpreted. A recent report by PRI on ESG and the municipal sector called for Issuers to “make information accessible and improve disclosure via existing platforms. They should view data dissemination to raise transparency and good governance standards, thus enhancing their risk profile.”

The question now abounds, “What information is to be disseminated and weighed and who decides? Is the data based on science as it relates to climate issues? Is the data politically sensitive as it relates to social factors?”

There is value added in ESG evaluations but before broader introduction into the US municipal bond market more work is needed to ensure that its value is useful.

March 8, 2022

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rule Making Board
1300 I Street NW, Suite 1000
Washington, DC 20005

RE: Request For Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market (MSRB 2021-17)

Dear Mr. Smith,

The American Bankers Association¹ (“ABA”) appreciates the opportunity to provide feedback on the *Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market* (“the Request”) published for comment by the Municipal Securities Rulemaking Board (“Board” or “MSRB”). The Request is intended to obtain input from market participants on ESG trends in the municipal securities market and to help inform the MSRB’s mandate of protecting investors, municipal issuers, and the public interest by promoting a fair, efficient and transparent municipal market. The Board is specifically seeking information concerning the municipal securities market as it relates to: 1). The disclosure of information regarding ESG-related risk factors and ESG-related practices; and 2). The labeling and marketing of municipal securities with ESG designations. Accordingly, our comments below will be of considerable interest to the MSRB.

ABA and its members understand that broader environmental policy and goals, and more specifically, appropriate disclosures from all business sectors, have implications for all municipal market participants. Businesses and providers of capital need to identify and assess the financial impacts of potential climate risks in order to manage the global challenge of climate change.

ABA members are lenders, underwriters, servicers, investors, and asset management firms that

¹ The American Bankers Association is the voice of the nation’s \$23.7 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$19.7 trillion in deposits, and extend more than \$11.2 trillion in loans. Learn more at www.aba.com.

gather, assess, and evaluate climate risk-related information to make decisions for their investors and other stakeholders. Our members are also key providers of capital in their specific communities and lending regions in an economy that is focused to reduce its dependency on carbon-based energy. Thus, we welcome the opportunity to engage on this important topic on behalf of our members.

ABA has developed the following principles to guide our advocacy on climate related financial issues:

- Banks should be free to lend to, invest in, and generally do business with any entity or activity that is legal, without government interference.
- Prudential regulation of banks should not be a substitute or proxy for efforts to carry out broader social policy or to regulate specific businesses and industries.
- Prudential regulations should support orderly transitions in local economies and allow banks to finance the new technologies necessary for a lower-carbon economy.
- Regulation and supervisory expectations must be plausible, market-based and appropriately scaled to bank capabilities and the economic realities of the communities they serve.
- Capital and liquidity requirements should not be tied to regulatorily-driven scenario analysis or climate related financial stress testing, which are still in early developmental stages.
- Any disclosure requirements should be focused on what is necessary to inform business and risk management decisions.
- US financial regulators must work together closely, and with international bodies, to ensure consistent definitions, standards and avoid conflicting or overlapping requirements.

We believe these principles are consistent with the Securities and Exchange Commission's ("SEC" or "Commission") current efforts and should guide the Commission as they continue to consider regulating disclosures related to climate-related financial risks. With that in mind, we note that MSRB's Request raises concerns that may unnecessarily impede the Commission's ongoing efforts, and current initiatives, as it relates to disclosure requirements. ABA supports the

Commission’s pursuit of a deliberate and sensible climate risk disclosure regime, which contributes to effective climate risk mitigation and capital allocation throughout the broader economy. We believe that information about climate-related financial risks will allow market participants to more readily assess, price, and manage risk and allocate capital accordingly.

I. On the disclosure of information regarding ESG-related risk factors and ESG-related practices

a. The MSRB Must Adhere to Its Mandate and Focus on the Transparency of Disclosures

MSRB’s public statements, and expressed interest, in the issues of ESG-related disclosures does not align with its mandate.² While the MSRB has taken steps to add certain ESG indicators to the EMMA system, we believe that the reliability of environmental metrics will be challenging in the face of unestablished principles and guidelines globally. Further, the emerging nature of environmental risk management means that reliable quantitative measurements of relevant metrics may not be possible for many years. Therefore, market participants need additional collaboration and engagement with the Commission and other financial regulators to address climate and other environmental metrics.

b. A Flexible Approach to Disclosure Should be Sought, Weighing the Needs of Various Stakeholders

ABA supports a flexible, principles-based approach in setting ESG disclosure standards, which also includes climate-related financial risk disclosure. Future regulation will need to be flexible to reflect the differences in the circumstances and complexities of financial institutions, participants in the municipal market, and their respective business models. In fact, banks of all sizes are currently engaged in a variety of activities that, in turn, present a disparity of risk

² MSRB’s mission “protects and strengthens the municipal bond market, enabling access to capital, economic growth, and societal progress in tens of thousands of communities across the country.” There appears to be an inferential leap between the interest the MSRB expresses in the materiality of disclosures and jumping ahead of the SEC in this instance.

profiles. Take into account the challenges and uncertainties with data, definitions, and the opaque systems and expertise of climate-related financial risks for example. It is imperative that cost-effective measures are developed for institutions of all sizes to provide meaningful information for investors. With that said, we encourage regulatory agencies to leverage the work done on existing ESG disclosure frameworks that target the disclosure of climate-related financial risk, is so long as it is ultimately sufficient for investor protection. In the long run, market-wide climate-related financial disclosure will be expected to pivot quickly.

II. On the labeling and marketing of municipal securities with ESG designations

a. The Identification of Climate Designations will Evolve

Financial institutions have been making headway for several years as it relates to making significant investments in the areas of systems, modeling, data collection, training, and staffing to assess their climate-related risks and needs of their clients. As MSRB is aware, the business environment is constantly evolving and banks have adapted to, and managed, the changes of an evolving market-base and consumer preferences. Historically speaking, climate-related financial risks have been rooted into bank risk management practices and naturally appear through the processes of dynamic market conditions, economic and counterparty data that overwhelmingly contribute to strong risk management. Ultimately, we believe banks of all sizes will continue to adhere to traditional financial and credit risk tolerances and practices related to their balance sheets to effectively manage their risks.

However, the complete understanding of financial “materiality” can and will differ, and in many respects, conflict with those of investors and preparers of information as portfolio allocations and investment decisions are determined by nonfinancial (ESG-related) factors.³ For example, certain metrics or designations may not necessarily be considered financially material to the preparer, but would indeed be critical to an investor. Ongoing engagement with industry

³ ESG-related investment funds often have “yes/no” investment criteria related to board membership or involvement in activities considered “controversial”. Such metrics may not be considered financially material to the preparer, but would be critical to specific investors.

analysts, third-party data providers, and relevant industry regulators is important for the future of this important issue. Again, we believe that priorities for investors as it relates to ESG can and will evolve over time. Thus, ABA recommends the Commission and other financial regulators work to address how preparers consider materiality in an ever changing environment.⁴

Thank you for your consideration of our views and recommendations. We hope that our comments are helpful in furthering the development of the Board in this area, and we stand ready to engage further with the MSRB and with municipal stakeholders.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin M. Underwood". The signature is fluid and cursive, with a large initial "J" and "U".

Justin M. Underwood

⁴ Without relevant coordination, contradictory or inconsistent policies could be issued that impact the decision making information for investors.



March 8, 2022

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW Suite 1000
Washington, DC 20005

Re: Request for Information on Environmental, Social, and Governance (ESG) Practices in the Municipal Securities Market

Dear Mr. Smith:

The American Securities Association (ASA)¹ welcomes this opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) request for information on environmental, social, and governance (ESG) practices in the municipal securities market (Request).

Discussion

The ASA has actively engaged Congress and the Securities and Exchange Commission (SEC) regarding the debate over ESG investing and the growing market for ESG-labeled securities and products. Numerous fundamental issues and questions exist that regulators, issuers, and investors must consider when incorporating ESG criteria into their decisions or selecting certain investments based upon their ESG profile.

In June 2021, the ASA submitted comments, which included our Disclosure Resource Index, in response to the request for information on climate change and ESG disclosures initiated by then-SEC Acting Chair Herren Lee.² These comments highlighted the fact that there is no accepted "consensus" related to ESG investing, or whether the incorporation of ESG factors actually promotes long-term, sustainable returns for investors.

There is also growing concern surrounding the marketing of ESG-labeled products and the various, sometimes conflicting, set of metrics that are used to define the term "ESG." The SEC has acknowledged this problem, stating in an April 2021 "risk alert" that:

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a diverse membership of almost one hundred members located in every geographic region of the United States.

² <https://www.sec.gov/comments/climate-disclosure/c112-8906849-244183.pdf>





The rapid growth in demand, increasing number of ESG products and services, and lack of standardized and precise ESG definitions present certain risks. For instance, the variability and imprecision of industry ESG definitions and terms can create confusion among investors if investment advisers and funds have not clearly and consistently articulated how they define ESG and how they use ESG-related terms, especially when offering products or services to retail investors. Actual portfolio management practices of investment advisers and funds should be consistent with their disclosed ESG investing processes or investment goals.

The same problems the SEC identified in this risk alert for investment funds exist within the municipal market as well.

As the Release notes, there are no uniform standards that currently exist for ESG disclosures by issuers or for ESG-labeled municipal bonds. This has led to the creation of a niche industry of self-styled ESG funds, standard setters and certification services seeking to place their imprimatur on certain practices or disclosures. This has also increased the risk the public will be misled.³

That said, the Government Finance Officers Association's recent letter to the SEC importantly articulates the reality in this market stating that "the notion of developing a uniform set of metrics to measure or evaluate risks is so impractical as to be virtually impossible to develop or implement."⁴

As you are aware, this issue is especially acute in the municipal space. According to the SEC, there are over 44,000 municipal issuers and close to one million different municipal bonds outstanding in the United States.⁵ Each of these municipalities has their own unique infrastructure, geography, demographics, and other factors that make it impossible for a uniform set of ESG metrics – whether adopted by a private standard setter or government agency – to be adopted. Compare this to the challenges currently facing the SEC in adopting climate change disclosures for a universe of roughly 4,000 publicly listed companies.⁶

Further, municipal bonds – by their very nature – have long supported environmental and social policy objectives in communities all across the country. These bonds facilitate the financing of schools, local infrastructure and water projects, public health facilities including hospitals,

³ <https://amp.ft.com/content/ae78c05a-0481-4774-8f9b-d3f02e4f2c6f> "To promote the funds, seemingly vague words such as "sustainable" and "green" have been widely used. Some industry insiders believe they are on the brink of a mis-selling scandal in the mold of payment protection insurance, mortgages or diesel cars. "Inconsistency, omissions, lack of clarity — that's prime territory for mis-selling claims."

⁴ <https://www.sec.gov/comments/climate-disclosure/cll12-9027450-246107.pdf>

⁵ https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_munibondsmarket#:~:text=Currently%2C%20there%20are%20over%2044%2C000,cities%2C%20counties%2C%20and%20states.

⁶ <https://www.natlawreview.com/article/internal-dissension-sec-delays-climate-change-disclosure-regulations>





affordable housing, renewable energy, and other critical projects that benefit the environment and enhance the quality of life for millions of American.

Put another way, municipal bonds were ESG-friendly long before “ESG” became a marketable term that often encompasses issues that are financially immaterial to issuers of debt and equity.

Rating a municipality’s bonds – or incorporating ESG criteria into the credit rating of an offering as many credit rating agencies now do – can pose thorny questions that are not easily resolved. This problem is heightened when the issue is not directly impacted by an environmental factor (i.e. it seems reasonable to include the cost impact of a hurricane in the credit evaluation of a Florida issuer’s ability to repay, but should it be relevant for an issuer in Illinois?)

Various certification services, standard-setters, and credit rating agencies all use different criteria and processes to determine what a municipality’s ESG “score” may be or how ESG topics factor into a municipality’s credit rating. The risk inherent with this reality is that a small number of entities get to define what constitutes “ESG,” even if certain issues are wholly unrelated to the ability of a municipality to honor its financial obligations.

A far more preferable approach would be to allow the issuers the ability to tailor disclosures in a way that discusses risks or other factors that are material – including any factors that may fall under the broad bucket of ESG.

The ASA has urged the SEC and other regulators to be cautious when considering “uniform” standards and needlessly costly disclosures surrounding ESG. While there is often a temptation amongst regulators to step in and mandate uniform rules when market-based standards sometimes differ from one another, the SEC and MSRIB should avoid this approach. Instead, each regulator should continue to support disclosures made by municipal issuers that are tied to the concept of materiality which properly informs investors of the unique financial risks that a particular issuer may have.

It is also an open question as to whether financial services regulators have the legal authority to mandate any disclosures in this area without explicit Congressional authority to do so. As the Supreme Court said in *UARG v. EPA*, “[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy,’ we typically greet its announcement with a measure of skepticism.”⁷

⁷ *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency*, 134 S. Ct. 2427 (2014).





EMMA

We believe the MSRB should consider improvements to the Electronic Municipal Market Access (EMMA) system in addition to those enhancements that were implemented in 2018. Given heightened interest around ESG issues, a search function that allowed investors to easily access information around ESG-labeled bonds or ESG-related disclosures from issuers would help meet any demand for ESG information without applying uniform or prescriptive disclosure mandates.

Conclusion

In the context of the municipal bond market, we believe the SEC and MSRB should continue to support disclosures that allow investors to assess the *financial* creditworthiness of municipal issuers, while avoiding a regulatory adoption of any specific set of ESG or non-financial performance standards.

The ASA appreciates this opportunity to provide our perspective on this issue and look forward to continuing to work with the MSRB on issues affecting the municipal bond market.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
Chief Executive Officer
American Securities Association



Comment on Notice 2021-17

from Indiana Retail Investor,

on Monday, February 21, 2022

Comment:

A special ESG designation would in no way affect which municipal bonds I purchase. I look through the POS (preliminary offering statement) and if the project looks good, and is priced fairly, I will buy it. If a bond is trading in the secondary, I can easily find information about the issuer and decide for myself if it is a "responsible" situation. Finally a large percentage of munis automatically fall under the ESG umbrella simply by being munis with their proceeds used for Schools, Water Treatment, Housing, etc. IMO, labeling issues as ESG is not needed and seems like a waste of time and money.



Baker Tilly Municipal Advisors, LLC

**Comments to the Request for Information on ESG Practices in the Municipal Securities Market
March 8, 2022**

Submitted by the BTMA Disclosure Leadership Team: Brian Colton, Susan Reed, and Alyssa Glaser

Baker Tilly Municipal Advisors, LLC (“BTMA” or “Baker Tilly”), a registered municipal advisor, is one of the largest municipal advisors in the Midwest (10th for the total par amount of bond issues, and 3rd by the number of bond financings for 2021 according to Bloomberg). The firm is dedicated to serving clients, including municipalities, counties, K-12 schools, higher education, utilities and transit, and state governments.

- (1) Does the formulation and delivery of advice regarding ESG-Labeled Bonds raise any novel compliance issues for firms, such as challenges related to recommendations, pricing, suitability or other related legal obligations?

Baker Tilly believes there are some unique challenges presented by ESG-Labeled Bonds for a municipal advisor. Many of these challenges stem from the relatively new focus on ESG in the municipal securities market within the United States. Perhaps, the largest challenge is finding measurable ways to demonstrate the value of the designation. With limited available data to link a pricing differential to ESG-Labeled Bonds, it is more challenging to explain tangible market benefits to the designation. Unlike pursuing a rating or a credit enhancement, such as a line of credit or bond insurance, Baker Tilly is not able to show that the expected savings from obtaining the product are greater than the cost to procure the product. Nevertheless, it is also reasonable to believe that ESG-Labeled Bonds are likely to gain the attention of additional investors as the marketing of the ESG-Labeled Bonds becomes more prominent through visibility on web-based resources utilized by the primary and secondary market participants, such as Bloomberg, EMMA, and I-Preo. Although it is currently difficult to demonstrate a pricing benefit, this may become more measurable quickly, so ESG designations are an area that must be closely monitored.

Clients and municipal advisors are learning about ESG-designations simultaneously in many ways as ESG is now a “hot topic” across the marketplace, but there are still relatively few municipal issuers who have completed transactions with an ESG label. Our clients rely on us, as their municipal advisor, for advice, and we are still processing and evaluating the best approach for them to consider the designation. For example, if a utility is completing a project that would meet Climate Bonds standards for a “Green Bonds” certification, should a client consider pursuing and incurring the cost associated with a Climate Bond certification and its post-issuance requirements when the client may not realize a monetary benefit? Are there other non-monetary benefits to the designation that are measurable or important for the issuer to consider? On the other hand, the issuer could instead self-designate its bonds with an ESG-Label based upon another set of standards used in the municipal securities market, such as the International Capital Markets Association’s Green Bond Principles and develop its post-issuance plan. In Baker Tilly’s viewpoint, these are challenging questions. Regulators should convene market participants and industry groups to discuss considerations around ESG-Labeled Bonds. Additionally, there may be Rule G-42 considerations for municipal advisors related to assisting clients around ESG determinations.

- (2) Does the formulation and delivery of advice regarding ESG-Related Disclosures raise any novel compliance issues for firms, such as challenges related to recommendations, pricing, suitability or other related legal obligations?

Often information that may be classified as “ESG” has already been incorporated into an issuer’s official statements in various sections of the disclosure document. However, determining what is classified as an ESG disclosure is often difficult due to the myriad of interpretations of what “ESG” is and adds complexity to disclosure. There has been market discussion about whether creating an “ESG” section within an official statement would be beneficial. Due to the breadth of ESG considerations, it makes more sense to discuss these issues in the context of the areas affected by ESG consideration, such as the project description or issuer overview.

Disclosure around ESG has two basic purposes: disclosure of material ESG-related risks and disclosure related to an issuer’s ESG-focused initiatives or the financed projects. With respect to material disclosures, the consideration is whether the disclosure of the omitted information would have been viewed by a reasonable investor as having significantly altered the “total mix” of the information made available. Generally, disclosure is focused on financial risks or liabilities related to the issuer or the security. What a reasonable investor would want to know around ESG is more dependent on the investor’s ESG focus rather than the traditional materiality assessment, primarily focused on financial considerations. It is more challenging to determine what is relevant to ESG-focused investors. That being said, it may still be difficult for municipal advisors to assist issuers in compiling the information needed based on each issuer’s ability to obtain or prepare information as requested or required by investors. It is challenging to provide guidance to issuers about how much post-issuance reporting is needed to allow the issuer to benefit from the ESG-designation. Post-issuance commitments are important to ensure the representations made when bonds are offered come to fruition. However, they should be manageable reports for the issuer to provide. Additionally, incorporating any requirements into SEC Rule 15(c)2-12 would not be advisable as it may stifle ESG designations on bonds and would limit the ability for disclosure to grow organically with investor expectations around ESG-Labeled Bonds as the market and opportunities for these types of securities grows.

March 8, 2022

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Submitted electronically via <https://www.msrb.org/CommentForm.aspx>

**Re: Request for Information on Environmental, Social, and Governance Practices in the Municipal Securities Market
MSRB Notice 2021-17¹**

Dear Mr. Smith:

Bloomberg L.P.² respectfully submits this letter in response to the above-referenced notice issued by the Municipal Securities Rulemaking Board (“MSRB”) for information on environmental, social, and governance (“ESG”) practices in the municipal securities market (“MSRB Notice”).

We share the MSRB’s recognition that investor appetite for sustainable investing has led to a growing interest in ESG-labeled bonds as well as demand for disclosure of information regarding ESG-related risk factors and practices.³ Indeed, ESG-related disclosure and access to information have become a priority for many investors increasingly concerned with financial risks posed by climate change. We appreciate the MSRB’s engagement with stakeholders on this important topic to protect investors, municipal issuers, and the public interest by promoting a fair, efficient, and transparent municipal securities market.

Overview

One of the greatest challenges for market participants and regulators globally is the lack of publicly available, mandatory, and globally consistent reporting standards. Inconsistent reporting

¹ Request for Information on Environmental, Social, and Governance (ESG) Practices in the Municipal Securities Market, MSRB Notice 2021-17 (Dec. 8, 2021), available at <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2021-17.ashx?>.

² Bloomberg – the global business, financial information, and news leader – increases access to market data by connecting market participants of all stripes to a dynamic network of information, people, and ideas. The company’s strength – quickly and accurately delivering data, news, and analytics through innovative technology – is at the core of the Bloomberg Terminal. The Terminal provides financial market information, data, news, and analytics to banks, broker-dealers, institutional investors, government bodies, and other business and financial professional worldwide.

³ MSRB Notice at pp. 1-2.

standards across jurisdictions and market players can significantly impact the credibility, usability, and comparability of data. Presently, there are no uniform standards for ESG-related disclosures for bonds other than material ESG information required under existing disclosure standards. Current practices around identifying and communicating material ESG-related information rely largely on voluntary best practices and industry-led standards.

To that end, we offer some practical considerations regarding the MSRB's current ESG disclosure requirements. We also recommend that the MSRB look to frameworks and standards established by organizations such as the Financial Stability Board's Task Force on Climate-Related Financial Disclosures and the International Capital Markets Association, as well as follow developments in other jurisdictions (*i.e.*, European Union) that are leading in this area.

Practical Considerations: The Need for Guidelines and Consistency in Official Statements and Continual Disclosure Documents

At a high level, we believe the MSRB should consider issuing updated guidance regarding disclosure obligations of municipal securities issuers to address ESG-related disclosures. Currently, there is no consistency in the ESG-related disclosures found in official statements, which makes it difficult to obtain relevant ESG information without having to manually interrogate each document. Additionally, there is no protocol on where to find ESG information in continuing disclosures, specifically annual disclosures. Having a dedicated ESG section in official statements and the addition of a new ESG document type for annual disclosures would be helpful.

In addition, it is difficult to determine whether a Muni New Issuance is ESG or not in the absence of an issuer self-labeling as such or the bond purpose outlined in the official statement aligning perfectly with principles set out by the International Capital Markets Association ("ICMA"). For this reason, more guidance on standards around ESG disclosure in official documents would be helpful.

It is also important to consider the latency of ESG data, as there may be data quality issues associated with the data that is not disclosed to the market in a timely manner. It is important to make sure that ESG information is provided promptly so it remains relevant and is not outdated at the time it is disclosed. Further, ESG-related disclosures should be digital in format and contain machine-readable information that is common and comparable, in addition to binary or metrics-based answers.

However, we caution that the MSRB should not go beyond disclosures and impact market participants' ability to conduct their own ESG analysis. For example, ESG scoring of municipal issuers and bond issuances should be open to interpretation and analysis.

Task Force on Climate-Related Financial Disclosures (“TCFD”), International Capital Markets Association (“ICMA”), and the European Union’s Draft Regulation on Green Bond Standard (“EU GBS”)

Despite challenges to more directly standardizing ESG disclosures for bonds in the municipal securities market due to limitations posed by the existing regulatory framework, the MSRB should continue to encourage climate-related disclosures following a binding disclosure framework, such as the TCFD. MSRB may also benefit from considering ICMA principles, as well as to follow the development of the EU GBS, when it comes to green bonds.

Bloomberg chairs and provides the Secretariat for the TCFD.⁴ In June 2017, the TCFD released its final recommendations which provide a framework for companies and other organizations to develop more effective climate-related financial disclosures through their existing reporting processes. In our experience, the TCFD recommendations proactively address the growing investor demand for climate-related information, in a framework that investors are increasingly asking for. We have also found that TCFD plays a central role in driving corporate actions toward a low- and zero-carbon economy by facilitating constructive dialogues between institutional investors, financial institutions, and companies.

It is important to note that the TCFD recommendations were designed to be adopted by all organizations, including non-financial groups and the financial sector, from asset managers to asset owners, banks, and insurers. The TCFD designed the set of recommendations as a flexible framework for these organizations to produce decision-useful, forward-looking information on the financial impacts of climate change, which would accommodate the continued rapid evolution in climate-related modeling, management, and reporting.

The TCFD is now widely considered to be the key global framework for climate reporting. While many standards are important in the ESG reporting world, TCFD is the only framework to focus exclusively on climate-related reporting and is widely supported by companies, governments, and public sector bodies globally. As of the date of this letter, TCFD has over 3,166 supporters globally – including 1,329 financial institutions – responsible for assets of \$210.2 trillion. TCFD supporters span 93 countries and jurisdictions and nearly all sectors of the economy, with a combined market capitalization of \$25 trillion.

More than 120 regulators, central bankers and government entities around the world are TCFD supporters, including the governments of France, Belgium, United Kingdom, Canada, Chile, Denmark, Ireland, Japan, New Zealand, and Sweden. The G20, the G7, IOSCO and the Network

⁴ The TCFD is an industry-led task force created by the Financial Stability Board. Its members represent providers of capital, insurers, large non-financial companies, accounting and consulting firms, credit rating agencies, and others. The TCFD has developed recommendations for more effective climate-related disclosures to promote more informed investment, credit, and insurance underwriting decisions. It is chaired by Mike Bloomberg, founder of Bloomberg L.P. Bloomberg L.P. serves as the Secretariat of the TCFD. For further information on the TCFD, please see <https://www.fsb-tcfid.org/>.

for Greening the Financial System have encouraged companies issuing public debt or equity to disclose in line with TCFD recommendations.

The TCFD framework covers critical metrics and targets such as Scope 1, Scope 2, and where appropriate, Scope 3 GHG emissions, water, waste, and industry-specific key performance indicators.

We recommend that the MSRB consider TCFD's four overarching recommendations and 11 supporting recommended disclosures, as well as its guidance for financial industries to understand the type of disclosures required to provide end-users with higher quality information. In addition to TCFD disclosure, mandatory disclosures of ESG indicators applicable to financial market participants are needed to improve the quality of quantitative and science based ESG data.

The MSRB should also consider existing initiatives developed by international bodies such as the ICMA.⁵ ICMA's Green Bond Principles, for example, provide issuers guidance on the key components involved in launching a credible green bond, while also enabling investors to have access to information needed to evaluate the environmental impact of their green bond investments.⁶ These principles have been widely adopted by market participants and have gained credibility among investors.

Increased innovation in the sustainable debt market requires close monitoring by and guidance from regulators. When considering sustainable finance initiatives, it also may be helpful to follow EU legislative developments, such as the EU GBS.⁷ While the scope of the legislation captures European companies and market participants, the MSRB may glean additional insights from implementation of these legislative initiatives.

When it comes to the green bond standard, there is merit in developing a single standard for issuers to create a globally comparable universe of securities. There is also a need for additional clarification and regulation regarding the green bond market. Should there be a future consideration of developing a green bond standard in the U.S., existing principles set by the ICMA and the underlying principles of the EU GBS would provide a good foundation to build upon.

⁵ See ICMA's Principles, Guidelines, and Handbooks, available at <https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/>.

⁶ The Green Bond Principles: Voluntary Process Guidelines for Issuing Green Bonds, ICMA (June 2021), available at <https://www.icmagroup.org/assets/documents/Sustainable-finance/2021-updates/Green-Bond-Principles-June-2021-140621.pdf>.

⁷ Proposal for a Regulation of the European Parliament and of the Council on European Green Bonds (July 2021), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0391>.

Conclusion

Climate considerations and ESG issues will continue to be major areas of focus for market participants. As such, the MSRB should continue to encourage ESG-related disclosures and monitor developments in green bond standards in other jurisdictions. We hope that the recommended considerations detailed above will provide the MSRB with some insights on what may be done under the current disclosure scheme as well as other ESG trends to consider in the municipal securities market.

We appreciate the MSRB's willingness to consider comments on this topic and would be pleased to discuss any questions that may arise with respect to this letter.

Thank you.

Very truly yours,

A handwritten signature in black ink that reads "Gregory R. Babyak". The signature is written in a cursive, slightly slanted style.

Gregory Babyak
Global Head of Regulatory Affairs, Bloomberg L.P.

March 8, 2022

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Delivered electronically

Dear Mr. Smith,

The Bond Dealers of America (“BDA”) is pleased to provide comment on MSRB Notice 2021-17, “Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market” (the “Notice”). BDA is the only DC-based organization exclusively representing the interests of securities dealers and banks focused on the US fixed income markets.

ESG investments are the fastest growing segment of the financial services industry.¹ BDA’s members’ investor customers are increasingly demanding ESG investments for their portfolios. Some issuers have responded by designating their new issues as “ESG” bonds, or using some similar designation, and marketing them to specific investors. This trend raises regulatory and compliance issues, as the MSRB has recognized in the Notice. Still, we are generally pleased with the manner in which ESG standards and practices are developing and evolving. We do not believe that significant action—regulatory or non-regulatory—by regulators with respect to ESG labeling is called for. As the ESG segment of the municipal market evolves and matures, better data and tools will continuously emerge.

An important consideration in regard to ESG standards and practices in the municipal market is the uniqueness of municipal securities and municipal credits among other sectors of the capital markets. The majority of outstanding municipal securities financed essential public services like water and sewer systems, transportation infrastructure, schools and universities, hospitals and others. A majority of municipal securities are supported either by taxing authority or fees paid for essential services, resulting in the strongest credit market in the world outside the market for sovereign debt. In examining ESG practices in the municipal market, we urge the MSRB and other regulators to continually recognize these unique features and how they relate to ESG labeling. Moreover, there is a diversity of opinions within the investor world on the importance of ESG standards and which standards to follow. We urge the Board and other regulators to not interfere with investors’ ability to make those judgements for themselves in the context of ESG labeling.

ESG Bonds and MSRB authority

The MSRB does not have statutory authority over issuer practices with respect to new-issue bonds, including the issuer practice of designating bonds as “ESG.” While the Board is charged with protecting

¹ Cam Simpson, Akshat Rathi, and Saijel Kishan, “The ESG Mirage,” *Bloomberg*, December 10, 2021, www.bloomberg.com/graphics/2021-what-is-esg-investing-msci-ratings-focus-on-corporate-bottom-line/.

issuers and investors, that authority is limited to the regulation of municipal securities dealers and municipal advisors, neither of whom have control over issuer disclosure documents or issuer ESG designation practices. This lack of authority means there is no meaningful action the MSRB could take to address any hypothetical issues associated with issuer ESG designations, so the purpose of the Notice is unclear.

In the Notice the Board cites the RFI “as part of its broader engagement on ESG trends in the municipal securities market.” The Notice also states the Board is seeking input on “(1) the disclosure of information regarding ESG-related risk factors and ESG-related practices (‘ESG-Related Disclosures’) and (2) the labeling and marketing of municipal securities with ESG designations (‘ESG-Labeled Bonds’).” But nowhere in the Notice does the Board discuss what, if any, actions are available to the MSRB to address whatever issues arise from the Board’s inquiry. While BDA questions the appropriateness of issuing a notice and seeking stakeholder input on an issue that falls outside the Board’s authority, we offer our answers to the questions posed in the Notice.

Questions posed to dealers

Underwriting ESG-labeled bonds and compliance

Underwriting ESG-labeled bonds could raise unique and challenging compliance issues, including with respect to diligence duties. Our members are beginning to see that in some cases, an ESG designation on a bond may affect pricing, suggesting that the designation is material information.

Dealers are bound to have a reasonable basis to believe the truthfulness of statements made by issuers in the context of bond sales. This underwriter duty raises potential questions in relation to bonds purported to be “green,” including: What standards has an issuer followed in self-designating a bond as green? If the bond was designated by a third-party evaluation service, what standards did they use? Are those standards compatible with what US regulators expect with respect to ESG impacts of investments? Who is verifying that the issuer or third-party designation service is applying ESG standards correctly? These questions are difficult enough in the context of bonds designated as green. They are even more complex for bonds designated as social, where evaluation standards may be more subjective. There is no American standard for characteristics necessary to place an ESG label on a bond. Some firms have reported that they see an ESG designation as a “red flag” on an bond because it potentially exposes the underwriter to additional risk which may be difficult to mitigate given the uncertainties associated with ESG designations.

For these reasons dealers should be able to rely on issuer statements and third party opinions with respect to diligencing ESG bonds, including the opinions of third-party designation services or issuer officials who self-designated the bond. In addition, dealers should not be required to define ESG standards. ESG labeling is an entirely issuer-driven function for marketing purposes. Underwriters do not own or control the standards for ESG labeling and should not be liable for any irregularities that arise as a result of labeling standards applied by issuers and third-party experts.

Prioritizing ESG orders

For decades many municipal issuers have prioritized retail orders in their bond sales. Issuers specify retail order periods and define which investors are eligible to buy bonds during that period. Unfortunately, retail order periods have generated an extraordinary number of enforcement cases

making findings that dealers failed to follow issuer guidelines during retail order periods or that investors engaged in “flipping,” i.e., buying bonds during retail order periods and selling those bonds quickly for a profit once the bonds become “free to trade.”

Now we are beginning to see order priority granted to “ESG investors” on some transactions as well. We believe this trend has the potential to be an even more troublesome enforcement issue than retail order periods. There is no standard definition of ESG investor, and issuer definitions may not be adequate to distinguish among customers. Issuer definitions can vary from deal to deal even with the same issuer. This raises thorny compliance questions regarding, for example, the action that dealer should take if prioritizing ESG orders causes the issue to price worse for the issuer than marketing to general investors.

It is important that issuer priority of orders is explicit and clear in identifying and defining what an ESG investor is. There is no standard, regulatory or otherwise. Regulations should not make underwriters the arbiters of who qualifies for ESG order priorities.

Secondary market trading

One significant issue associated with secondary market trading of ESG-labeled bonds is reliance on the ESG designation. A bond labeled ESG may have received that designation years or decades before a secondary market trade. Unlike credit rating agencies, which monitor the credit quality of issuers throughout the life of the bond and change credit ratings as issuers’ financial conditions change, third-party ESG designators do not follow the performance of bond-financed projects throughout their lives. An ESG designation applied at issuance could be stale or even inaccurate at the time of a trade. Dealers quoting and trading ESG bonds in the secondary market have no way of knowing whether a bond still meets ESG standards years after issuance. Moreover, there are trillions of dollars of bonds outstanding which were issued before the trend of ESG labeling caught on. Some of those bonds may meet ESG standards and may be suitable for investors who are explicitly seeking ESG investments, but traders have no way of knowing.

Dealers should not be expected to determine whether a bond with an ESG label trading in the secondary market really meets the criteria for an ESG investment or is currently accurate. And Sophisticated Municipal Market Participants (SMMPs) should be expected to make their own determinations as to whether a bond trading on the secondary market meets their ESG requirements regardless of whether it is labeled ESG.

Questions posed to all

Systemic risks

Although it is challenging to quantify climate risks, there may be systemic or sectoral risks associated with climate change in general and the effects that a warming climate can have on state and local governments. We do not believe, however, that ESG labeling results in systemic risks.

In terms of what the MSRB might do to improve the transparency and application of ESG standards, one consideration would be to identify third-party verifiers/designators and publish information about them on EMMA, including a description of the standards they apply to designating investments. It is also important for regulators to distinguish municipal securities from corporate bonds and equities in the context of ESG labeling. State and local government do not necessarily face the same environmental,

social and governance issues as corporations. It is also important for regulators and market participants to recognize significant differences among municipal securities issuers with respect to ESG issues and risks they face. A low-lying coastal city, where climate risks are direct and identifiable, is different from issuers where the effects of climate change are general and amorphous.

ESG voluntary evaluation standards

The International Capital Markets Association (ICMA) Green Bond Principles² are the de facto standard for environmental bonds in the municipal market. There are no comparable standards for social and sustainability bonds.

BDA believes strongly that ESG standards should be voluntary and remain in the realm of industry and market groups as opposed to being imposed through regulation. While better standardization of ESG principles would be welcome, BDA believes those improvements will come organically as the ESG sector evolves and matures. Moreover, as stated above, ESG labeling is an issuer function. Issuers make the decisions on labeling and completely control the process of determining what standards and criteria to apply to labeling a bond. The responsibility and liability associated with ESG labeling should rest completely with issuers.

Industry ESG initiatives

BDA believes that industry initiatives and criteria established by third party standard setters can provide serious and meaningful standards for ESG-labeled bonds. While there is still no universal standard for ESG bonds, clear definitions and distinctions are emerging. For example, evaluation criteria for climate bonds tend to be more objective and quantitative while criteria for social and sustainable bonds tend to be more subjective. These standards will continue to be refined and developed by private third parties. Intervention by regulators or self-regulatory organizations is not needed.

New tools related to ESG bonds are steadily emerging. For example, Build America Mutual, the monoline bond insurer, in 2018 announced the initiation of BAM Greenstar, a climate bond assessment program.³ In another example, ICE Data Services announced last year that they had acquired risQ, a company focused on quantifying climate risk.⁴ Branded as “ICE Climate Risk,” the product allows users to “quantify climate risk exposure and make strategic decisions across municipal portfolios by maturity, obligor or geographical boundary.” Initiatives like these two and others will continue to emerge and evolve and will provide a means for investors and others to evaluate their investments through an ESG lens.

² International Capital Markets Association, “Green Bond Principles,” June 2021, www.icmagroup.org/assets/documents/Sustainable-finance/2021-updates/Green-Bond-Principles-June-2021-140621.pdf.

³ Build America Mutual, “Build America Mutual Launches BAM GreenStar Assessment to Identify Municipal Green Bonds,” press release, October 2, 2018, buildamerica.com/news/build-america-mutual-launches-bam-greenstar-assessment-to-identify-municipal-green-bonds/.

⁴ Intercontinental Exchange, “ICE Expands Climate Change and Alternative Data Capabilities With Acquisitions of risQ and Level 11 Analytics,” press release, December 9, 2021, ir.theice.com/press/news-details/2021/ICE-Expands-Climate-Change-and-Alternative-Data-Capabilities-With-Acquisitions-of-risQ-and-Level-11-Analytics/default.aspx.

Unequal access to data

We do not believe “competing ESG data” create meaningful investor confusion. There are public sources of climate data that could mitigate informational asymmetry with respect to ESG bonds. One example is the Federal Emergency Management Administration’s National Risk Index which, according to its developers, “is a new, online mapping application from FEMA that identifies communities most at risk to 18 natural hazards.”⁵ There are also data vendors in addition to ICE who market ESG data and tools to institutional investors. We do not see a role for the MSRB in distributing ESG-related data.

Comparison with other financial markets

The availability of ESG-related information in other sectors of the capital markets does not influence the functioning of the municipal market. Municipal bond investors in general recognize that disclosure standards differ between the municipal and corporate bond markets and do not expect the same type of disclosures from municipal issuers. The municipal market throughout its history has operated with a discrepancy in disclosure standards without significant disruption. The same would apply to any discrepancy in disclosure standards related to ESG.

ESG indicators on EMMA

Last year the MSRB announced a new feature on the EMMA new issue calendar, a field for whether the bond issuer has self-designated the bond as green, climate, social, or sustainable and a second field for whether the bond has been certified by a third-party verifier.⁶ We believe this is a constructive initiative, but we do not believe it is a major factor in expanding ESG transparency.

EMMA

We do not believe there are significant changes to the EMMA web site which the MSRB could implement based on existing sources of data and information which would enhance access for investors to ESG-related information. We do not believe in general that there is a significant role for regulators with respect to ESG labeling. There is nothing “broken” in regard to the developing practice of placing ESG labels on bonds, and no regulatory response is justified.

In summary, BDA believes the following principles should guide the Board and other regulators in regard to evaluating the state of standards and practices related to ESG labeling.

- The Board should take great care not to wander into areas of regulation which do not fall under its jurisdiction, especially issuer disclosure practices, including ESG labeling.
- The current state of ESG standards and practices is generally good. Tools and data available to investors to evaluate ESG investment continue to improve and evolve. There is no need for regulatory intervention in this area.

⁵ Federal Emergency Management Administration, “National Risk Index for Natural Hazards,” www.fema.gov/flood-maps/products-tools/national-risk-index.

⁶ Municipal Securities Rulemaking Board, “New EMMA Feature Helps Investors Identify Green, Social, Climate and Sustainable Bond Investments,” press release, October 25, 2021, www.msrb.org/News-and-Events/Press-Releases/2021/EMMA-ESG-Indicator.

- ESG labeling is an issuer function. The responsibility and liability associated with ESG labeling standards rest with state and local government and third-party designators, not with underwriters.

BDA is happy to provide these comments on the Notice. As always, please call or write if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Decker". The signature is written in a cursive style with a large initial "M".

Michael Decker
Senior Vice President



February 7, 2022
Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I St. NW
Washington, D.C. 20005

Comments re: MSRB Notice 2021-17

Dear Mr. Smith,

On behalf of Breckinridge Capital Advisors, Inc. (Breckinridge), I am pleased to offer the following comments re: the MSRB's "Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market" (MSRB Notice 2021-17). Breckinridge is an investment grade fixed income investment advisor with over ten years of experience integrating ESG analysis in its municipal investments.

Breckinridge believes that the MSRB should promote standardized, sector-based disclosure of material ESG information in municipal primary offerings and continuing disclosure materials. Doing so is consistent with the MSRB's mission to protect investors, issuers, and promote an efficient municipal market. Disclosure issues related to the emerging labeled bond market likely require less of the MSRB's attention, in our view.

As an initial matter, to protect retail investors, the MSRB should strive to ensure that substantially similar ESG information is clearly communicated to ordinary and professional investors, alike. There is little question that municipal investment professionals believe ESG data can help them price risk. All three major rating agencies incorporate sector-based, standardized ESG methodologies into their credit opinions, and investors now routinely purchase ESG data from private vendors to help them make investment decisions.

Ordinary municipal investors especially need better, standardized information concerning physical- and transition-related climate risks. Municipal bonds typically finance infrastructure assets that are immobile and must be maintained. Protecting these assets from physical risks like increased flooding, stronger storms, or more frequent wildfires will be costly in some cases. Likewise, the greenhouse gas (GHG) transition threatens municipal credit quality in certain sectors. Some coal-reliant electric utilities may struggle under the weight of more stringent renewable power standards. Some motor fuel tax-backed bonds may suffer from weaker tax collections if electric car sales reach an inflection point.

Some examples of material, sector-specific, climate-related disclosures that might be standardized include:

- In the local GO sector: issuers often have access to information like the date of their last building code update or land use plan revision. Many also have access to information regarding their greenhouse gas emissions (GHGs), either through a state agency or their own GHG inventory.
- In the water and sewer sector: relevant information about water loss rates, drought conditions, and water quality.
- Across sectors: information regarding whether capital plans account for climate related risks, and if so, how the issuer intends to fund these risks.

The above information is typically not reported, reported in lengthy documents, or communicated in boilerplate language in official statements. However, with some legwork, this kind of information can be reduced to a table format, sorted into ranges, and/or communicated in a binary way (y/n).

In Breckinridge's experience, standardizing material climate or ESG information is a time-intensive and iterative process. Any marketwide municipal ESG standardization effort will likely require collaboration from a broad swath of municipal market stakeholders. It will also require consistent revision and proactive data dissemination from owners of public databases. The municipal market's thousands of small issuers will need ready access to public databases to keep the time and expense of disclosure costs to a minimum.

Nonetheless, the success of the Sustainable Accounting Standards Board (SASB) hints that sector-based municipal ESG standardization is achievable. SASB standards were developed for 77 industries "each of which includes disclosure topics and performance metrics for sustainability risks and opportunities" that could materially affect the financial condition or overall risk profile of a company (see SASB's May 19, 2021 public comment letter to the SEC regarding climate-related disclosures). Of note, organizations like CDP and the U.S. Green Building Council have developed SASB-like frameworks for municipal governments.

Importantly, promoting standardized, sector-based material ESG disclosures is likely to help issuers. Again, using climate risk as an example, some small New Jersey shore communities with significant exposure to sea level rise may increasingly find fewer buyers of their debt if investors are poorly informed about their adaptation efforts or state laws that require



conformance with climate conscious building codes. Evidence for this proposition is presently unclear from pricing data. However, that likely reflects confounding variables such as the state-of-issuance, limited trading, the tax exemption and, quite likely, *poor disclosure* itself.

Standardized ESG disclosures would also promote a more efficient municipal market. While climate risk is largely unpriced in the municipal market today, it's clear that professional investors are preparing for a different pricing paradigm. Better disclosure of material ESG information should help assist with intermediation.

Labeled bonds require less attention from the MSRB as compared to ESG disclosure. Third-party verification providers and the securities law's existing anti-fraud provisions are likely adequate to meet the regulatory challenge posed by labeled bonds. Consider the following example: In May 2019, Standard & Poor's downgraded Trinity Public Utility District's (CA) series 2017 green bonds from AA- to A- based on "the district's exposure to claims relating to [existing and] future wildfire liability...". Had this wildfire risk been better disclosed, a reasonable investor, especially one interested in ESG factors, may have avoided the bond despite its green label. The crux of the disclosure problem is not in the green bond's shortcomings. It was in the issuer's lack of disclosure of wildfire risk. To the degree that the buyer of the green bond felt misled, the traditional anti-fraud provisions seem sufficient to the task.

Thank you for the opportunity to offer thoughts and recommendations on this important topic for our market.

Sincerely,
Adam Stern

Co-Head of Research
Breckinridge Capital Advisors, Inc.
125 High Street, Suite 431
Boston, MA 02110



March 8, 2022

Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Build America Mutual (BAM) appreciates the opportunity to respond to the Municipal Securities Rulemaking Board's request for information on Environmental, Social, and Governance Practices in the Municipal Securities Market. As a municipal bond insurer, our mission is to serve investors with durable, transparent protection against default while acting as an industry utility providing efficient funding and savings to municipal issuers. Achieving those goals in today's market requires embedding ESG considerations into multiple areas of our operations. As the MSRB reviews responses to this RFI and considers whether guidance or rulemaking is necessary and appropriate, it is important to distinguish between the issues related to ESG Risk Disclosure and those associated with ESG Labelled Bonds. After reviewing the RFI, we have assembled the following comments and recommendations.

OBSERVATIONS ON ESG RISK DISCLOSURE

Build America Mutual is the only mutual insurer of U.S. municipal bonds and has guaranteed timely payment of interest and principal on more than \$100 billion of debt since our 2012 launch. Because BAM's bond insurance policies are irrevocable, BAM's underwriting guidelines are extensive and regularly reviewed and amended to incorporate the latest evidence regarding credit risks, including both environmental risks (primarily from natural disasters that could pose long-term risks to municipal issuer revenues) and social and governance risks. BAM has considered ESG risks as part of our credit underwriting process for every transaction we have considered for insurance since our launch in 2012 (more than 25,000 series of new-issue U.S. municipal bonds). BAM's underwriters rely on both issuer disclosures and paid and free third-party risk-analysis tools to evaluate these risks.

ESG risk disclosures and analysis – particularly those related to the potential for physical and financial damage associated with severe weather events and other natural disasters – are becoming both more important and more common as the frequency and severity of flooding, wildfires, and other events have both increased in recent years. While the quality of issuer disclosure can vary, the information available to investors to assess and manage ESG-related risks has improved significantly over the past decade – both in terms of the number of issuers making risk disclosures and the content of those statements – as industry professionals and trade associations compile, share, and adopt



best practices and disclosure checklists, like the forthcoming report from the National Federation of Municipal Analysts’ “Green Bond Disclosure Task Force.”

One development, in particular, is worth noting: The publication of the National Risk Index¹ by the Federal Emergency Management Agency in August. The NRI is a free service that “visualizes natural hazard risk metrics [related to 18 natural hazards] and includes data about expected annual losses from natural hazards, social vulnerability, and community resilience.” The NRI offers data at the zip code level, and while those boundaries may not align perfectly with jurisdictional boundaries for municipal issuers, in our experience, they are localized enough to provide investors and other creditors with useful information.

Ultimately, we believe there is a role for the MSRB to play in helping to raise awareness among investors and issuers of these emerging tools and best practices, and to encourage issuers and financial professionals to continue this pace of innovation. In addition, we are enthusiastic about the potential for the Electronic Municipal Market Access (EMMA) system to make this information easily searchable and retrievable for investors – building on the success of the “IHS Markit Green Bond Indicator” that was implemented last year. We do not recommend regulations requiring specific ESG disclosures at this time, primarily because the nature of ESG-related risks means that the details of what constitutes material information can vary widely and rely on the facts and circumstances relevant to individual issuers. Broad guidance reminding issuers to approach disclosure of ESG risks with the same standard of materiality they apply to financial disclosures is likely to be the most effective tool to ensure both that investors and the market receive relevant and actionable information and data and that the market’s current pace of innovation is sustained.

OBSERVATIONS ON ESG LABELLED BONDS

BAM serves as a third-party verifier for green bonds sold by its members through the BAM GreenStar program. Between the program’s launch in October 2018 and March 1, 2022, more than \$4 billion of green bonds across 275 series were labeled as BAM GreenStar bonds – more municipal green bond transactions than any other verifier. The BAM GreenStar program was launched after more than six months of development that included extensive interviews with institutional investors and other market participants about their expectations for a labeled green bond, and the development of specific standards that allow BAM’s analysts to identify U.S. municipal bonds that align with the International Capital Market Association’s (ICMA) Green Bond Principles and are eligible for inclusion in the Green Bonds Database² maintained by the Climate Bonds

¹ <https://hazards.fema.gov/nri/>

² <https://www.climatebonds.net/cbi/pub/data/bonds>; Note that the CBI Green Bond Database is distinct from its more restrictive list of “Certified Climate Bonds.”



BAM

Initiative. Prior to launching the program, BAM was accepted as an approved verifier for CBI's Certified Climate Bonds program, an extensive review process that required us to demonstrate a robust and rigorous approach to applying the standards consistently and without conflicts of interest.

In our pre-launch research, the institutional investor community was unanimous in stating that each firm had developed its own, internal standards for determining whether a bond is eligible for inclusion in its ESG or impact investing standards, and would not solely rely on a third-party verification or self-labeling by an issuer when making that determination. We further learned that different investors can have significantly different goals for their ESG investment allocations, ranging from an exclusive focus on zero net carbon investments to a broader definition of impact investing that may not include any environmental considerations at all. We believe that BAM GreenStar and other green bond labeling programs provide value to the market by increasing transparency and helping investors identify potential candidates for their ESG portfolios, which they can then confirm with their further analysis. Given the wide diversity of opinions among investors, who are the ultimate end users of any labeling mechanism, we do not believe a single standard for labeled green bonds is in the interest of the marketplace. Instead, we encourage the MSRB to consider maintaining a database of third-party verification programs and their standards, which will help investors and issuers understand their options and select the provider that makes the most sense for their needs.

ESG-driven investment criteria can be a powerful tool for investors who want to encourage municipal issuers to adopt environmental and social impact considerations into their capital investment plans, but it is important to recognize that at this stage in its development, the market remains quite small, limiting its impact. In a review of all transactions in our portfolio, BAM concluded that between 15% and 20% of our insured par would potentially be eligible for a green designation (and that percentage would grow in future years as more issuers adopt capital plans that include specific strategies to reduce CO₂ emissions). However, despite recent growth, the green bond market still represented less than 5% of new-issue municipal bonds in 2021, well below its potential. That low volume, in turn, has impeded the ability to demonstrate a premium trading value for green bonds, because there is limited evidence of the sector's liquidity. BAM agrees with the signatories of the Green Bond Pledge³ that the most important strategy for improving their relevance is to expand the volume of labeled green bonds and other ESG investments. In the longer term, groups like the ICMA have publicly stated their intention to "raise the bar" for future green bond-funded investments as the labeled green bond sector grows and demonstrates sustained liquidity and premium pricing. BAM is a "registered observer" for the ICMA's Green Bond Principles governance process and supports that goal.

³ www.greenbondpledge.com



BAM

CONCLUSIONS

Ultimately, there is a substantial track record showing that market participants, including issuers, dealers, and municipal advisors have demonstrated that they take ESG disclosure issues seriously. That, in turn, has allowed the market to post impressive growth without significant credible accusations of “greenwashing.” We appreciate the MSRB’s interest in the disclosure issues surrounding ESG risks and ESG labeled bonds and value the role regulatory guidance can play in helping to improve transparency and investor confidence in this important market while allowing participants room to continue to embrace innovation and improve the effectiveness of their capital planning, bond issuance, and secondary market disclosure efforts. Please contact us at any time if you have follow-up questions.

Sincerely,

Laura Levenstein,
Chief Risk Officer
Build America Mutual

Michael Stanton,
Head of Strategy & Communications
Build America Mutual

Before the
Municipal Securities Rulemaking Board

Comments of the
California Green Bond Market Development Committee
(CGBMDC)

On
*Request for Information:
Environmental, Social and
Governance (ESG) Practices in the
Municipal Securities Market*

March 8, 2022

By
David Wooley
Cecilia Latapi
Michael Papanian
Secretariat for CGBMDC
Goldman School of Public Policy
University of California, Berkeley

Introduction

These comments are submitted on behalf of the California Green Bond Market Development Committee (CGBMDCC) in response to the MSRB's *Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market*, issued December 8, 2021.¹

The CA Green Bond Market Dev Committee ("CGBMDC" or "Committee") is a group of rating agencies, underwriters, bond counsel, investors, and government issuers interested in promoting the issuance of labeled bonds and increasing the availability of climate risk data in the bond market. The CA Green Bond Market Development Committee is chaired by the California State Treasurer, with the Goldman School's Center for Environmental Public Policy serving as Secretariat. The Committee seeks to advance education, training and policy research regarding sustainable finance for state and municipal governments. A key theme of the Committee's work is to enhance the consideration and disclosure of climate risk in financial instruments that support long-lived infrastructure in California.

The Committee is grateful that MSRB is paying attention to the impacts of ESG in the government bond market, especially in relation to climate risk, a factor we consider crucial for the long-term stability of the municipal securities market.

Our response to the RFI, focuses exclusively on questions 1, 5 and 7 in the section addressed to all market participants. We consider these the most urgent questions posed in the RFI and have been a subject of discussion in our Committee directly or indirectly since its creation in 2018.

These questions focus on the presence of ESG systemic risks in the municipal bond market, how the MSRB should address them, and how it could use EMMA to address market inefficiencies. After several discussions with our Committee members, it became evident that climate risk data is not generally available, and that, when climate risk data is presented, there often is no access point for such information that is presented.

The Committee's proposals seek to promote incremental change. The main goal is to facilitate the ability of issuers to make climate information easily accessible to investors, and to thereby support investors' ability to accurately price ESG risks.

The approaches suggested in these comments are just a few of the viable options available to the MSRB. Our comments should not be read to imply rejection of other approaches. We present these comments on behalf of the Committee, but these comments do not necessarily reflect the views of individual Committee members or their organizations.²

¹ <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2021-17.ashx?>

² For more information on the CA Green Bond Market Development Committee membership, see Appendix A.

Context for the RFI

The Request for Information (RFI) from MSRB is not an isolated event. The RFI process runs parallel to actions by other financial agencies in the United States on ESG and climate risk disclosure. For example, the Securities and Exchange Commission is increasingly focused on disclosures related to environmental, social and governance (ESG) issues, including climate change, board diversity, human capital management and cybersecurity risk governance. Climate change will be a particular priority, as evidenced recently by the SEC staff's detailed, comment letters on climate-related disclosures in SEC filings³. The Commission is expected to propose mandatory ESG-related disclosure rules for corporate issuers in early 2022.

Another example is the Federal Reserve Bank of New York, who developed a stress testing procedure to measure the resilience of financial institutions to climate-related risks. The Reserve managers introduced a measure called CRISK, systemic climate risk, which is the expected capital shortfall of a financial institution in a climate stress scenario. During this process, the Federal Reserve found that institutions with a large exposure to the fossil fuel industry are facing considerably higher risks.⁴

Finally, the RFI comes out in a context of increasing awareness of climate risk from investors across all segments of the financial markets. By way of example, during the last months of 2021, the California State Treasurer's Office sent an informal, and non-binding survey to financial institutions and brokers/dealers acting as counterparties to the Treasurer on certain investment transactions asking if their organizations adhere to risk disclosure standards such as the Sustainability Accounting Standards Board, the Global Reporting Initiative or the Task Force on Climate-related Financial Disclosure. It is significant that 35 institutions either did not respond or stated that they do not follow and/or are not subject to any standards or recommendations regarding climate risk disclosure. Only 18 of the 53 institutions follow one or more of the standards.

These comments first answer selected questions posed in the RFI for All Municipal Market Participants, and then make several specific recommendations on how the MSRB might operationalize climate risk disclosure in the municipal and state bond market.

³ <https://www.skadden.com/insights/publications/2021/09/sec-staff-issues-detailed-form-10-comments>

⁴ https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr977.pdf

Response to Selected Questions Posed in the RFI

Regarding Question 1, Systemic Risk

- 1) *Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?*

The ESG-related factors that the Committee identifies as systemic risks to the municipal securities market are mostly those related to physical climate risks. According to the Bank for International Settlements, physical climate risk events for financial institutions, and by inference, fixed income investors, can be divided into two categories:

Acute: extreme climate change-related weather events (or extreme weather events) such as heatwaves, landslides, floods, wildfires, and storms.⁵

Chronic: longer-term gradual shifts of the climate such as changes in precipitation, extreme weather variability, ocean acidification, and rising sea levels and average temperatures; and indirect effects of climate change such as loss of ecosystem services (e.g., desertification, water shortage, degradation of soil quality or marine ecology).⁶

The Committee focuses mostly on physical climate risks⁷ because those risks have the potential to impact employment levels, property values, local and state tax receipts, and local government financial strength. Low employment and falling property values arising from climate-induced changes to the local, regional and global ecology can affect governmental bond issuers' revenues, and therefore, their capacity to repay financial commitments over time.

The Committee is aware of the fact that there are few examples, so far, of municipalities, local or regional agencies who have struggled to repay their obligations due to climate impacts. But when those events have happened, the consequences in the financial market have been severe.

An example of this is the winter storm in February 2021 that had disastrous consequences in Texas, in large part because of its effect on the electric power and gas supply. Retail electricity suppliers were forced to purchase power at the maximum rate allowed under regulations, \$9,000 per megawatt hour, versus the average 2020 price of \$22. Natural gas fuel prices jumped too, due to supply interruptions and infrastructure failure and spiking demand. Almost five million customers went without power and 246 people died. The credit implications of this environmental catastrophe became evident almost immediately.

⁵ <https://www.bis.org/bcbs/publ/d517.pdf>

⁶ <https://www.bis.org/bcbs/publ/d517.pdf>

⁷ Compared to transition risks, which are the risks related to the process of adjustment towards a low-carbon economy.

One company, Brazos Electric Power Cooperative (BEPC), filed for bankruptcy citing debt owed to ERCOT. BEPC's troubles had repercussions for CoServ Electric, otherwise known as the Denton County Electric Cooperative. CoServ is the largest member of BEPC's distribution cooperative, taking a third of its electric sales, and it is obliged to buy from BEPC. In March, Fitch downgraded CoServ from AA- to A, based in part on the expectation that the cooperatives will be forced to bear BEPC's costs as determined by the bankruptcy court.

Of the 27 rated electric cooperative, municipal electric, wholesale, and combined utilities in ERCOT, S&P lowered the ratings on 14 given the financial effects of the storm, their view of ongoing physical risks, and governance risk associated with ERCOT that could negatively affect financial performance. The three utilities that exhibited the most pronounced rating changes among the utilities adversely affected by the winter storm were Brazos Electric Power Cooperative Inc. (D - in default), the Brazos Sandy Creek Electric Cooperative (BSC) (CCC), and the Rayburn Country Electric Cooperative (Rayburn) (CCC).⁸

Another example arises from recent California wildfires. In late 2018 a wildfire struck Butte County, California, killing 85 people and destroying 19,000 buildings. The most damaging and deadly fire on record in the state devastated the town of Paradise and 90% of the 27,000 residents left, at least temporarily.

Paradise was one of three obligors in a pool for a series of bonds issued as part of the California Statewide Communities Development Authority's Pension Obligation Bond Program, which allows local governments to finance unfunded pension liabilities. Moody's downgraded the relevant securities, the 2007 Series A-2 Bonds, from B1 to Caa3 in January 2019. The credit ratings agency said that the damage to Paradise would prevent it from paying debt service on its share of the bonds in the short term. At the time of the downgrade, its share of the debt service outstanding was 41%.

As average temperatures rise, climate science finds that acute risks such as heat waves and floods grow in frequency and severity, and chronic risks, such as drought and rising sea levels, will intensify.⁹

Credit ratings are also beginning to reflect climate risk, rewarding municipalities that implement climate-resilience strategies. For example, in 2020, S&P gave the City of Norfolk a AAA rating, highlighting the City's proactive management of its environmental, social, and governance risks.¹⁰

Asset managers (e.g., Fidelity, BlackRock, Vanguard) and other investment funds also face challenges when it comes to ESG disclosure. Asset owners' apprehension of climate risk is

⁸<https://www.spglobal.com/ratings/en/research/articles/211101-texas-winter-storm-brought-downgrades-and-spurred-response-among-public-power-and-electric-cooperative-utilit-12164982>

⁹ <https://www.mckinsey.com/business-functions/sustainability/our-insights/climate-risk-and-response-physical-hazards-and-socioeconomic-impacts>

¹⁰ <https://norfolkdevelopment.com/sp-raises-norfolks-credit-rating-to-aaa/>

growing, managers are being asked how they are addressing such risks both in the corporate and municipal bond markets. Asset managers rely on ESG data companies and consulting firms for advice on how to respond to the requests from the asset owners, but not all asset managers have the resources to engage in this data collection and reporting effort.

Climate risks are especially damaging for revenue bonds, where the repayment of the bond depends on the ability of the project and the obligor to collect revenue and direct such revenue to bond repayment. The default risk can increase dramatically as a result of climate driven weather events, particularly if the asset that creates revenue is affected by a series of climate catastrophes (e.g., recurring coastal hurricanes or inland riparian flooding).

Weather catastrophes have historically been perceived as one-time occurrences. However, under climate change scenarios, flooding and other climate-enhanced weather events have begun to increase in frequency. Record setting floods (Germany, China, Tennessee), heat events (Pacific Northwest of the U.S.), drought (Southwest U.S.), extreme cold (Texas), and wildfires (Western U.S., Siberia, Southern Europe) now beset virtually every region of the world. Society already feels the impacts of climate change. According to the latest available report from Intergovernmental Panel on Climate Change,¹¹ failure to adapt to climate change and to reduce emissions will adversely affect human well-being for centuries.¹²

Regarding Question 2, Other Markets

5) Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG-related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?

Yes. The Committee observes that there are two markets where ESG-related information disclosure is more advanced and whose disclosure and pricing practices could influence certain sectors of the municipal bond market in the US.

The first market is the European bond market, in which *greenium* - or a green bond premium - has emerged for bond issues that finance climate friendly-infrastructure and businesses. The *greenium* arises when a labeled issuance enters the primary market at a higher price and therefore offers a lower yield compared to matching outstanding non-labeled debt. There are a number of large governmental issuers in the US taxable municipal bond market who participate in the European markets.

¹¹ The Intergovernmental Panel on Climate Change (IPCC) is the United Nations body for assessing the science related to climate change.

¹² <https://www.ipcc.ch/report/ar6/wg1/#FullReport>

The Committee feels strongly that the American municipal market will eventually follow the same trend, creating an economic incentive for local issuers to issue labeled bonds and promote their climate risk hedging strategies. This could create an incentive for a wide variety of issuers to issue labeled bonds, which, in the absence of any market standards could result in either asymmetric or incomplete information available to the broadest array of municipal bond buyers.

The Committee believes that the MSRB can serve a valuable role in the development of a readily accessible, centralized repository of information provided by issuers.

Regarding Question 7 - EMMA.

7) What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds, and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

After several discussions with Committee members, we recommend the following:

- Include specific functionality on the EMMA platform to enable issuers, on an optional basis, to provide information relating to climate risk and mitigation to investors seeking such data.
- Create alerts for green issuances in “Alert Groups”

Currently, the platform EMMA allows users to create “alerts” for market events for selected issuances. However, it would be very helpful for investors to have a built-in “Group of Securities” alert that focuses exclusively on labeled bonds, allowing investors to decide if they would like to receive trade alerts, primary market documents, variable rate security documents, and continuing disclosure documents market events, etc.

EMMA should provide the option of receiving via email the documents associated with post-issuance disclosure for labeled bonds, including any use of proceeds documents and environmental impact reports, categorizing both disclosures as “voluntary event filings”.

The information relating to the labeled bonds on EMMA should state whether the issuer has self-certified the status of the bonds as labeled, or if has commissioned a third-party certification. EMMA should be modified to upload third party verification, where applicable, into the Document archive of a green issuer.

Because verification documents don’t have a predetermined location in EMMA, analysts at investment funds, academic researchers, and others have difficulty locating the information issuers disclose in regard to labeled bonds. Some issuers integrate the second party opinions

and green frameworks to the bond's official statement, while others provide those documents independently of EMMA or official statements, and some do not share that information with the investors at all. Therefore, we suggest adding any verification documentation under Operating Filing(s), and add any ESG information disclosed after issuance, under Event Filing(s), on an optional basis.

Recommendations

The Committee encourages the MSRB to facilitate climate risk disclosure by issuers. The MSRB, through its market education role, can improve information flow on climate risk through changes to EMMA and via best practice guidelines. The Committee staff developed a list of information that could be useful to issuers, and the investment community in assessing climate risk. This list could assist MSRB in developing a method by which to structure climate risk disclosure.

The MSRB should consider adding checkboxes or a classification system in EMMA that provides visibility for issuers into climate risk data available from the issuer. The questions below suggest categories of information that could be used to formulate check boxes or a classification system.

In addition, the MSRB could develop a best practice guideline that recommends issuers respond to the following questions on climate risk on EMMA. See above for suggestions that would allow issuers to post documents related to climate risk on EMMA in a readily accessible manner.

Ten Questions

1. Does the issuer adhere to or use sustainability and risk disclosure metrics or standards promulgated by:¹³

- The Global Reporting Initiative (GRI), GRI Standards for Cities, [Global Reporting Initiative \(GRI\) Sustainability Reporting Standards](#).
- ISO 37101:2016 (establishes requirements for a management system for sustainable development in communities).
- Sustainable Sites Initiative, ([American Society of Landscape Architects](#)) national guideline and performance benchmark for sustainable land design, construction and maintenance practices.
- LEED for Cities and Communities (<https://www.usgbc.org/leed/rating-systems/leed-for-cities>).
- U.N. Sustainable Development Goals.
- Metrics from the Green Cities Index

¹³ This list is by no means exhaustive. The MSRB could offer this list as examples of methodologies, without specifically endorsing any particular approach.

- TCFD Disclosure Recommendations¹⁴
 - Other
2. Has the issuer established governance, processes, systems and oversight controls to provide for the ongoing completeness and accessibility of its climate risk disclosures?
 3. Does the issuer present its climate risk disclosures on its website? If so please provide a link to that presentation.
 4. Does the issuer have a climate action plan and if so, does the plan include a current inventory of factors being measured?
 5. For any long-lived infrastructure to be funded by the issuer's capital funds, did the issuer perform an assessment of the vulnerability of the infrastructure, over its expected life, to climate change or climate-enhanced storm, drought, flooding, heat storms, polar vortex, wildfire and other such events?
 6. For any long-lived infrastructure to be funded by the issuer's capital funds did or does the issuer plan for design, equipment or other measures to mitigate the impacts described in Item 4, above?
 7. For any long-lived infrastructure to be funded by the issuer's capital funds derived from sale of a labeled bond (e.g. climate, sustainability, ESG or equity bonds), did the issuer perform an assessment to identify opportunities to reduce greenhouse gas, air and water pollution from the construction and operation of the infrastructure?
 8. For any long-lived infrastructure to be funded by a labeled bond, what aspects of the design and operation of the asset have the effect of reducing greenhouse gasses from the asset's construction and operation of the asset over its expected service life? Examples might include:
 - use of low or zero carbon building materials or methods.
 - low or zero carbon fuels and energy sources, energy efficient equipment and products, water use efficiency and recycling.
 - heat island reduction measures.
 - carbon sequestration in landscapes.
 - vehicle charging.
 - indoor air filtration in areas subject to wildfire or concentrated transport equipment, vehicle or vessel emissions.

¹⁴ <https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf>

- vehicle-miles-traveled reductions, and measures to increase resilience of the asset to climate related emergencies).
9. If the financing instrument constitutes a labeled bond, has the project been certified as meeting accepted standards for these labels by an independent certifier?
 10. How does the organization incorporate environmental factors into its capital improvement plan (CIP)? Detail might include how climate change mitigation, biodiversity, mitigation of natural disaster and other known environmental risks, energy efficiency, renewable energy, and/or environmental equity are incorporated into the entity-wide CIP and/or into the design of capital projects.

Conclusion

The proposals presented in this document are initial steps to begin incorporating climate and ESG-related systemic risks in the municipal bond market. Greater transparency can be expected to produce more efficient markets and refined pricing of municipal bonds, to the benefit of issuers and investors alike.

We believe that change in this direction has to be incremental, empowering all market stakeholders to gradually evolve in their understanding of the risks they are exposed to, and best ways to measure and disclose them.

We acknowledge that that best practices on climate risk disclosure are just emerging. In this environment MSRB should facilitate the information flow and accessibility that will encourage market participants to standardize their approaches in the most efficient manner possible. Any climate and ESG risk disclosure mechanisms adopted by the MSRB must be flexible enough to accommodate shifts in perspectives and methodologies.

Respectfully submitted,

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March 8, 2022

Annex 1: California Green Bond Market Development Committee
 Members

CA State Treasurer's Office	Fiona Ma & Tim Schaefer
Climate Bonds Initiative	Alex Rau
NV5	Jeffrey Cooper
KPMG	Daniel Feitelberg
UC Berkeley	Kiran Jain
CalSTRS	Matt Schott
S&P	Jenny Poree
San Francisco Public Utilities Commission	Mike Brown
LA Metro	Cris Liban
Ceres	Kirsten Snow Spaulding
Sempra Energy	Kathleen Brown
California Statewide Communities Development Authority	Catherine Bando
Stradling, Yocca, Carlson & Rauth	Kevin Civale
Ramirez	Raul Amezcua
Revalue	Mark Hall
NRDC	Doug Sims
Goldman Sachs	Ruth Pan
Kestrel	Monica Reid
UBS	Sandra Kim
Local Government Commission	Julia Kim
Scripts Institute	Margaret Leinen (Gwen Nero)
Sacramento Utility District, Board member	Heidi Sanborn
Orrick	Bob Feyer
CA Pollution Control Financing Authority	Nancee Robles
Governor's Office Planning and Research	Nuin-Tara Key
Governor's Office of Business & Economic Development	Dan Adler

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David Wooley	Director, Environmental Center, UC Berkeley Goldman School
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Michael Paparian	Climate Bonds Initiative
Caitlin MacLean	Milken Institute
William Collins	UC Berkeley & Lawrence Berkeley National Lab



March 08, 2022

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I St NW Suite 1000
Washington DC 20005

VIA Electronic Filing

Re: MSRB Request for Information on Environmental, Social and Governance Practices in the Municipal Securities Market.

Dear Mr. Smith,

The Center for American Progress (CAP) is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans. As part of our mission, we seek to protect investors, worker savings and retirement funds, and the public from risks associated with climate change, inadequate human capital management, lack of workforce diversity, and other environmental, social and governance matters. CAP also maintains a 401(k) retirement plan for all of its employees.

Retail and institutional investors who are interested in purchasing securities increasingly want more information about potential risks associated with environmental, social, and governance (ESG) factors, including vulnerability to climate-related risks, human capital management practices, board and workforce diversity, and political spending, among others.

The growth in investor demand for securities with positive ESG attributes has outpaced regulatory requirements, leading to two separate challenges. First, issuers are not providing adequate risk disclosures. With respect to climate change, these risks include physical risks, such as fires, floods, storm surge during hurricanes, sea level rise, drought, and extreme heat; and transition risks, such as changing federal policies around combustion of fossil fuels, consumer demands, and societal norms. While many issuers include some representations about the sustainable or climate-friendly aspects of the underlying project, often this is boilerplate language and is not audited for reliability.

Investors in municipal securities may be blindsided if climate-related or other ESG risks materialize that were not anticipated or disclosed by issuers. For instance, rising costs could come from facility damage tied to a weather event or escalating capital needs tied to climate adaptation. Falling revenues could result from a severe service outage or changing demographic and economic production trends as residents and businesses alike respond to the pressures of climate change. Retail investors are particularly

vulnerable to these risks, including with respect to municipal securities embedded in larger funds.

Second, and equally problematic, many municipal bonds are labeled as green, sustainable, or ESG based on frameworks that do not include environmental performance standards grounded in climate science or environmental justice performance standards developed through robust community input. In fact, many purportedly green bonds rely on a process that is essentially self-certification. The process begins with a municipal issuer developing their own green framework that may or may not have any grounding in science or quantitative measures. Next, the issuer contracts with a third-party to attest to the fact that a particular issuance conforms to the issuer's own green framework, resulting in the bond being labeled and marketed as green and sustainable. This de facto self-certification undermines investor confidence, posing a substantial threat to market integrity. Moreover, there is no standard practice among municipal securities brokers, dealers, or advisers of verifying these claims.

As both a market participant and a policy institute that advocates for fair capital markets and transparency around ESG matters, CAP is responding to questions in Section E of the RFI. In this letter we maintain that climate change is indeed a systemic risk. We recommend that the MSRB require municipal securities brokers, dealers and advisors to disclose their processes for evaluating sustainability, climate-related risk, and other ESG factors in selecting investments, creating ESG-related funds, and offering investment advice, including whether their analysis is science-based and whether and how the issuer's representations have been verified.

In addition, we recommend that the MSRB consider changes to its EMMA platform to facilitate more transparency on these matters and make ESG-related information and documentation provided by issuers easier to locate.

Finally, we encourage the MSRB to work with the SEC to enhance disclosure rules for underwriters of municipal securities, specifically requiring them to obtain and review the issuer's statements about climate emissions and climate risk and secure the issuer's commitment to continuing disclosures on any climate statements or events.

Climate change poses a systemic risk to the capital markets

Climate change represents an existential threat to civilization, and many negative climatic changes are occurring faster than research had initially suggested, reducing the time remaining to avoid the very worst effects of a warming planet. This rapid and destabilizing change presents significant risks to the financial system and specifically the municipal bond market, which currently has more than \$4 trillion in outstanding issuances.¹

¹ Securities Industry and Financial Markets Association, "US Municipal Bond Statistics," available at <https://www.sifma.org/resources/research/us-municipal-bonds-statistics/> (last accessed March 2022).

Individuals, or retail investors, directly or indirectly hold the overwhelming majority of municipal securities, and they often hold them until maturity. Thus, risks associated with these municipal securities may have widespread impacts in the economy. Municipal securities are particularly vulnerable to the physical risks of climate change. When climate disasters strike, the projects themselves may be damaged or destroyed, increasing costs of completing the project or delaying completion, which is probably necessary before revenues can be generated from the project. In some cases, the entire municipality may be destroyed, as occurred when fires destroyed the town of Paradise, California. In such situations, credit enhancements may not be adequate to make bond holders whole.

Yet, the climate-related risks faced by investors, including municipal securities investors, are not uniform. For instance, a low-lying coastal community that experiences frequent tropical storms and hurricanes and which is heavily dependent on sales and transitory occupancy taxes paid by tourists presents a different risk profile than an inland community with a diversified economic base. Unfortunately, issuer disclosures typically offer no detail beyond mentioning the existence of climate change. As a result, investors have no meaningful data to weigh the differential climate risks presented by various issuances. At a minimum, this lack of information decreases the likelihood that the municipal bond market is appropriately pricing climate risk. And, more concerning, it increases the likelihood that perhaps millions of investors will be harmed when a widespread climate disaster occurs.

Large-scale catastrophic damage to municipally-financed infrastructure from increasingly severe weather events is not a theoretical or uncertain concern, and there is data available for estimating the potential impacts. For instance, in 2017, Hurricanes Irma and Maria devastated the facilities of the Puerto Rico Aqueducts and Sewers Authority (PRASA). According to PRASA, the storms forced the suspension of meter reading for 60 days, causing a loss of \$271 million in revenue.² PRASA also estimated that the incremental costs associated with storm response would be \$396 million and include capital repairs of \$769 million, for a total cost of \$1.4 billion.³ Unfortunately, the severe financial shock faced by PRASA is a harbinger of what is to come for other municipal issuers.

Acute financial shocks are not the only climate-related threat to municipal securities investors. Long-term structural cost increases due to climate change adaptation also present risks. For instance, the Miami-Dade Water and Sewer Department (WASD) operates as a separate enterprise unit of the county government. This means that WASD leverages its operating revenues to finance its capital program. Many of WASD's outstanding issuances extend out for twenty to thirty years. During this time, the Department will have to contend with rising costs associated with climate adaptation. Drinking water in South Florida comes from the Biscayne Aquifer, which is a shallow,

² Puerto Rico Aqueducts and Sewers Authority, "Revised Fiscal Plan to Incorporate Modifications to the Certified Fiscal Plan as a Result of the Impact of Hurricanes Irma and Maria" (San Juan: 2018), available at <https://emma.msrb.org/ES1137216-ES889836-ES1291154.pdf>.

³ Ibid.

porous limestone formation highly vulnerable to saltwater intrusion and contamination. Both the pace and severity of sea level rise will affect the capital outlays WASD must make (and by extension the degree of leverage to its operating revenue stream) to maintain the viability of the Biscayne Aquifer. At some point, WASD may have to make capital-intensive outlays to secure potable water farther inland.

In managing their portfolios, investors typically view bonds as a reliable investment that provides lower but more stable returns. This is all the more reason why the quality of bond disclosures is essential, especially when it comes to climate risks. Yet, as the PRASA and WASD examples demonstrate, climate change very likely will saddle issuers with abrupt and unexpected costs and reduced revenues as well as escalating, structural cost challenges —both of which will threaten creditworthiness. The credit effects of these climate risks should not be simply relegated to post-issuance ongoing disclosures but rather incorporated into the original issuance to the greatest extent possible through quantitative sensitivity analysis covering a range of possible cost and revenue scenarios.⁴

While recognizing the limitations of the MSRB's authorities, CAP believes that the Board can take meaningful steps to improve transparency around climate change and other ESG risks associated with municipal securities.

Recommendations

The widespread practice of self-certification by municipal securities issuers and the practice of greenwashing raise serious concerns for investors. While some existing third-party frameworks for certifying green bonds are more science-based than others,⁵ investors need consistency and comparability as well as reliability of disclosures in order to make investment decisions. The following measures could begin to provide investors with the information they need.

The MSRB should require municipal securities brokers, dealers, and advisors to develop and publicly disclose their procedures for verifying ESG claims related to municipal securities included in ESG-labeled funds or recommended for investors. The MSRB has authority to require municipal securities brokers, dealers and advisors to make disclosures and produce documents that provide “clear and concise information about investment objectives, strategies, costs, and risks.”⁶ Retail investors seeking to invest in companies that meet ESG-related goals rely on these intermediaries to reliably direct them to ESG companies and funds and have a right to know how their broker,

⁴ See, e.g., *Climate Change and Municipal Finance*, available at <https://www.americanprogress.org/article/climate-change-municipal-finance/> and generally <https://www.americanprogress.org/article/secs-time-act/>.

⁵ For a discussion of current green bond labeling, see *A Framework for Strengthening Municipal Market Green Bond Labeling*, available at <https://www.americanprogress.org/article/framework-strengthening-municipal-market-green-bond-labeling/>.

⁶ Securities and Exchange Act of 1934, 15 U.S. Code Section 78o-n, available at <https://www.law.cornell.edu/uscode/text/15/78o>.

dealer or advisor selected the investments offered, including whether the ESG claims are science-based and whether the issuer's claims have been verified and by whom. This is particularly important since municipal securities are traded in a decentralized over-the-counter market that is illiquid and opaque. A relatively small number of brokers and dealers handle the majority of trading in municipal securities, so their role in protecting investors is critical. Moreover, ESG claims may affect pricing, so assessment of these claims is an essential aspect of brokers' and dealers' duty to exercise due diligence in establishing the market value of a municipal security.

Alternatively, or in addition, the MSRB should work with the SEC to amend Rule 15c2-12,⁷ to require municipal securities underwriters to engage with issuers on critical climate-related matters. When issuers make statements regarding climate emissions, climate risk, or other ESG matters, underwriters should be required to review the issuer's statements and secure the issuer's commitment to provide continuing disclosures to investors on any climate-related statements or events.

The MSRB should update EMMA to make it easier for issuers to post more detailed and machine-readable disclosures around climate emissions, climate risk, and other ESG factors, as well as documents providing evidence of verification by third parties. This information should be easily located on the website and categorized or labeled in such a manner that viewers can more easily compare bond issues. In addition, the MSRB should work with the SEC as it develops climate disclosure and other ESG rules and make revisions to the format of the EMMA website that will encourage issuers to list information consistent with the SEC rules for corporate issuers.

Other helpful steps the MSRB could take include:

The MSRB should conduct research and educate municipal securities issuers, investors, market participants, and the public about climate emissions, climate-related risks, and other ESG factors, including how those factors can affect the value and resilience of municipal securities issuers and the underlying projects being funded.

Finally, the MSRB should publicly acknowledge that climate change poses a systemic risk to the U.S. municipal securities market.

Conclusion

As the incidence and severity of climate events accelerate, it is critical that the MSRB, working with the SEC, take steps to ensure that investors and other market participants have the information they need to protect their hard-earned savings from climate and other ESG risks. Actions like those recommended here will provide more transparency

⁷ U.S. Code of Federal Regulations, 17 CFR Section 240.15c2-12, available at <https://www.law.cornell.edu/cfr/text/17/240.15c2-12> (last accessed February 2022); and recent amendment at U.S. Securities and Exchange Commission, Amendments to Municipal Securities Disclosure, Release No. 34-83885, February 27, 2019, available at <https://www.sec.gov/rules/final/2018/34-83885.pdf> (last accessed February 2022).

and will enable investors to make informed decisions and invest with confidence. Over time, greater transparency around climate emissions and risk will also help move capital toward those municipal securities investments that are more resilient and in turn provide some protection against systemic risk to the financial system.

Sincerely,

Alexandra Thornton
Senior Director, Tax Policy

Kevin DeGood
Director, Infrastructure Policy



Ceres

Ceres Accelerator
for Sustainable Capital Markets

March 2, 2022

Mark T. Kim
Chief Executive Officer
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Dear Mr. Kim and Mr. Smith:

We are writing regarding the MSRB [Request for Information on Environmental, Social and Governance \(ESG\) Practices in the Municipal Securities Market](#). As the principal regulator of the \$4 trillion municipal securities market, the MSRB plays a vital role for municipal securities across the country.

It is a pleasure to submit comments on behalf of [Ceres](#) and the [Ceres Accelerator for Sustainable Capital Markets](#). Ceres is a nonprofit organization with over 30-years of working on climate change. The Accelerator works to transform the practices and policies that govern capital markets in order to reduce the worst financial impacts of the climate crisis. It spurs capital market influencers to act on climate change as a systemic financial risk—driving the large-scale behavior and systems change needed to achieve a just and sustainable future and a net zero emissions economy. It was also a pleasure for the Accelerator to host the MSRB and other industry leaders during our recent webinar on [The Changing Climate for Municipal Securities](#).

Ceres works with leading global investors and companies. Our Investor Network currently includes 217 investors that collectively manage over \$49 trillion in assets. Our investors are concerned about the impact of climate risk on all elements of the capital markets, including the municipal debt market. Ceres is a founding partner of the [Investor Agenda](#), the [Net Zero Asset](#)

[Managers Initiative](#) and the [Paris Aligned Investor Initiative](#), which includes investors focused on sustainable investments within their portfolios and other assets. Our Company Network includes approximately 60 of the largest global companies with whom we work on an in-depth basis on climate strategy and disclosure, among other issues.

Executive Summary of our Comments

We conducted interviews with industry leaders in preparing this response. Our interviews found general agreement that:

- Climate risk represents a systemic risk to the municipal bond market,
- Climate risk is material, affecting all market participants (and investors in particular),
- Climate risk disclosure as currently practiced, is fragmented, incomplete, inadequate, inconsistent, and inefficient.

Although in the short run municipal issuers may enjoy the cost savings associated with minimal disclosure requirements, in the long run this perceived benefit could be more than offset by a rapid loss of public confidence in the municipal market¹. As a result, Ceres respectfully recommends that the MSRB undertake the following actions to protect investors, municipal issuers and the public interest against the risks posed by climate change. We urge the MSRB to:

1. Publicly acknowledge that climate change poses a systemic risk to the U.S. municipal bond market,
2. Recommend that municipal issuers adopt the TCFD disclosure framework in order to provide investors and stakeholders with timely, decision-useful climate-relevant information,
3. Support efforts to amend the SEC Continuing Disclosure Rule² to include Climate Risk disclosure,
4. Enhance Board Governance and Senior Management expertise as it pertains to climate risk and create a Board Level Standing Committee on Municipal Bond Market Climate Risk Management,

¹ As discussed in "[Climate Change and Municipal Finance](#)", financial markets rely on participants' belief that the prices of debt and equity securities and other financial products more or less approximate the underlying real economy and its risks. "When a natural disaster, pandemic, or other economic shock reveals a large gap between actual risk and asset prices, markets can experience severe volatility. When investors do not understand what is happening in a particular market, they withdraw their capital and look for safe havens. Stated differently, capital markets rely on steady investor demand to provide liquidity. Investor demand in turn relies on accurate pricing. Accurate pricing relies in turn on effective risk assessment. And effective risk assessment relies in turn on transparency and comprehensive disclosures." Center for American Progress, May 2020

² <https://www.msrb.org/msrb1/pdfs/SECRule15c2-12.pdf>

5. Further update EMMA to facilitate timely, machine-readable disclosure of climate risk and ESG factors. This aligns with the MSRB's Strategic Plan to improve the user experience and system security, performance and functionality of EMMA³,
6. Update the Municipal Securities Exams (for example the Series 52, Series 53 exams) to test for climate risk management competency,
7. Conduct research and educate municipal issuers, investors and other stakeholders about climate-related physical and transition risks,
8. Encourage all U.S. municipal bond market stakeholders - such as bond counsel, data vendors, valuation services, bond insurers, municipal advisors and especially rating agencies and other standard setters - to fully incorporate climate risk management into their internal processes.

More detail on each recommendation can be found in the Appendix to the Letter, starting on page 10.

The municipal market faces unique risks from climate change. While issuers, investors and regulators in corporate securities have become increasingly aware of the significant climate change risks inherent in their business activities and investment portfolios, sensitivity to climate risk in the municipal market has thus far remained minimal. Yet, municipal bond investors and the municipalities themselves are at greater risk in unique ways. In theory, corporations facing the effects of climate change can move their headquarters and critical facilities, shift their product mixes and supply chains, and pivot their strategies. Public entities including state, counties and municipalities, on the other hand, are place-based and mission-constrained.

The other unique risk in this sector relates to the number of issuers. The \$4 trillion⁴ U.S. municipal securities market is unparalleled in the number of participating issuers. Of the 90,126 governmental units nationwide⁵, it is estimated that over 50,000 have outstanding municipal debt, representing approximately 1 million securities, dwarfing in size the approximately 6,000 issuers and 43,000 securities in the U.S. corporate bond market⁶. No other U.S. capital market encompasses so many issuers and so many securities⁷.

The fact that municipalities typically issue very long-dated debt liabilities makes this market particularly sensitive to the risk of climate change. Bonds maturing in 15-30 years are the norm in the municipal debt market⁸. These long-dated liabilities make it imperative for investors to

³ MSRB Strategic Plan Fiscal Years 2022 - 2025

⁴ MSRB, [Muni Facts](#), 2021

⁵ [From Municipalities to Special Districts, Official Count of Every Type of Local Government in 2017 Census of Governments](#), United States Census Bureau, October 29, 2019

⁶ In terms of debt outstanding, the corporate debt market's \$10.6 trillion debt outstanding is more than twice the \$3.9 trillion municipal debt outstanding. MSRB, [MuniFacts](#) 2020, 2021

⁷ MSRB, [Self Regulation and the Municipal Securities Market](#), 2018

⁸ The maturity of tax exempt debt must be tied to the useful life of the asset(s) financed, which for public infrastructure and buildings is often quite long. In Jan.-May 2021, the average tenor of municipal bonds was 17 years, according to [ESG Integration in Sub-Sovereign Debt: The U.S. Municipal Market](#).

incorporate the effects of climate change into investment decisions, especially climate change-related physical risks such as damage from fires, floods, cyclones, hurricanes, tornadoes, droughts, and rising sea-levels (henceforth referred to as “physical risk”).

Finally, these bonds are typically considered among the safest available, and so many investors purchase them as “buy and hold” investments. Given this long term investment horizon, bond holders may be less focused on the risks (such as climate risk). This is especially true if they hold them through a mutual fund or related instrument.

The frequency and severity of extreme weather events has increased significantly in recent years. The latest Intergovernmental Panel on Climate Change (IPCC) report states that “climate change is a threat to human wellbeing and the health of the planet” and that “any further delay in concerted global action will miss a brief and rapidly closing window to secure a liveable future”⁹. Also, according to NOAA’s National Center for Environmental Information (NCEI), 2020 was the most expensive year yet for weather and climate disasters: “There were 22 separate billion-dollar weather and climate disasters across the United States, shattering the previous annual record of 16 events, which occurred in 2017 and 2011”¹⁰. During 2021, climate disasters killed 688 people and cost the US more than \$145 billion¹¹.

Climate change is intensifying extreme weather events. America's coasts are at risk of flooding caused by rising seas, stronger hurricanes and torrential rain. As the climate crisis accelerates, extreme flooding threatens more critical infrastructure in the United States. A recent analysis found 25% of all critical infrastructure in the US, including assets like hospitals, police stations and power plants, are at risk of being rendered inoperable due to flooding. This report also found nearly 2 million miles of road, representing 23% of US roadways, at risk of becoming impassable due to flooding^{12 13}.

These acute and progressive physical risks have the potential to seriously disrupt the economies of these municipalities as well as the communities that live there. For example, more than 40 percent of Americans live in counties hit by climate disasters in 2021 and more than 80 percent of Americans experienced a heat wave¹⁴. Climate impacts are already manifesting in the largest state economies. In just the last few years, California has experienced recording-breaking wildfires¹⁵, in both number and size, that have taken hundreds of lives, bankrupted the state’s largest utility, left millions regularly without power and brought home insurability into question. Florida is facing rapidly rising sea levels and now-routine flooding that

⁹ IPCC, <https://www.ipcc.ch/report/ar6/wg2/resources/press/press-release>, February 2022

¹⁰ NOAA, “[2020 U.S. billion-dollar Weather and Climate Disasters in Historical Context](#)”, January 2021

¹¹ [Business Insider](#), January 11, 2022

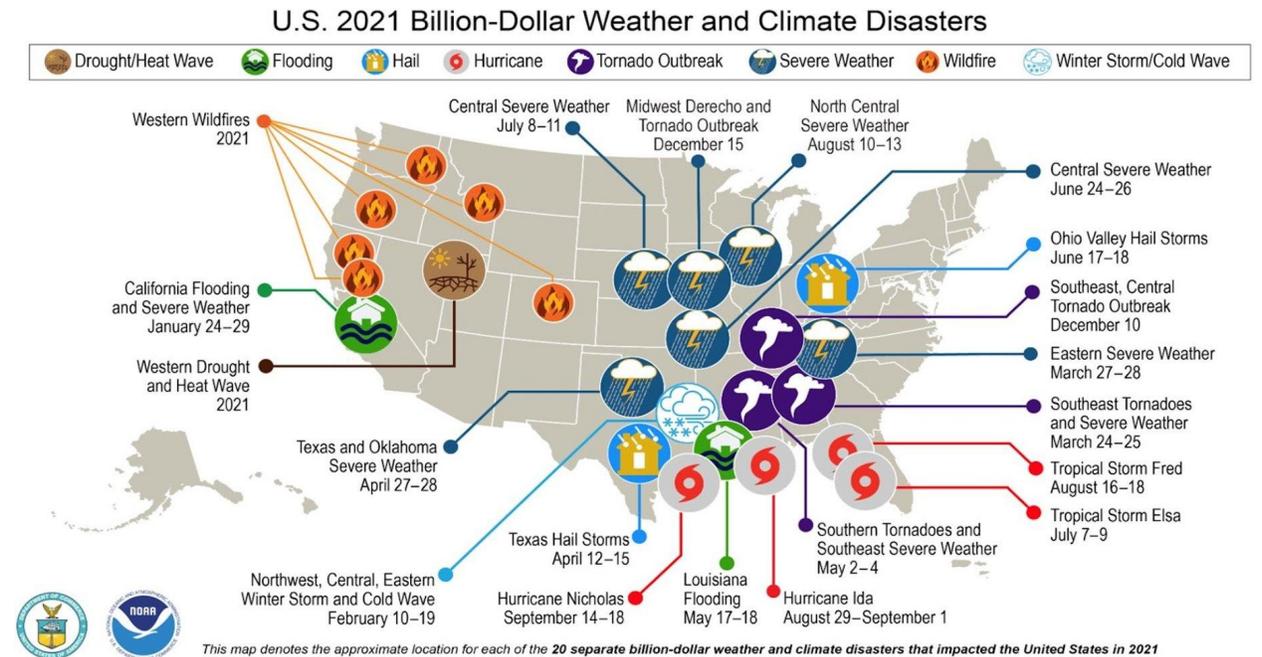
¹² [The Cost of Climate: America’s Growing Flood Risk](#), Feb. 22, 2021 (First Street Foundation)

¹³ ‘[25% of all critical infrastructure in the US is at risk of failure due to flooding, new report finds](#)’, CNN October 11, 2021

¹⁴ ‘[More than 40 percent of Americans live in counties hit by climate disasters in 2021](#)’, Washington Post, January 5, 2022

¹⁵ [Wildfires Destroy Thousands of Structures Each Year](#), Nov. 2020, [California Contemplates a Dark and Fiery Future](#), October 2019

are eroding coastal property values and wiping out freshwater supplies¹⁶. In fact, these are just the most recent events. Between 1980 and 2020, Texas experienced 124 separate billion dollar disasters – the most of any state¹⁷.



<https://www.ncdc.noaa.gov/billions/>

The Fourth National Climate Assessment¹⁸ outlines the impact of climate change on the economy, water, health, tourism and recreation, and other direct impacts that are relevant to municipal bonds: “The impacts of climate change are already being felt in communities across the country. Future climate change is expected to further disrupt many areas of life, exacerbating existing challenges to prosperity posed by aging and deteriorating infrastructure, stressed ecosystems, and economic inequality.”

Local and regional economies, which are key drivers of revenue for municipal entities, are at risk from climate change, according to the report.

The Fourth National Climate Assessment also addresses differential regional impacts, and the outsized impact on marginalized communities, including people of color and indigenous peoples: “Impacts within and across regions will not be distributed equally. People who are already vulnerable, including lower-income and other marginalized communities, have lower

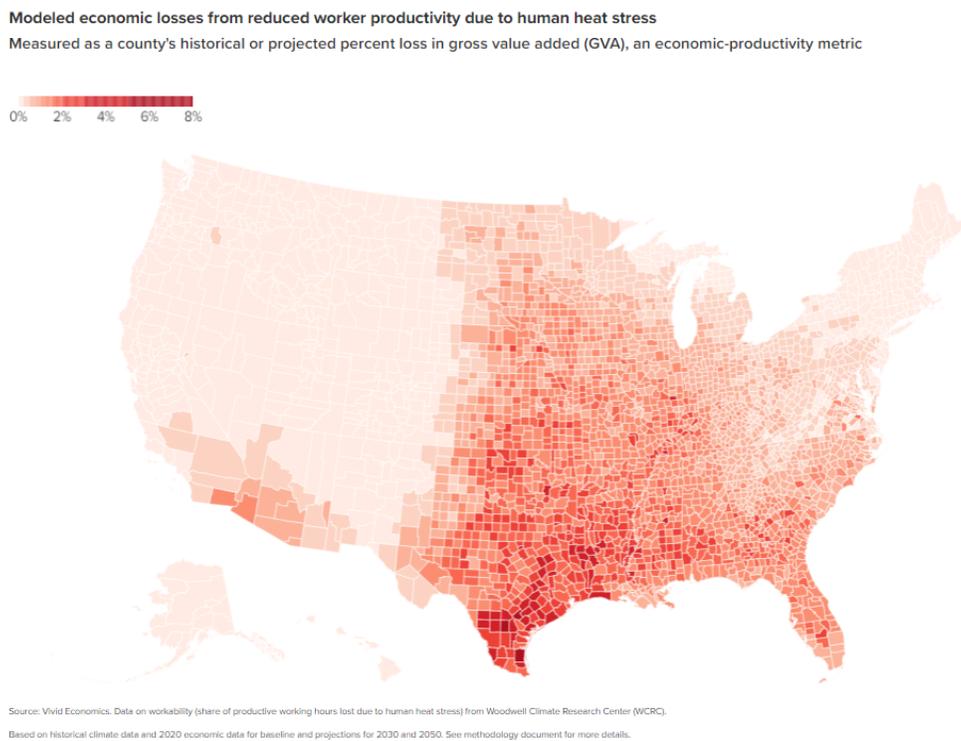
¹⁶ [Salt Levels in Florida’s Groundwater Rising At Alarming Rates; Nuke Plant is One Cause](#), Howard Center for Investigative Journalism, November 23, 2020, [Your Florida Coastal Home Could Lose 15% of Value by 2030 Due to Sea Level Rise](#), Tampa Bay Times, January 17, 2020

¹⁷ NOAA, 2021

¹⁸ The [National Climate Assessment](#) is produced by the US Global Change Research Program, which is operated by 13 federal agencies

capacity to prepare for and cope with extreme weather and climate-related events and are expected to experience greater impacts. Climate change increasingly threatens Indigenous communities' livelihoods, economies, health, and cultural identities by disrupting interconnected social, physical, and ecological systems.”

Data modeling techniques have advanced significantly in recent years, allowing municipal bond market stakeholders to understand both the macro impact of climate change on the economy, infrastructure, health, and safety, and differential impacts on locations, sectors, and historically marginalized communities. In “Extreme Heat: The Economic And Social Consequences for the United States”¹⁹ the Atlantic Council demonstrates the impact of one aspect of climate change – the increase in extreme heat days – on labor productivity, tourism, agriculture, and health at a county-by-county level: “Under baseline climate and demographic conditions, the United States loses an average of \$100 billion annually from heat-induced declines in labor productivity. Without meaningful action to reduce emissions and/or adapt to extreme heat, labor productivity losses could double to nearly \$200 billion by 2030 and reach \$500 billion by 2050.” In some counties, lost productivity is upwards of 8% of gross value added (GVA) (see below).



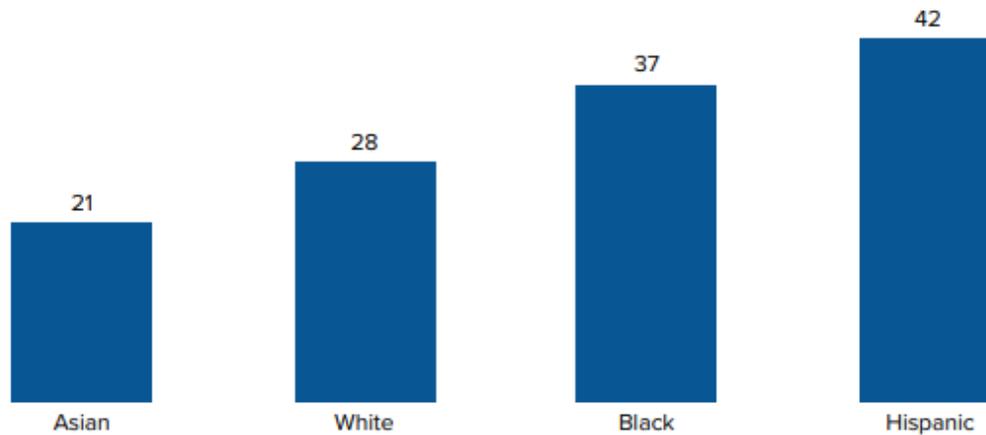
Source: [Extreme Heat: The Economic and Social Consequences for the United States](#), Atlantic Council, August 2021

¹⁹ [Extreme Heat: The Economic And Social Consequences for the United States](#), Atlantic Council, August 2021

The impact of extreme heat falls more heavily on Black and Hispanic workers who tend to live and work in more heat-exposed regions of the country. They face proportional productivity losses 18% percent greater than non-Hispanic White workers²⁰.

Figure 5: Exposure to Heat by Race, Baseline Climate Conditions

Average Annual number of days with exposure to maximum daily temperature above 90°F by race, baseline



Note: Based on historical climate data from 1986 to 2005 and demographic details from the 2019 American Community Survey.

Source: Vivid Economics.

Source: [Extreme Heat: The Economic and Social Consequences for the United States](#), Atlantic Council, August 2021

Americans are taking note of climate science and increasingly connecting the dots between climate change and negative effects on property values, the cost of public services, and the loss of tax revenues which their communities rely on to provide public services and service debt. According to the Pew Research Center, six-in-ten U.S. adults believe that climate change will hurt them personally²¹, and a study by the Yale School of the Environment found public concern about climate change at a record high, with 73% of Americans believing that climate change is happening²². Across the country, taxpayers are feeling the direct impact of climate change:

- On the Outer Banks of North Carolina, homeowners in Avon are confronting a 50% increase in taxes to protect their homes and the only road to their town²³.
- Along the Arizona-Utah border, tourism has plummeted as the water level on Lake Powell hits record lows, leaving boat ramps high and dry²⁴.

²⁰ [Extreme Heat: The Economic And Social Consequences for the United States](#), Atlantic Council, August 2021

²¹ Pew Research Center "[Americans are Less Concerned - But More Divided - On Climate Change Than People Elsewhere](#)"

²² Yale School of the Environment, "[Public Concern About Climate Change Remains at Record High](#)", May 2020

²³ New York Times, "[Tiny Town, Big Decision: What Are We Willing to Pay to Fight the Rising Sea?](#)", March 14, 2021

²⁴ The Guardian, "[Climate Change Has Become Real: Extreme Weather Sinks Prime U.S. Tourism Site](#)", July 29, 2021

- Farming communities in Iowa have suffered damage to crops, livestock and livelihoods from climate change-related extreme weather including droughts, extreme rains, floods, and most recently, a severe derecho²⁵.
- Residents of Galveston, Texas are grappling with repeated property damage from extreme weather events including ice storms, hurricanes, and heat waves²⁶.
- Sea levels along the U.S. coastline are projected to rise, on average, 10 - 12 inches in the next 30 years (2020 - 2050). This is as much as the rise measured over the last 100 years (1920 - 2020). Effects may vary, but no U.S. coastal city will be left unaffected²⁷.
- Maryland power customers are concerned about the rising costs of protecting the power grid from extreme weather events²⁸.

In many cases, local taxpayers are also municipal bondholders, wondering whether climate change will result in a form of expanded risk, where both their community and investment portfolio is at risk. Unfortunately, current municipal market disclosure of climate risk is rare, climate-related regulation is limited and bond pricing demonstrates little differentiation between issuers with greater and lesser exposure to climate risk factors²⁹.

A thoughtful and well-researched Brookings Institution study of the offering statements for 1,500 municipal bonds found that only 10.5% of revenue bond offerings mentioned climate change risks, and that figure is just 3.8% for general obligation bond offerings. Moreover, several highly climate-change-at-risk cities make no mention of climate change in their bond offering memorandum. By overlaying geospatial climate risk data against the location of various municipal bond issuers, no correlation was found between climate risk disclosure and the severity of local climate risks, including issuers such as New Orleans, Los Angeles, Charleston South Carolina, and Mobile, Alabama³⁰.

Unintuitive as it may sound, market prices and municipal bond credit ratings do not currently seem to be influenced by climate risk – positively or negatively. One municipal market expert put it very bluntly: “These risks are not incorporated in the municipal market. At all. Because investors want the tax exemption, they’re not saying ‘no’ because they want the product. They

²⁵ Iowa State University Extension and Outreach, [“Iowa Farmers Are Pursuing Actions in Response to Changing Weather”](#), September 15, 2021

²⁶ Inside Climate News, [Ice Storm Aftermath: More Climate Extremes Ahead for Galveston](#), April 2021

²⁷ National Ocean Service, National Oceanic and Atmospheric Administration, [2022 Sea Level Rise Technical Report](#)

²⁸ Towson Times, [“As Extreme Weather Events Rise, So Do the Costs of Protecting The Power Grid”](#), September 15, 2021

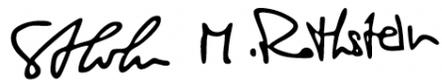
²⁹ In [“Muni Bond Investors Need Straight Talk About Climate-Change Risk”](#), MarketWatch March 2021, the author provides an example of two securities with similar ratings and pricing, but one has substantially greater physical risk from extreme weather events, in this case wildfire: “For example, compare the municipal bonds recently issued by Middletown Unified School District and Red Bluff Unified Elementary School, both in California. Both bonds mature in 2048 with AA ratings and similar pricing. Yet the risk of serious property damage from wildfires is more than five times higher in Middletown than in Red Bluff.”

³⁰ Brookings, [Flying Blind: What Do Investors Really Know About Climate Change Risks in US Equities and Municipal Debt Markets?](#), October 2020

don't discern risk. It's not a prioritized risk in the ratings. So the rating agencies aren't penalizing the issuer, no-one is telling the issuer you have to disclose risks. No one wants their cost of capital to go up³¹. Furthermore, many municipal debt financings are backed by revenues from a single asset such as a water treatment facility or tolls from a road. These assets face climate change related supply chain risks such as the availability of water for treatment and sale in drought conditions³². Many of those we interviewed in support of the recommendations included in this filing believe the provision of additional disclosure related to these increasing physical risks is critical to protect investors and other market participants.

Once again, we congratulate the Municipal Securities Rulemaking Board (MSRB) for issuing this Request for Information (RFI). Your leadership on this critical issue is deeply valued. More background on our recommendations is included in the appendix that follows. We would be pleased to discuss any questions you may have on our feedback.

Sincerely,



Steven M. Rothstein
Managing Director
Ceres Accelerator for
Sustainable Capital Markets



Jim Scott, CFA
Senior Advisor, Financial Institutions
Ceres Accelerator for
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³¹ Thomas Doe, President of Municipal Market Analytics as quoted in MarketWatch, "[Cities and States on the Frontline of Climate Change Aren't Always Upfront About Risks. Does the Municipal Bond Market Care?](#)", August 2021

³² FitchRatings, "[Arizona Water Rates Rise as Colorado River Water Shortage Declared](#)", August 18, 2021

Appendix to the Letter

Systemic Importance of the U.S. Municipal Bond Market

The municipal securities market includes general governmental borrowers such as cities, counties, and states, and special purpose governments like school, fire, and library districts. As noted, of the 90,126 governmental units nationwide³³, it is estimated over 50,000 have outstanding municipal debt. Because these entities generally enjoy monopoly status for the provision of designated public services within their jurisdictions, possess the authority to raise revenues through taxes, fees, and user charges, and are vested with a very high level of autonomy compared with municipal governments outside the U.S., credit quality is very high and default rates are extremely low³⁴.

American households are the primary holders of municipal debt, accounting for 72% of municipal securities, including direct holdings, mutual funds, and exchange traded funds (ETFs) in 2020³⁵. Holders of municipal bonds are frequently taxpayers of the issuer, further underscoring the intertwining of public policy and the municipal market. The citizen bondholder is also dually exposed to climate risk – first through the risk to property values and the vibrancy of their local community, and second through the risk of loss on the value of their investment.

Additionally, the municipal market is systemically important because of how central it is to funding our nation's infrastructure. In addition to financing America's new infrastructure needs, it provides the capital to rehabilitate our existing buildings, roads, bridges, water, wastewater and ports to withstand the impact of increased physical risks.

State and local governments fund 90% of their infrastructure needs by issuing municipal securities³⁶. Public policies such as those affecting taxes, land use, the environment, economic development and others have intertwined effects on local communities' livability and fiscal health as well as the debt that those communities issue in the municipal securities market. These factors render the municipal securities market systemically important as acknowledged by the Securities and Exchange Commission (SEC): "It is generally accepted that the continued functioning of this market is essential to the continued funding and operation of state and local governments and our economy more generally"³⁷.

The municipal securities market also includes governmental enterprises such as housing agencies; electric, water, sewer and solid waste utilities; transportation authorities such as roads, bridges, mass transit, ports, and airports; and narrow service providers such as community development districts that finance infrastructure supporting new housing

³³ [From Municipalities to Special Districts, Official Count of Every Type of Local Government in 2017 Census of Governments](#), United States Census Bureau, October 29, 2019

³⁴ MSRB, [MuniFacts](#) 2021

³⁵ SEC, [The Importance of Disclosure for Our Municipal Markets](#), May 4, 2020

³⁶ MSRB, [Municipal Securities: Financing The Nation's Infrastructure](#), 2021

³⁷ SEC, [The Importance of Disclosure for Our Municipal Markets](#), May 4, 2020

development. These agencies, utilities and service providers may be departments of a general government or independent authorities. Additionally, the municipal securities market includes non-governmental nonprofits, many of which are eligible to issue municipal debt, including nonprofit hospitals, charter schools, universities, foundations, and cultural institutions. There are over 1.5 million of such nonprofits³⁸, among them essential service providers in healthcare and education including almost 4,000 hospitals³⁹, 3,300 universities⁴⁰, and 7,500 charter schools⁴¹.

In addition to the broad spectrum of entity types in the municipal debt markets, U.S. municipal debt is issued with security features that are unique in the fixed income world. Municipal securities can be backed by a broad repayment pledge of all the entity's revenue raising authority ("general obligation" bonds), or can be secured by revenues produced by a revenue-generating asset (such as a water treatment plant), pool of assets (mortgages on affordable housing properties), or enterprise (a hospital, charter school or university). This second category is often referred to as "revenue bonds". A single municipal entity, such as a large city, can issue bonds backed by some or all of these sources. For example, a city can issue general obligation bonds backed by its "full faith and credit", bonds backed by revenues generated from its electric department or waste management department, and bonds backed by specific revenue streams such as sales taxes, hotel taxes, or gas taxes. The Bloomberg Barclays Municipal Bond Index includes bonds representing at least 18 distinct municipal sectors⁴². Securities backed by slices of an entity's revenue or departmental revenue are rarely found outside the US municipal securities market.

Key Challenges Posed by Climate Change

Climate change has the potential to impact many of the revenue streams that municipalities rely on to provide services to their residents and service debt. Furthermore, municipalities often secure debt with revenues collected from the operation of physical facilities, such as power plants, water treatment plants, and affordable housing communities. These are all at risk. There are physical risks to our nation's non-defense public infrastructure, 95% of which is owned by state and local governments⁴³, in addition to the economic costs of climate change to communities, including damaged property values, unlivable communities, and unequal impact on disadvantaged portions of society. And because the nation's infrastructure is overwhelmingly in state, county and local hands, climate risk mitigation costs will fall most heavily on them.

The large variety of security types adds complexity to addressing climate risk in the municipal market. For example, within the same city, climate change could impact certain of its pledged streams more severely than others. These differences lead a few market participants to assert

³⁸ [Urban Institute National Center for Charitable Statistics](#)

³⁹ [American Hospital Association](#)

⁴⁰ [Bestcolleges.com](#)

⁴¹ [National Alliance for Public Charter Schools](#)

⁴² UN PRI, [ESG Integration in Sub-Sovereign Debt](#), July 2021

⁴³ MSRB, [Municipal Securities: Financing The Nation's Infrastructure](#), 2021

that climate change disclosure cannot be standardized and thus should be left up to each municipality to determine its unique situation and the level of necessary disclosure.

However, the current voluntary approach has led to uneven and generally inadequate disclosure⁴⁴. Furthermore, in recommending additional climate risk disclosures, we believe that the municipal market can take into account both the uniqueness of the security pledge and the broader economic underpinnings that all municipal securities rely upon, while allowing investors to conduct the necessary comparability research that underpins market efficiency.

The municipal securities market lacks standardized analytic tools and products to measure climate risks for municipalities. Currently, disclosure by municipal debt issuers is limited, highly variable, unstructured, and not machine-readable. These limitations, combined with the very large number of municipal debt issuers, make it prohibitive for regulators and investors to create searchable databases, conduct comparable analysis and assess climate risks using a consistent framework. In other words, nobody knows the full extent of climate change risks embedded in municipal securities today and it's prohibitive to find out under the current structure. These conditions represent market inefficiencies that should be addressed by regulators to ensure investors have the information to assess risks consistently across the entire market and make meaningful distinctions between those with greater and lesser exposures.

Although in the short run municipal issuers may enjoy the cost savings associated with minimal disclosure requirements, in the long run this perceived benefit could be more than offset by a rapid loss of public confidence in the municipal market⁴⁵. In fact, investors are already demanding more climate-relevant information as evidenced by the SEC's plans to issue proposed mandatory climate disclosure rules. Investors are also making their voice felt. A record 733 institutional investors from around the world, with more than \$52 trillion in assets under management, have signed an ambitious statement to governments, calling for a number of measures that would help avoid catastrophic temperature rise and manage climate risk. We urge the MSRB to follow suit and ensure disclosure, education, ongoing focus and regulation of this systemically important market evolves to meet the existential challenge posed by climate change.

⁴⁴ Examples of the limited nature and uneven quality of climate change disclosure in municipal debt markets can be found in several sources, including "[Climate Change Disclosure Among California Enterprise Issuers](#)" "[Flying Blind: What Do Investors Really Know About Climate Change Risks in US Equities and Municipal Debt Markets?](#)", and "[Muni-bond Investors Need Straight Talk About Climate-Change Risk](#)"

⁴⁵ As discussed in "[Climate Change and Municipal Finance](#)", financial markets rely on participants' belief that the prices of debt and equity securities and other financial products more or less approximate the underlying real economy and its risks. "When a natural disaster, pandemic, or other economic shock reveals a large gap between actual risk and asset prices, markets can experience severe volatility. When investors do not understand what is happening in a particular market, they withdraw their capital and look for safe havens. Stated differently, capital markets rely on steady investor demand to provide liquidity. Investor demand in turn relies on accurate pricing. Accurate pricing relies in turn on effective risk assessment. And effective risk assessment relies in turn on transparency and comprehensive disclosures." Center for American Progress, May 2020

An Overview of the Qualitative Methodology Used to Develop Our Recommendations

To align our recommendations with the views of leading market participants and to solicit recommendations on best practices, Ceres worked with industry experts with decades of experience in the municipal market, and conducted in-depth interviews with market participants including institutional investors (40 Act Funds), Registered Investment Advisors, independent standard-setters, rating agencies, bond insurers, green bond verifiers, data providers, service vendors, and industry trade groups. In aggregate, the 17 municipal market stakeholders we interviewed represent total municipal bond assets under management of over \$356 billion, rating agencies with published rating opinions on over \$3,890 billion par outstanding bond issues, bond insurers with underwritings in excess of \$87.1 billion, standard-setters of generally accepted industry financial reporting principles, and industry trade groups composed of government financial professionals and financial service industry professionals with national memberships. For the purpose of brevity in this submission, we will refer to these as market participants or stakeholders, such terms being used interchangeably.

After speaking with each of these market participants, it is clear that there is now an increasing and pressing need for enhanced transparency and clarity in climate risk disclosure. As one registered investment advisor diplomatically put it, “the status quo is untenable.” Current practices contribute to opacity and confusion. The large majority of market stakeholders agreed that the existing market-based solution, premised on increased use of voluntary disclosure posted in an unstructured format, lacks the necessary completeness, standardization, data, accessibility, and reporting timeliness for the market to function efficiently.

The general tone was succinctly summed up by one institutional investor who stated, “Climate risk is going to be around forever. It is ever present. It is not going away. We cannot ignore it”. What follows are recommendations for the MSRB’s consideration.

Recommendations to the MSRB to protect investors, municipal issuers and the public interest against the risks posed by climate change

The mission of the MSRB is threefold⁴⁶: (1) to promulgate rules for the municipal securities dealers and municipal advisors that engage in the offer and sale municipal securities or provide financial advisory services to municipalities; (2) to support market transparency by making trade data and disclosure documents available on its Electronic Municipal Market Access (EMMA) website; and (3) to serve as an objective resource on the municipal market, by sponsoring education and outreach to market stakeholders on key policy issues, thereby providing market guidance and leadership.

⁴⁶ [The Role and Jurisdiction of the MSRB](#), 2021

As part of fulfilling its mission, the MSRB is uniquely positioned to tackle the difficult challenge of climate change. In a marketplace that prides itself on self-regulation and market-wide consensus building, there is no alternative leadership choice to address this critical issue.

There was unanimous agreement among municipal participants that the solution to appropriately assessing, quantifying, ranking, and valuing the effect of climate risk lies in receiving better disclosure. Several market participants expressed the sentiment that it would be best to have a strong directive from the MSRB on climate risk disclosure.

As such, Ceres respectfully recommends that the MSRB undertake the following actions to protect investors, municipal issuers and the public interest against the risks posed by climate change:

Recommendation #1: MSRB should publicly acknowledge that climate change poses a systemic risk to the U.S. municipal bond market.⁴⁷

In order to mobilize all relevant stakeholders to take appropriate and immediate action, it is imperative that the MSRB publicly state clearly and decisively that climate change poses a systemic risk to the stability of the U.S. municipal bond market. Such a public statement aligns with the 2021 finding of the U.S. Department of Treasury's Financial Stability Oversight Council⁴⁸ (FSOC) that climate change is an "emerging threat to the financial stability of the United States". FSOC members, including the Federal Reserve⁴⁹, U.S. Comptroller of the Currency⁵⁰ and other financial regulatory agencies have endorsed the Council's findings. Many FSOC members have separately stated that climate change is a systemic risk to the U.S. financial system and committed to concrete action steps. While we understand that MSRB is not an FSOC member, because the effects of climate change present the risk of destabilizing a specific and systemically important market, the imperative for the MSRB to make a declaration is even greater.

Recommendation #2. MSRB should recommend that municipal issuers adopt the Task Force on Climate-Related Financial Disclosures (TCFD) framework in order to provide investors and stakeholders with timely, decision-useful climate-relevant information.

Many U.S. federal and state regulators have already taken, or are currently proposing, actions such as enhanced disclosure to combat the systemic threat of climate change. We strongly encourage the MSRB (which is subject to SEC oversight) to follow the leadership shown by the SEC and take all efforts necessary in the establishment of a disclosure regime for the U.S. municipal bond market.

⁴⁷ [MSRB Strategic Plan Fiscal Years 2022-2025](#)

⁴⁸ [The Financial Stability Oversight Council's Response to Climate-Related Financial Risk](#), October 21, 2021

⁴⁹ [Climate Change and Financial Stability, Board of Governors of the Federal Reserve System](#), March 19, 2021

⁵⁰ [Principles for Climate-Related Financial Risk Management for Large Banks](#), December 16, 2021

As a leading disclosure framework, Ceres recommends the adoption of the Task Force on Climate-related Financial Disclosures (TCFD) framework for municipal issuers so that ESG information is comparable marketwide. This framework is already widely used by corporations in the U.S. and internationally, and by several municipalities. Use of TCFD is also consistent with the recommendations of the Financial Stability Oversight Council⁵¹. It also parallels the MSRB's comments that ideally, all disclosure would be standardized so "investors can compare apples to apples"⁵².

The TCFD divides climate-related risks into two major categories: (1) Risks related to the transition to a lower-carbon economy ("transition risk") and (2) risks related to the physical impacts of climate change ("physical risk"). The impact of climate risk on the municipal market differs fundamentally from the corporate market. As stewards of public infrastructure, state and local governments (and political instrumentalities thereof) are primarily impacted by physical risk⁵³.

A report published in October 2019 by the Chartered Public Accountants of Canada demonstrates how the TCFD Framework can be adopted by cities⁵⁴. Members of the Working Group that collaborated with the CPAs of Canada were drawn from a coalition of leading Cities and Climate Change advocacy groups. These included:

- C40 Cities Climate Leadership Group
- Canadian Urban Sustainability Practitioners' (CUSP) Network
- City of Montreal (Environment Department)
- City of Montreal (Finance Department)
- City of Toronto (Environment & Energy Division)
- City of Toronto (Accounting Department)
- City of Vancouver (Sustainability Department)
- City of Vancouver (Finance Department)
- Delphi Group
- Federation of Canadian Municipalities (FCM) Partners for Climate Protection (PCP) Program
- International Council for Local Environmental Initiatives (ICLEI) Canada

⁵¹ [The Financial Stability Oversight Council's Response to Climate-Related Financial Risk](#), October 21, 2021. The TCFD's core elements and recommended disclosures offer a useful structure for promoting the consistency, comparability, and decision-usefulness of climate-related disclosures, and have been widely adopted, in whole or part, by financial regulators around the world. According to the TCFD's 2021 status report, more than 120 regulators and governmental organizations support the TCFD, including the governments of Belgium, Canada, Chile, France, Japan, New Zealand, Sweden, and the United Kingdom. The TCFD's recommendations are also incorporated in the European Commission's Guidelines on Reporting Climate-Related Information.

⁵² [Cities and states on the frontline of climate change aren't always upfront about risks. Does the municipal bond market care?](#) MarketWatch, 9/1/2021

⁵³ [Final Report: Recommendations of the Task Force on Climate-Related Financial Disclosures](#), June 2017, pgs. 3-6.

⁵⁴ [Enhancing Climate-related Disclosure by Cities: A Guide to Adopting the Recommendations of the Task Force on Climate Related Financial Disclosures \(TCFD\)](#), Chartered Professional Accountants of Canada, October 2019

- Public Sector Accounting Board (observer role)

As climate-related risks and opportunities impact most organizations, including municipal issuers, the TCFD framework offers broad applicability. The TCFD recommendations are relevant to municipal issuers because:

- Cities are generally focused on climate-related risks and opportunities and similarly will endeavor to formulate related strategy, risk management and governance as illustrated in the table below.
- Cities are on the frontlines of climate change, and it is therefore critical to apply a climate risk lens on short- and long-term financial planning, operational budgets and capital investments.

Here are two examples representative of the TCFD framework reporting for a city. The first is the City of Toronto - 2020 Annual Financial Report⁵⁵. A dedicated segment of the report sets forth climate-related financial disclosure and contains the following sections: (i) Why climate disclosures are important; (ii) Why climate impact is important; (iii) the City's Commitment to climate action; (iv) key climate-related disclosures for the year 2020; and (v) the City's TCFD alignment assessment.

Similarly, the City of Vancouver - 2018 Annual Financial Report incorporates climate related disclosures containing the following key components: (i) a statement of commitment to environmental stewardship and its leadership role in promoting sustainability; (ii) following the TCFD framework, management enumerates specific actions being undertaken advance climate risk in the areas of Governance, Strategy, Risk Management and Adoption of Metrics and Targets; (iii) an explanation and description of how the City has integrated sustainability and resilience criteria into its current capital planning process; (iv) a detailed discussion of Climate action strategies being undertaken accompanied by summaries of concrete action plans; and (v) an assessment with prescribed time frames of projected climate impacts to Vancouver, which also features scenario analysis⁵⁶.

The TCFD requirement to conduct climate scenario analysis can be readily applied to the municipal bond market⁵⁷. As noted previously, data modeling techniques have advanced significantly in recent years, allowing stakeholders to understand both the macro impact of climate change as well as differential local and regional impacts⁵⁸. Also, the recent U.S. Financial Stability Oversight Council report makes clear that scenario analysis is an important risk mitigation and opportunity identification tool for capital markets participants⁵⁹.

⁵⁵ [City of Toronto's 2020 Annual Report](#), pgs. 135 to 147

⁵⁶ [City of Vancouver - 2018 Annual Financial Report](#), pgs. 29 to 37

⁵⁷ [Final Report: Recommendations of The Task Force on Climate-Related Financial Disclosures](#), June 2017

⁵⁸ [Extreme Heat: The Economic And Social Consequences for the United States](#), Atlantic Council, August 2021

⁵⁹ [Report on Climate Related Financial Risk](#), Financial Security Oversight Council, October 2021

In addition to the TCFD, there are ample tools, data, metrics, methodologies, and taxonomies currently available as resources to the market in developing its disclosure framework and metrics. There are well-established disclosure frameworks used extensively in other capital markets, with metrics and paradigms from industry sources, regulatory authorities, and standard setters.

2a. Adopting TCFD Recommendations on Climate-Related Financial Disclosures for Use by Municipal Revenue Bond Borrowers. With over \$10.9 trillion in municipal revenue bonds issued between 1986 and 2021 across ten general categories⁶⁰ and an estimated \$2.793 trillion revenue bonds currently outstanding, these bonds comprise an estimated 64.3% of the \$4 trillion in aggregate outstanding US tax-exempt debt⁶¹. This includes 501(c)3's (i.e. hospitals, cultural institutions), public authorities backed by fees for services (i.e., utilities, toll roads, public transportation), geographically focused (i.e., tax increment financings), and project dependent borrowers. The TCFD disclosure framework, originally developed for corporate issuers, all of which fall under one or more of the 1,057 North American Industry Classifications⁶², can readily accommodate a majority of the 33 revenue bond sectors recognized by market-standard indices⁶³ as well as sector-focused metrics covering the various sectors in the municipal bond market.

2b. Convene a TCFD Implementation Committee. As a self-governing organization, the MSRB should provide the infrastructure for members to self-determine the best way to adapt the TCFD framework for use in the U.S. municipal bond market. Again, nearly all market participants interviewed for this analysis agreed that an organized market-wide effort among stakeholders regarding the development and implementation of climate risk disclosure standards is necessary. Since disclosure standards reach all market stakeholders, the Committee should draw from all participants of the municipal bond market. As noted earlier, we believe it is important to include individuals selected from an inclusive and diverse pool of candidates (representing a range of ethnic, racial and socio-economic backgrounds), with proven climate risk management competence and experience, reflecting the diversity of U.S. municipal market stakeholders. Given the wide variety of both municipal issuers and consumers of municipal-entity disclosure, having an established framework such as TCFD, is crucial.

⁶⁰ The [Bond Buyer Market Statistics](#), Market Data (Annual 1986-Date). Note that reported revenue bond sector categories vary by source. While there is general agreement as to categories, there is no market agreed upon standard taxonomy.

⁶¹ [Board of Governors of the Federal Reserve System](#), Federal Reserve Statistical Release Z.1 Financial Accounts of the United States, Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts 3rd Quarter 2021, p. 121. Table L.212 Federal Reserve Board (12-9-21) indicates total aggregate US tax-exempt debt through Sep. 30, 2021 amounted to \$4.344 trillion. The breakdown of revenue bonds as a total percentage of US tax-exempt debt derives from an estimate of the ratio of Revenue bonds to GO Bonds based upon the average annual percent for years 1986 through 2021.

⁶² [North American Industry Classification System](#), U.S. Bureau of the Census

⁶³ [S&P Global Fixed Income Directory](#), S&P Dow Jones Indices, p. 10. Note that U.S. Municipal Sector-Based Indices include land-based sectors such as S&P Municipal Bond Dedicated Tax Index and the S&P Municipal Bond Appropriation Index.

2c. Use of TCFD in MSRB Annual Report. With the goal of providing leadership by example, the MSRB should also include TCFD-aligned disclosure in its own annual report. By assessing and disclosing its own impact using this framework, the MSRB would demonstrate not only its commitment to transparency, but also show how a U.S. government entity can apply TCFD metrics.

Recommendation #3. The SEC Continuing Disclosure Rule should be amended to include Climate Risk disclosure.

Codifying the MSRB's stated perspective that climate risk is material to investors, the MSRB should ensure that Climate Risk, Resiliency, and ESG are included in issuing documents, continuing disclosure, and material events and other relevant sections of SEC Rule 15c2-12 regarding disclosure for all borrowers⁶⁴. Such amendments are consistent with the views of the institutional investors we interviewed.

Furthermore, climate risk should be included in the Official Statement (i.e., the securities prospectus). As currently written, Rule 15c2-12 sets a low bar for municipal disclosure in new issue offering documents. Since the SEC can't require municipal issuers to register securities or provide disclosure, the rule subjects the broker-dealers to requirements that accomplish similar goals. Specifically, underwriters must review and provide an Official Statement, an offering document to investors which is the equivalent of a corporate securities prospectus, which provides disclosure of material information⁶⁵. Climate risk should be addressed in new issue offering documents.

Climate risk should also be a part of Continuing Disclosure. Prior to purchasing or selling bonds in the primary market, the underwriter must determine that the issuer has signed what is commonly referred to as a "continuing disclosure agreement" promising to provide annual disclosure in an electronic format to a central repository, EMMA⁶⁶ ⁶⁷. The agreement itself is subject to very minimal requirements⁶⁸. Currently, the impacts of climate risks are generally not enumerated in continuing disclosure agreements.

Specifically, the disclosure agreement must include the provision of "annual financial information"; a statement of whether financial information will be audited, and the accounting principles used to prepare the financial information; and the date each year by which annual financial information will be provided. In practice, continuing disclosure agreements are negotiated for each bond issue and typically fall far short of providing annual updates of all the

⁶⁴ MarketWatch, [Cities and States on the Frontline of Climate Change Aren't Always Upfront About Risks. Does the Municipal Bond Market Care?](#), August 2021

⁶⁵ National Archives and Records Administration, Code of Federal Regulations, [§240.15c2-12 Municipal Securities Disclosure](#), [17 CFR § 240.15c2-12, (b)(1) and (2)]

⁶⁶ [Overview of Continuing Disclosure Requirements for Bond Issuers](#), Smith Gambrell & Russell LLP

⁶⁷ Municipal Securities Rulemaking Board, [Continuing Disclosures](#)

⁶⁸ National Archives and Records Administration, Code of Federal Regulations, [§240.15c2-12 Municipal Securities Disclosure](#), [17 CFR § 240.15c2-12, (b)(5)(i)(A) and (B), and subsequent sections, such as (b)(5)(ii), (iii) and (iv)]

information provided in the official statement⁶⁹ ⁷⁰. This is even more troubling when considering that the information deemed relevant at the time of bond issuance can quickly become dated. As conditions change, information relevant to investors does as well.

Continuing Disclosure Agreements should contain all of the climate risk disclosure presented in the offering documents. It is inconsistent for a municipal issuer to create a climate action plan, initiate climate mitigation and adaptation projects, make public statements about the risks of climate change to their economy or infrastructure, join climate action groups, create a dedicated climate agency, or hire a climate department head, but not include climate risks in their primary and secondary market disclosure⁷¹.

Under SEC Rule 15c2-12, municipal issuers must agree to file material event notices within 10 business days from occurrence of any of 16 “material events”, such as delinquent payments, rating changes, and bankruptcies⁷².

However, there is no requirement for disclosure of important risks that aren’t among the 16 material events and fall outside of the Continuing Disclosure Agreement. For example, climate related disasters such as flooding, fires, or tornadoes are not among the material events, nor are the broader impacts of climate change such as the increasing frequency of extreme weather events, costs of climate mitigation, and impacts on the tax base. Unquestionably, investors view these broader impacts as posing material risks.

A proposed amendment to SEC Rule 15c2-12 adding a special subsequent material event reporting notification as a new subsection (17) to paragraph (b)(5)(i)(C) of this Rule is set forth below:

The occurrence of a weather or other natural event or series of events, including floods or flooding, droughts, rising sea levels, earthquakes, wildfires, tornadoes, hurricanes or other weather or nature-related circumstance having a material impact on the ability of an Obligated Person to pay when due, or over the time to a final maturity on outstanding debt, accruing principal and interest payments on

⁶⁹ [Overview of Continuing Disclosure Requirements for Bond Issuers](#), Smith Gambrell & Russell LLP

⁷⁰ Bond counsels often advise municipal issuers to limit their promises in continuing disclosure agreements, as in this example: “The issuer should carefully review the section of the Continuing Disclosure Agreement describing the contents of the annual report. The description of non-audit information to be provided should be specific (as opposed to a general statement requiring the issuer to provide information “of the type included in the Official Statement”), and the issuer may want to limit the requirement to information that the issuer already updates each year and plans to continue to update.” (emphasis added), Orrick, Herrington & Sutcliff LLP, [Disclosure Obligations of Issues of Municipal Securities](#), 2018

⁷¹ The SEC is beginning to question corporations about the gap between climate actions and disclosure. For example, the SEC’s [Sample Letter To Companies Regarding Climate Change Disclosure](#) includes this question: “We note that you provided more expansive disclosure in your corporate social responsibility report (CSR report) than you provided in your SEC filings. Please advise us what consideration you gave to providing the same type of climate-related disclosure in your SEC filings as you provided in your CSR report.”

⁷² Code of Federal Regulations, [§240.15c2-12 Municipal Securities Disclosure](#), [17 CFR § 240.15c2-12, (b)(5)(i)(C)]

that outstanding debt or to meet contract requirements under other financial obligations.

In February 2021, Acting SEC Chair Allison Lee Herren directed the SEC's Division of Corporation Finance to enhance their focus on climate-related disclosure in public company filings "Now more than ever, investors are considering climate-related issues when making their investment decisions. It is our responsibility to ensure that they have access to material information when planning for their financial future" ⁷³.

Unfortunately, as shown in an extensive study of climate change disclosure by corporations and municipalities conducted by the Hutchins Center for Fiscal and Monetary Policy at Brookings, the materiality of climate change disclosure is similar for corporates and municipals, but disclosure of climate change risks in municipals is "much worse" ⁷⁴. As such, urgent change is needed.

The MSRB exhibited important leadership in establishing the high priority of climate risk disclosure by noting it is material to an investor's decision making. As MSRB CEO Mark Kim stated in a recent interview about climate risks: "I think the market's understanding of climate risk is evolving. Today, reasonable investors consider climate risk material" ⁷⁵.

Recognizing climate risk as material to municipal bond investors is a turning point in correcting this glaring disclosure void. Materiality to a reasonable person is a key concept in securities law, triggering disclosure obligations. A commonly accepted definition is that something is material if there is a substantial likelihood that the disclosure would be considered by a reasonable investor to alter the 'total mix' of information made available⁷⁶. Regulators have increasingly recognized the materiality of climate change risks, as have investors, rating agencies, and professional organizations⁷⁷.

⁷³ SEC, "[Statement on the Review of Climate-Related Disclosure](#)", February 2021

⁷⁴ Adopted in 1989, Rule 15c2-12 addresses the issue raised by the effects of the Securities Act Amendments of 1975, often referred to collectively as the Tower Amendment. The Tower Amendment exempts municipal issuers from requirements to which issuers in other securities markets are subject. It is designed to keep municipal issuers from being subject to federal registration and disclosure requirements.

⁷⁵ MSRB CEO Mark Kim, as quoted in MarketWatch, "[Cities and States on the Frontline of Climate Change Aren't Always Upfront About Risks. Does the Municipal Bond Market Care?](#)", August 2021

⁷⁶ Orrick, Herrington & Sutcliff LLP, [Disclosure Obligations of Issues of Municipal Securities](#), 2018

⁷⁷ Evidence that climate change risks are material abound for municipal securities. An example related to regulator statements is in the subsequent paragraph. Examples of rating agency statements include S&P Global Ratings, "[Could the U.S. Western U.S. Drought Threaten Municipal Credit Stability](#)", Aug 2021 and "[California Wildfires, Blackouts Highlight Utility Operating Risk](#)", FitchRatings Aug. 2020. Examples from investors include Brown Advisory "[A Climate Change Reckoning for the Municipal Bond Market](#)" and BlackRock, "[Getting Physical: Scenario Analysis for Assessing Climate Related Risks](#)", April 2019. Finally, the Government Finance Officers Association (GFOA), in "[ESG Disclosure](#)", March 2021 noted "The increase in the number of extreme weather events in recent years has raised public awareness about climate change. Investors and rating analysts are not just looking to see if risks are present, but also want information regarding what plans a government has to address these risks."

This was re-emphasized in another venue when, discussing issuer disclosure more broadly, MSRB CEO Mark Kim made it expressly clear that “the standard against which those disclosures will be evaluated is whether a reasonable investor would consider them important in the context of the ‘total mix’ of all the information made available”⁷⁸. Mr. Kim went on to note that “investors are incorporating ESG factors into the total mix of the information being used in their portfolio valuation and risk models.” This was also discussed by Mr. Kim and other market stakeholders during Ceres’ recent webinar on [The Changing Climate for Municipal Securities](#).

The emphasis on materiality is at the crux of creating policy regarding climate risk disclosure in the municipal bond market. Unfortunately, as noted⁷⁹, municipal issuers are not required to register securities or provide disclosure. Consequently, the primary guardrails for issuer’s disclosure practices are the securities law provisions related to fraud. This is the only area where the SEC has direct enforcement authority over municipal issuers. In general, the fraud provisions make it illegal for anybody connected with the sale of a municipal security to make untrue statements of material facts or to omit material facts.

Overall, the current continuing disclosure framework for municipal securities leaves several sizable gaps. It’s inherently backward-looking, reporting often delayed (6-9 months after the end of the fiscal year is not uncommon^{80 81} and forward-looking projections and scenarios are not required), and the baseline requirements are very minimal.

Currently under 15c2-12 there is an exemption from the disclosure rule for small and infrequent issuers⁸². However, the adverse effects of climate change affect all municipal bond issuers to some extent, and correspondingly affect the assessment of credit risk and valuation of those holdings by municipal bond investors. It follows that, regardless of the amount of debt offered and outstanding, all issuers should be required to disclose their climate risks. It is up to the MSRB to balance the cost of compliance with the benefits of regulations and rule changes.

As noted previously, the municipal bond market has over 50,000 issuers with outstanding long-term debt. While municipalities and authorities with large, multi-year capital programs tend to come to market frequently, the majority of bond issuers are infrequent, smaller borrowers issuing less than \$10 million in long term debt⁸³. Market data reflects that from 2015 to 2021, there were an average of 7,450 such borrowers in the market, comprising 57% of total market issuers. The average total par amount of these bonds issued over that same period was \$33 billion, roughly 7% of the market’s total long term bond issuance⁸⁴.

⁷⁸ [Prepared remarks by MSRB CEO Mark Kim at the GFOA MiniMuni Conference](#), October 10, 2021

⁷⁹ Hutchins Center on Fiscal and Monetary policy at Brookings, [“Flying Blind: What Do Investors Really Know About Climate Change Risks in US Equities and Municipal Debt Markets?”](#) September 2020

⁸⁰ Merritt Research Services Recognizes the Winners when it comes to Timely Municipal Bond Audit Reporting Times, March 25, 2021

⁸¹ Chronically Late Municipal Bond Audits Further Delayed in FY 2018, Merritt Research Services, January 1, 2020

⁸² Code of Federal Regulations, [§240.15c2-12 Municipal Securities Disclosure](#), [17 CFR § 240.15c2-12, (b)(5)(d)(2)]

⁸³ [EMMA Market Statistics](#)

⁸⁴ [MSRB, Primary Market Statistics, New Municipal Issuance](#)

Some stakeholders mentioned that a specific framework with a readily duplicated structure reduces disclosure costs for issuers. This is particularly true for smaller and infrequent borrowers. We believe that use of TCFD should help reduce these costs for some issuers.

Recommendation #4. MSRB should enhance Board Governance and Senior Management Expertise as it Pertains to Climate Risk and Create a Board Level Standing Committee on Municipal Bond Market Climate Risk Management.

During our interviews in support of this RFI, nearly all of the market stakeholders that we spoke with expressed the view that the MSRB Board and MSRB senior managers should lead by example on climate risk and environmental matters. During this discussion, the MSRB's plans to report its own energy efficiencies in XBRL on its website were applauded.

Consistent with the MSRB's positive market-facing statements and actions regarding climate risk, we respectfully recommended that the MSRB consider the following:

4a. Enhance Board Governance and Senior Management expertise as it pertains to climate risk. This can be accomplished via the following steps:

- Include climate expertise as a criteria in the selection process for board members and senior managers,
- Conduct climate training for existing board members and senior managers to improve climate expertise,
- Similar to actions already taken by financial regulators, such as the OCC⁸⁵, expand the senior management team to include a senior climate risk policy role, such as Climate Change Risk Officer.

4b. Create a Board Level Standing Committee on Municipal Bond Market Climate Risk Management. The MSRB should enhance its board governance by including a Standing Committee on Municipal Bond Market Climate Risk. The Committee's role should be to develop a detailed plan to lead the MSRB's efforts to institute a multifaceted strategy addressing the risks of climate change to the municipal marketplace. Such a Standing Committee, with proven climate risk management competence and experience, would further strengthen the Board's abilities to review and create policy regarding climate risk. We would recommend that this standing committee be selected from an inclusive and diverse pool of candidates (representing a range of ethnic, racial and socio-economic backgrounds), with proven climate risk management competence and experience, reflecting the diversity of U.S. municipal market stakeholders.

⁸⁵ <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-78.html>

By way of background, Ceres has provided guidance to many corporate boards on how they can effectively oversee the risks inherent in various sustainability dimensions. This includes concrete recommendations for boards looking to improve their companies' resilience in the face of climate change and other ESG risks⁸⁶. To ensure that board members have access to climate and ESG training, Ceres has partnered with Berkeley Law school to offer an [online training program](#) which pinpoints how corporate board members can embed ESG into their oversight role. We encourage all board directors to participate in appropriate continuing education on these vital issues.

Recommendation #5. Further update EMMA to facilitate timely, machine-readable disclosure of climate risk and ESG factors. This aligns with the MSRB's Strategic Plan to improve the user experience and system security, performance and functionality of EMMA.

The SEC designated Electronic Municipal Market Access ("EMMA") as the official source for municipal securities data and disclosure documents⁸⁷, directing the MSRB to fund and provide administrative oversight in the management of all aspects of EMMA⁸⁸. This is the basis for the MSRB serving as the market's central – and sole – repository for market data⁸⁹. Correspondingly, it follows that the MSRB can and should use EMMA as the market's climate risk disclosure platform.

All market participants we talked with, without exception, expressed unanimous support for the MSRB's strategic initiative of enterprise-wide migration to the cloud as well as the \$17 million budget commitment to modernize the entire suite of market transparency systems, including EMMA⁹⁰. The creation of the EMMA Labs platform to fuel innovation for market data and transparency, potentially ultimately establishing for the municipal bond market structured data standards commonly used in the majority of major global capital markets, was widely lauded.

However, it was also widely viewed that the current EMMA reporting in PDF format is outmoded. This issue was also discussed by the participants at Ceres' recent webinar on [The Changing Climate for Municipal Securities](#). As one institutional investor put it, "EMMA is a dinosaur rapidly becoming a fossil." Searchable, machine-readable data, would facilitate comparative analysis, and greatly increase the usability of this vast amount of reported data⁹¹. As such, we

⁸⁶ [Running the Risk: How Corporate Boards Can Oversee Environmental, Social and Governance \(ESG\) Issues](#), Ceres, November 20, 2019

⁸⁷ [EMMA](#), 2021

⁸⁸ [SECURITIES AND EXCHANGE COMMISSION \(Release No. 34-59061; File No. SR-MSRB-2008-05\) December 5, 2008](#) Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Establishment of a Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA)

⁸⁹ [Prepared remarks by MSRB CEO Mark Kim at the GFOA MiniMuni Conference](#), October 10, 2021

⁹⁰ Municipal Securities Rulemaking Board, [Building the Foundation for the Future, 2021 Annual Report](#)

⁹¹ Market stakeholders have called for years on the MSRB to require that municipal bond disclosure be in machine-readable form. Increasingly these stakeholders have mentioned climate risk disclosure as a key driver of the need for standard taxonomies and machine readability. In January 2021, the MSRB received feedback on

recommend that the MSRB require that all significant primary and secondary disclosures, including offering statements, audited financial statements, and management discussion & analysis, be reported in a searchable, machine-readable format such as XBRL. (Having documents in PDF also limits access to those with visual impairments).

The MSRB has the regulatory authority to accomplish this. In 2008, it was noted as part of the final Rule that the MSRB “could encourage the establishment of the necessary taxonomies and permit states and local governments to make use of the XBRL in the future”⁹². Moreover, as part of the final rule adopted in 2008, the SEC gave the MSRB the authority to prescribe the electronic format and accompanied by identifying information in EMMA⁹³.

Should this not be immediately actionable, as an interim step towards the ultimate goal, we suggest that the MSRB provide improved tools on the EMMA website to search for climate-related disclosure in municipal bond filings. This in turn will allow users to better assess potential climate risk exposure in municipal bonds. An example of such a search tool is Ceres’ SEC Sustainability Disclosure Search Tool⁹⁴. The SEC Sustainability Disclosure Search helps one understand how companies are tackling material risks and opportunities they face from sustainability issues like climate change, carbon asset risk, water availability and quality, and hydraulic fracturing. Ceres would encourage EMMA Labs participants to apply the SEC Search tool to develop their own work in fully digitizing data in EMMA.

The vast majority of stakeholders interviewed expressed that, just as financial information is initially reported in offering documents and then updated separately by issuers by posting financial information reports on their EMMA pages, each issuer should have a Climate or ESG section on their EMMA page. Time and again investors expressed the view that issuers are disadvantaged by not having a place to highlight their ESG efforts and tell their story. Creating a specific location to post climate risk exposure developments, mitigation, and resiliency planning makes tangible the message that climate risk is material and will be measured by the marketplace. Stakeholders viewed this as an interim step as the municipal bond market as a

strategic priorities from market participants. Letters to the MSRB in 2021 from [Ceres](#), [Climate Advisory LLC](#), [Geos Institute](#), [Global Legal Entity Identifier Foundation \(GLEIF\)](#), [Allyson Ugarte](#), and [XBRL US](#) all recommended that the MSRB require machine-readable disclosure. In their letter, Climate Advisory LLC observed “the way in which the current municipal reporting is carried out precludes real-time analytics or efficient comparisons across municipalities. It also fails to capture or disclose the actual costs of climate change”. Other stakeholders have made similar recommendations: “To facilitate searches on climate risks and comparisons among municipal issuers, the MSRB should require that all offering statements for municipal bonds be filed in a singular, machine-readable format. At present, analysts must pull climate risks by hand from these disclosure documents”, Robert Pozen in [MarketWatch: Opinion: Muni-Bond Investors Need Straight Talk about Climate-Change Risk](#), March 2021

⁹² [Federal Register, August 7, 2008](#) [17 CFR Part 240 Proposed Amendment to Municipal Securities Disclosure; Proposed Rule; Notice, p. 46144, n. 64 states “In addition, the availability of audited financial statements and other financial and statistical data in an electronic format by issuers subject to the Rule could encourage the establishment of the necessary taxonomies and permit states and local governments to make use of XBRL in the future, should they wish to do so.”]

⁹³ [Securities and Exchange Commission, 17 CFR Part 240](#) [Release No. 34-59062; File No. S7-21-08] Amendment to Municipal Securities Disclosure.

⁹⁴ [Ceres SEC Sustainability Disclosure Search Tool](#)

whole moves forward to the goal of fully integrating disclosure on these issues into bond offering documents and subsequent annual reporting prescribed under Rule 15c-2-12. All stakeholders interviewed envision that ultimately climate risk disclosure will be a standard part of all disclosure.

Recommendation #6. MSRB should update the Municipal Securities Exams (for example the Series 52, Series 53 exams) to test for climate risk management competency.

The MSRB should update the curriculum and examination to test for climate risk management competency as part of the Municipal Advisors Series 52⁹⁵ and Municipal Principals Series 53⁹⁶ exam qualifications. Professionals seeking these designations will be in positions of responsibility, and having a climate risk management skill set is necessary for licensure as it ensures that all risk vectors will be properly considered when engaging in investment and advisory activities.

Additionally, climate risk should be included as part of the Maintaining Qualifications Program⁹⁷ with CE credits awarded for those completing certified programs on climate risk management, ESG, or sustainability more broadly.

Recommendation #7. MSRB should conduct research and educate municipal issuers, investors and other stakeholders about climate-related physical and transition risks.

Working in conjunction with interested parties, the MSRB should examine the quality of climate-related disclosures in the Official Statements and Continuing Disclosures Agreements of municipal bonds, as a collaborative means of determining whether disclosure is adequate for market participants to assess any underlying climate risks. If disclosure is found to be deficient, the MSRB should issue a public statement calling on key stakeholders, including municipalities, underwriters, and banks, to improve disclosure guidelines. The MSRB should offer written and online resources in support of proper disclosures.

While we understand that it is not a member itself, the MSRB would benefit from collaborating with FSOC members that are actively analyzing data gaps and will work together via the Climate-related Financial Risk Committee (CFRC), as well as the Climate-related Financial Risk Advisory Committee (CFRAC) once established⁹⁸. MSRB could also collaborate with the Department Of Treasury's Office of Financial Research, as well as the very well-resourced Research Division of the Federal Reserve, at both the Board and district-level.

⁹⁵ [FINRA Series 52 Municipal Securities Principal Qualifications Examination](#)

⁹⁶ [FINRA Series 53 Municipal Securities Principal Qualifications Examination](#)

⁹⁷ [FINRA Maintaining Qualifications Program](#)

⁹⁸ <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf> p.119

With the focus on climate change across numerous federal, state and local agencies and departments, the MSRB is encouraged to collaborate with those government efforts so as to identify and curate reliable and relevant data sources for municipal issuers to use in their disclosure. In addition to continuing building relationships with key governmental stakeholders, this would be a significant service to other stakeholders and in keeping with the MSRB's mission.

7a. MSRB should add a section to its website with access to climate risk data and research. This would include links to public resources. For example, in the Federal government, the Environmental Protection Agency, NOAA, FNMA, FEMA, and Federal Housing Finance Agency and others have programs and extensive data pertaining to climate risk that could benefit and expand existing municipal bond market stakeholder resources. Additionally, there would be links to third party research (as vetted by MSRB) and original research. Original research conducted by leading independent think tanks or research universities would also be linked. In conjunction with this, there may be an opportunity by the MSRB for collaborative research efforts as to how climate risk is affecting the municipal bond market.

This could well become a clearinghouse for municipal bond market climate risk resources that stakeholders could both draw upon and, with appropriate vetting, contribute to. Such a compendium of web-based resources could potentially increase the consistency of disclosure data within overlapping jurisdictions⁹⁹.

Moreover, by identifying and making available these resources, the MSRB would be taking tangible steps to reduce resource constraints on smaller issuers and non-institutional investors, who seek a one-stop information source.

Providing these resources to the market can benefit all investors, particularly non-institutional investors, as well as reduce the burden on smaller issuers. Both of these market stakeholders may share the same impediment of not having in-house expertise or resources to hire technical experts. Both may be grappling with trying to understand and assess the effects of climate change – investors on their bond holdings, issuers on their community – but feel overwhelmed by the vast amount of data out there and the level of expertise needed to understand and use it.

⁹⁹ Other stakeholders that have made similar recommendations include the Center for American Progress. In [“Climate Change and Municipal Finance”](#), May 2020, they recommend: “Moving to a new disclosure regime that includes climate risk will require most issuers to engage with outside technical experts. State and local issuers should not bear the full cost of creating a new set of disclosure standards, since a well-functioning muni market provides significant benefits to the economy and society at large. For this reason, the U.S. The Environmental Protection Agency and the SEC, working with other relevant agencies and regulators, should establish a clearing house for climate data and establish best analytical practices.” They also recommend going beyond the creation of the clearing house to provide technical assistance to municipal issuers: “additionally, these agencies should provide direct technical assistance during the early years of implementing any new climate disclosure requirements”

A climate risk resource web-page would be consistent with existing on-line educational efforts, such as the MSRB Education Center¹⁰⁰ and MSRB EdPro Courses¹⁰¹. The MSRB is a leader in this education effort. The MSRB website states “The MSRB Education Center is a multimedia library of information about the municipal securities market. Free and objective resources are geared toward investors and state and local governments to help them make informed decisions. The MSRB encourages widespread use of its educational materials.” The MSRB offers a range of fact sheets, webinars, videos and podcasts that cover a range of topics. But there needs to be more resources for investors, state and local governments and other stakeholders. The MSRB could play an unparalleled role in this important work.

Recommendation #8. MSRB should encourage all U.S. municipal bond market stakeholders - such as bond counsel, data vendors, valuation services, bond insurers, municipal advisors and especially rating agencies and other standard setters - to fully incorporate climate risk management into their internal processes.

In addition to those we have already referenced, there are many other important municipal bond market stakeholders, including bond counsel, data vendors, valuation services, bond insurers, and municipal advisors. We urge all of these groups to more fully incorporate principles of climate risk management into their part of the U.S. municipal bond market.

As it relates to the MSRB RFI, we would like to specifically address the role of rating agencies and other standard setters such as auditors and GASB.

8a. Recommendations for Rating Agencies

As standard setters for credit risk assessment methodologies, Ceres recommends that rating agencies enhance transparency regarding how climate risk factors into an issuer’s credit rating.

To accomplish this, we suggest that rating agencies disaggregate climate risks from broader ESG frameworks in credit ratings to increase transparency to the market. This approach has also been endorsed by many market participants, particularly investors. Even though all major rating agencies have made statements about the importance of incorporating climate risk into their ratings methodology, researchers have called into question whether they are truly reflecting these risks in their ratings¹⁰². By increasing transparency, rating agencies can accelerate the understanding and adoption of climate risk analysis by all stakeholders¹⁰³.

¹⁰⁰ [MSRB Education Center](#)

¹⁰¹ <https://www.msrb.org/Regulated-Entities/MuniEdPro>

¹⁰² Extensive discussion of rating agencies’ statements and actions with respect to climate change can be found in [Flying Blind: What Do Investors Really Know About Climate Change Risks in US Equities and Municipal Debt Markets?](#), Brookings, September 2020

¹⁰³ Other market observers have noted the rating agencies’ outsized impact on changing market behavior: “If ...credit rating agencies take bigger steps to integrate physical risk into their standards and evaluations of issuers,

Ceres also recommends that rating agencies recognize those issuers that demonstrate excellence in climate risk disclosure. Rating agencies should consider creating a Certificate of Recognition program for municipal issuers, such as a “Climate Awareness Leadership Award”, providing support and encouragement to the entities that have been showing leadership in this area.

8b. Recommendations for Auditors and Governmental Accounting Standards Board

Ceres recommends that accounting firms performing audits of municipal bond issuers consider climate-related risks to the issuer’s financial condition and operating performance.

There has been a glaring absence of climate risk disclosure in financial reporting for municipal issuers. However, accounting standard setters and independent auditors are being asked more frequently by investors and regulators to consider more directly climate-related risks in financial reporting¹⁰⁴. Last year Ceres issued a report on the challenges focused on auditing in the oil and gas sector¹⁰⁵. These issues are also relevant for the municipal debt sector.

Accounting and auditing standards are established in order to give investors the information they need, via financial reporting, to compare issuers, allocate capital and undertake stewardship. Failure to meet these standards suggests that investors will lack the necessary information to carry out those tasks. If the underlying judgements used to prepare financial statements ignore climate considerations, there is a risk that capital is misallocated¹⁰⁶.

Auditors play an important role in assessing and enforcing rigorous sensitivity analyses. U.S. audit standards for public issuers require that auditors obtain an understanding of how management analyzed the sensitivity of its significant assumptions to change, based on other reasonably likely outcomes that would have a material effect on the company’s financial condition or operating performance, and, among other things, evaluate the potential for management bias¹⁰⁷. This is the same for audits of nonprofits, municipalities, and governmental

companies, and securities due to increased knowledge of the exposure and the materiality of the risk, it will quickly alter behavior. There is a history of analogies for such circumstances where the knowledge regarding materiality and risk evolves over years until the point that the risk is clearly known and material, such as what happened with exposure to subprime assets, asbestos, unfunded pensions, and smoking. Once the depth of the issue and the materiality on valuations were broadly understood, information was demanded by market participants, rating agencies, and regulatory bodies that quickly altered market practices and pricing of financial assets and the legal environment regarding disclosure of those with fiduciary responsibility ", Brookings, [Flying Blind: What Do Investors Really Know About Climate Change Risks in US Equities and Municipal Debt Markets?](#), September 2020

¹⁰⁴ [The Role of Accounting and Auditing in Addressing Climate Change](#), *Center for American Progress*, March 3, 2021

¹⁰⁵ [Lifting the Veil: Investor Expectations for Paris-Aligned Financial Reporting by Oil and Gas Companies](#)

¹⁰⁶ [Flying blind: The glaring absence of climate risks in financial reporting - Carbon Tracker Initiative](#)

¹⁰⁷ Public Company Accounting Oversight Board, [“Auditing Accounting Estimates, Including Fair Value Measurements”](#)

entities. If an auditor determines that its work to test and evaluate an estimate or assumption constitutes a critical audit matter (CAM), then it must discuss the matter in its audit report. A CAM is defined as any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee, and that 1) relates to accounts or disclosures that are material to the financial statements; and 2) involves especially challenging, subjective, or complex auditor judgment. Since climate risk is material to many borrowers in the municipal bond market, the risk may constitute a critical audit matter.

Outside the United States, accounting and auditing standards-setters have provided detailed guidance to companies on how climate change and climate-related commitments could be reflected in corporate financial statements. In November 2019, the International Accounting Standards Board (IASB) issued a report detailing how climate change and mitigation strategies should be reflected in companies' financial statements¹⁰⁸. The International Financial Reporting Standards (IFRS) Foundation, which oversees the IASB, published additional educational material to highlight how existing requirements in IFRS require companies to consider climate-related matters when their effect is material to the financial statements¹⁰⁹. These are important statements and analyses by the IASB, the IFRS Foundation, and their staff that are justifiably receiving significant attention from both capital market regulators and climate policymakers, as well as from investors; companies; and, importantly, their auditors.

The mission of the Governmental Accounting Standards Board¹¹⁰ is to promote the provision of higher quality financial information through standard setting. It is this body that is the standard setter for many municipal issuers.

To this end, Ceres recommends that MSRB advocate that the GASB review governmental accounting standards and provide guidance on the financial impacts of climate-relevant risks as there is a strong connection between climate risk and accounting topics such as Valuation, Depreciation, Asset Impairment and Useful Life of physical assets.

Ceres also recommends that the MSRB encourage GASB to conduct and publish research on climate-related physical and transition risks and educate municipal issuers, investors and other stakeholders about climate-related physical and transition risks and how they may affect relevant accounting topics.

¹⁰⁸ Nick Anderson, "[IFRS Standards and Climate-related Disclosures](#)" (London: International Financial Reporting Standards Foundation, November 2020)

¹⁰⁹ IFRS "[Educational Material: The effects of climate-related matters on financial statements prepared applying IFRS Standards](#)"

¹¹⁰ [Government Accounting Standards Board](#)

MSRB ESG RFI—City of Detroit Response

Questions for Municipal Issuers

2. Do you believe the information included in ESG-Related Disclosures should be standardized? If so, how? If not, why not? In your view, is there a consensus on what information and which metrics are important? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are relevant and should be included in ESG-Related Disclosures?

- We agree with the GFOA guidance that standardized ESG disclosures would be overly burdensome, costly, and potentially inhibiting for municipal issuers who could decide not to use ESG designations they deserve to avoid the added cost and effort. Voluntary disclosures make the most sense for the municipal market.

3. Have you issued ESG-Labeled Bonds? If so, please consider providing an example and describing what criteria were used to make the ESG designation. Did you utilize an independent party to validate or otherwise attest to the use of the ESG designation? Please consider explaining why or why not.

- Yes, the City of Detroit issued \$175 million in 2021 with the Social Bond designation, based on the intended use of the Bonds for the financing of blight removal purposes.
- The City's Social Bonds designation reflects the use of proceeds of the Bonds in a manner that is consistent with the "Social Bond Principles," as promulgated by the International Capital Market Association (the "ICMA"), updated most recently in June 2020. The proceeds of the Bonds are funding projects consistent with a number of these categories, including affordable housing, employment generation and socioeconomic advancement and improvement, which is expected to benefit certain of the target populations included by the ICMA in the Social Bond Principles, such as (i) excluded and/or marginalized populations, (ii) communities that are underserved regarding affordable homeownership, and (iii) minorities and other target populations.
- We decided to use the ICMA standards as they were clear, easy to follow, and fit our purpose.
- We consulted our Bond Counsel and Financial Advisory on using the Social Bond designation, but we did NOT consider hiring a third-party vendor to certify the bonds as we did not feel doing so would add any value or be a good use of money.

4. If you issued ESG-Labeled Bonds, did you commit to providing any ongoing or continuing disclosure related to the ESG designation? If so, was that disclosure commitment incorporated into the continuing disclosure agreement or similar contractual obligation related to Securities Exchange Act Rule 15c2-12 (collectively, "CDA")? If so, please consider providing an example of the CDA. If the disclosure commitment was not incorporated into the CDA, how is the information made available to an investor on an ongoing basis and at what frequency?

- We stated in our Official Statement that we intended to report annually on the spending of bond proceeds in relation to the Social Bond designation; however, we clarified that this will not be a requirement under the City's continuing disclosure.
- We have not yet made a disclosure on this component, but are planning to do so.
- *From pg. 10 of the Official Statement: "In connection with the designation of the Bonds as Social Bonds, the City intends to file a report annually regarding the expenditure of the net proceeds of the Bonds, including the status of the projects funded with the proceeds of the Bonds and the amount of*

such proceeds expended as of the end of the prior fiscal year. The City intends to file this report with the Electronic Municipal Market Access service of the Municipal Securities Rulemaking Board ("EMMA"). However, the City is not required to file this report under the continuing disclosure undertaking attached hereto as APPENDIX C, or any other disclosure obligations pursuant to the Rule (as defined herein). See "CONTINUING DISCLOSURE" herein. The City intends to report on the use of the Bond proceeds and the projects funded with such proceeds only until all Bond proceeds have been fully expended."

Questions for all Municipal Market Participants

3. There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?

- The guidelines published by the GFOA for ESG Disclosures Best Practices is helpful information which will help the City of Detroit in its voluntary disclosures, and we believe will be useful to other municipalities.
- The City of Detroit has thus far been able to answer all investor questions regarding ESG issues. We believe these are so varied by issuer, that voluntary disclosures are the most efficient way to address concerns. Uniform or standardized disclosures would consume resources and potentially hinder issuers from providing investors with the best information.

4. There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?

- Vendors that certify ESG Municipal Securities could cause a disparity in markets because small issuers may not be able to afford their services. Such certifications essentially price out issuers who would otherwise sell ESG bonds.

5. Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG-related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?

- ESG considerations in the corporate sector are very different than in the public sector, and the type and frequency of disclosures should not be the same. The vast majority of municipal bonds clearly serve an ESG purpose; whereas the vast majority of corporate bonds do not.
- Corporate issuers who seek to use an ESG designation should be required to meet certain disclosure requirements, which are unnecessary for municipal issuers given the fundamental public purpose that municipal bonds serve by definition.



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

MARJORIE HENNING
DEPUTY COMPTROLLER FOR
PUBLIC FINANCE

BUREAU OF PUBLIC FINANCE

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

March 7, 2022

Re: Request for Information on Environmental, Social and Governance (“ESG”) Practices in the Municipal Securities Market

Dear Mr. Smith:

Thank you for the opportunity to provide input in connection with the disclosure of information regarding ESG-related risk factors and ESG-related practices (“ESG-related Disclosures”) and the labeling and marketing of municipal securities with ESG-labeled designations.

The New York City Comptroller serves as the chief fiscal officer of New York City. The Mayor and the Comptroller are jointly responsible for the debt issuance of the City of New York, the New York City Transitional Finance Authority, the New York City Municipal Water Finance Authority, and other City-related bond-issuing entities. The combined amount of debt issued annually and outstanding make New York City and its affiliated issuers among the most active issuers of municipal bonds in the United States. The Mayor and Comptroller are jointly responsible for the disclosure to the municipal marketplace of all material, City-related information, including information regarding ESG-related matters. The City Comptroller’s Office appreciates the opportunity to respond to the request for information.

- 1. Are you currently providing ESG-Related Disclosures or ESG-related information beyond the legally required disclosures in your offering documents, continuing disclosures or other investor communications? If so, please consider providing examples. If not, please consider describing how*

you address ESG-Related Disclosures in your offering documents, continuing disclosures or other investor communications. In your view, should municipal issuers include a separate section in their official statements and other offering documents expressly devoted to ESG-Related Disclosures?

We believe that the City's offering documents provide the ESG-related disclosures and ESG-related information, and do not omit any such information, that would be material to a reasonable investor. The details provided in the offering documents relating to environmental risks may go beyond what is legally required. New York City's relevant ESG-related Disclosure includes the following matters:

Governance:

The Official Statements of New York City contain a section on the structure of City government which lists the leading public officials and describes their responsibilities. The offices listed are: the Mayor; the City Comptroller; the Public Advocate; and the five Borough Presidents. The responsibilities of the City Council, the legislative body of the New York City, are also described. Subsequent sections describe the City's financial management, budgeting and controls, indebtedness, pension systems and other post-employment benefits, and the capital planning process.

Environmental:

The Official Statements contain a section on environmental matters. The section's sub-headings describe: Hurricane Sandy and the costs of ongoing recovery efforts; the impact of climate change on New York City and the City's coastal resiliency projects; and various superfund designations and the City's responses and remediation measures. Part of the City's due diligence procedures in advance of the printing of offering documents include responding to questions regarding climate change risks and related matters.

Social:

While there are no specific sections relating to "social" matters, information about the City's social risks is mentioned throughout the City's offering documents. Issues discussed extensively include the impact of health and safety risks arising from the pandemic, the need for and

expenditures on services such as education, health care and safety net assistance for individuals and families in need, and the status of labor negotiations. A section on City Services and Expenditures expands further on many of these matters.

City officials entertain questions from investors upon request and respond to questions regarding its ESG practices

With respect to our view as to whether issuers should include a separate section in their offering documents devoted to ESG-related matters, we think it is helpful to consider the environmental, social and governance components of ESG separately. Climate change, of course, gives rise to environmental risks that affect general governmental, utility, and transit issuers, among others, in different ways depending on their location. Potential costs relating to remediation and rebuilding following an extreme weather event, resilience measures to protect against the expected future impacts of climate change, and the transition from fossil-fuel based energy production to renewable sources, could all be material. Our view is that there should be a separate section in offering documents for issuers exposed to climate change risks that provides information to investors about the specific risks faced and how they are being addressed, together with the anticipated future costs, to the extent they can be quantified.

For the social and governance aspects of ESG-related Disclosures, we believe there is no real consensus in the municipal market regarding how to isolate those risks from general considerations of credit worthiness. Of course, at the extremes, social and governance factors affecting an issuer, such as widespread poverty or an inability to deliver essential services, are material and would be disclosed as a matter of course in a public bond offering. We believe that it is difficult, however, to isolate such risks in a meaningful way from the general credit of an issuer, and therefore would not recommend a separate section in bond offering documents relating to social and governance matters for all issuers.

- 2. Do you believe that the information included in ESG-Related disclosures should be standardized? If so, how? If not, why not? In your view, is there a consensus on what information and which metrics are important? If so,*

could you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are relevant and should be included in ESG-Related Disclosures?

Again, we think that it is helpful to distinguish among the elements of ESG-related Disclosure in response to this question.

Environmental:

Climate change affects different geographic areas of the country in different ways. For example, coastal areas are potentially impacted by sea level rise. Intense storms and other extreme weather events affect almost all regions of the country in different ways. Accordingly, the establishment of uniform standards that would be relevant and meaningful would be a difficult goal to achieve. Perhaps a minimum threshold of disclosure with general guidance that might be adaptable to each issuer might work better in the environmental area.

Social:

Local governments around the country are faced with many different types of social challenges which become material for investors when they affect a locality's general economic condition, including the ability to raise revenues and achieve balanced budgets, and prospects. We think that it would be difficult, if not impossible, to develop standardized disclosure about social risks because their impact on the credit worthiness of a local government depends on the specific economic, demographic and other circumstances facing each government.

Governance:

Governance risks of issuers across the country are similarly not uniform. Further, it is difficult to know when issues such as the inability of government officials to work together, dysfunctional legislatures, indictments of prominent officials, and turnover in personnel would rise to the level of materiality to an investor, absent an impact on the issuer's ability to operate and raise revenues. Like unhappy families, every dysfunctional government is dysfunctional in its own way. Therefore, we do not think that standardized disclosure would be useful in this context.

The standard for inclusion should be consistent with other disclosure matters: whether the ESG-related issue at hand would be material to a potential investor in making a decision as to whether to purchase the issuer's bonds.

While it is clear under current disclosure standards that ESG matters that would be material to an investor should be disclosed, there is no current consensus on the specific information that should be disclosed and metrics that should be used. The problems confronting the thousands of bond issuers across the country are often vastly different, unforeseeable, and often unquantifiable, and need to be considered in the context of each issuer's particular circumstances. While there is no one-size-fits-all approach, clearer standards as to what constitutes "green" or other ESG-labeled bonds could provide more clarity to issuers, improve investor acceptance, and potentially lead to a pricing advantage for these bonds. In any event, issuers should provide specific details about their ESG challenges and their current and expected impact on future operations and financial stability if they are material. Further, issuers should discuss their plans to address such challenges, to the extent feasible, accompanied by appropriate cautionary language particularly regarding unpredictable events.

- 3. Have you issued ESG-labeled bonds? If so, please consider providing an example and describing what criteria were used to make the ESG designation. Did you utilize an independent party to validate or otherwise attest to the use of the ESG designation? Please consider explaining why or why not.*

New York City and its main affiliated issuer entities have not yet issued ESG-labeled bonds. But the Hudson Yards Infrastructure Corporation, an independent issuing entity with City officials serving on its board and staffed by employees of the Mayor's office, recently issued refunding bonds with a Green Bonds designation. The bond issue refunded a prior bond issue that had used the proceeds to build an extension to a subway line in Manhattan and accordingly fell squarely under the "environmental" rubric as a mass transit project. Hudson Yards did use an independent party to validate or otherwise attest to the use of

the Green Bonds designation. We obtained the second party opinion because its cost was reasonable, and we had hoped that the involvement of an independent party would contribute to wider distribution and superior pricing on the transaction.

- 4. If you used ESG-Labeled bonds, did you commit to providing any ongoing or continuing disclosure related to the ESG designation? If so, was that disclosure commitment incorporated into the continuing disclosure agreement or similar contractual obligation related to the Securities Exchange Act Rule 15c2-12 (collectively, "CDA")? If so, please consider providing an example of the CDA. If the disclosure agreement was not incorporated into the CDA, how is the information made available to an investor on an ongoing basis and at what frequency?*

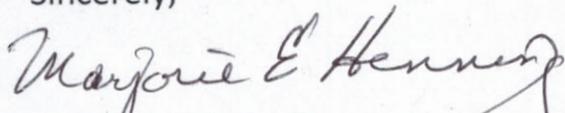
The proceeds of the Hudson Yards Infrastructure Corporation's recent Green Bond issue were used to refund bonds that had been issued to build an extension to a subway line in Manhattan. The proceeds of the prior issue had been fully spent and the subway extension has been operational for several years. Accordingly, since the environmental purpose had been achieved, it was not necessary to commit to provide ongoing, continuing disclosure relating to the Green Bonds designation.

- 5. Are you providing information to the credit rating agencies regarding ESG-related risk factors and ESG-related practices? If so, what type? In your view, how does this information generally compare to the information provided in your offering documents and continuing disclosures? Are the credit rating agencies requesting any new types of ESG-related information? Has the credit rating process changed in any significant ways in relation to ESG-related information?*

Officials of the Comptroller's Office's finance team meet with the credit rating agencies on a regular basis on various matters relating to New York City, including matters relating to ESG risk factors and ESG-related practices. The information provided is typically a summary of what has been disclosed to investors in our most recent Official Statement. The credit rating agencies have not specifically requested any new types of ESG-related information over and above what we disclose in our disclosure documents. The credit rating process has changed recently as some of the

rating agencies now have special categories concerning ESG-related matters that influence the issuers' long-term credit ratings. Each rating agency has its own unique approach and there is a lack of transparency regarding how they reach conclusions in these areas.

Sincerely,

A handwritten signature in cursive script that reads "Marjorie E. Henning". The signature is written in black ink and is positioned above the printed name and title.

Marjorie E. Henning
Deputy Comptroller for Public Finance

March 9, 2022

Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005
Attention: Ronald W. Smith, Corporate Secretary

Reference/Subject: Municipal Securities Rulemaking Board (MSRB) Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Dear MSRB,

Please find below the City of San Diego's responses to the above referenced Request for Information:

Municipal Issuers

Are you currently providing ESG-Related Disclosures or ESG-related information beyond the legally required disclosures in your offering documents, continuing disclosures or other investor communications? If so, please consider providing examples. If not, please consider describing how you address ESG-Related Disclosures in your offering documents, continuing disclosures or other investor communications. In your view, should municipal issuers include a separate section in their official statements and other offering documents expressly devoted to ESG Related Disclosures?

- The City of San Diego (the City) takes a robust approach to ESG-related disclosures in all bond offering materials beyond the legally required disclosures. The City updates disclosure on ESG-related information on the topics relevant to the City. Some Environmental factors referenced in City's offering materials include: the City's Climate Action Plan and Appendices, Climate Equity Index Report, and various Vulnerability Assessments, wildfires (preparedness and mitigation efforts), earthquakes and other natural disasters, and sea level rise. Social and Governance factors include the City's demographic information, pension and OPEB updates, Covid-19 pandemic response, and information technology preparedness and cybersecurity measures.

The City created and maintains its own customized issuer page (City of San Diego – ESG and Sustainability Materials) on the MSRB's EMMA platform to provide readily available information on the City's climate change mitigation efforts, ESG and other sustainability materials.

- <https://emma.msrb.org/IssuerHomePage/Issuer?id=C6B72B629A7F7EE4E0532C3C000A6E62>

Do you believe the information included in ESG-Related Disclosures should be standardized? If so, how? If not, why not? In your view, is there a consensus on what information and which metrics are important? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are relevant and should be included in ESG-Related Disclosures?

- The City has the infrastructure in place to gather, track, and collect historical/current data regarding ESG with the assistance of its Sustainability and Mobility Department led by the Chief Sustainability Officer. Additionally, the City has the tools in place to process and respond to climate assessments and various vulnerability assessments.

The City recognizes the benefit to standardized guidance for ESG-related disclosures, but information can vary considerably from issuer to issuer and considers mandatory standards unnecessarily burdensome. Currently, the City is focused on ESG-related matters pertinent to the City's ongoing climate mitigation, as well as City's social and governance principles.

Have you issued ESG-Labeled Bonds? If so, please consider providing an example and describing what criteria were used to make the ESG designation. Did you utilize an independent party to validate or otherwise attest to the use of the ESG designation? Please consider explaining why or why not?

- To date the City has not issued ESG-labeled bonds. At this time, the City has not seen a cost benefit for pursuing specifically ESG-labeled bonds (e.g. "Green Bonds") but is closely watching the market.

Are you providing information to the credit rating agencies regarding ESG-related risk factors and ESG-related practices? If so, what type? In your view, how does this information generally compare to the information provided in your offering documents and continuing disclosures? Are the credit rating agencies requesting any new types of ESG-related information? Has the credit rating process changed in any significant ways in relation to ESG-related information?

- The City provides information to credit rating agencies regarding ESG-related risks. The information provided is the same as that in offering documents and continuing disclosures. An overview of the information disclosed to the credit rating agencies and in bond offering materials regarding environmental factors include the City's Climate Action Plan, Climate Equity Index, wildfires and other natural disasters, and various assessments. Social factors disclosed, but is not limited to, include information technology preparedness and cybersecurity measures, Covid-19 pandemic impacts and response, homelessness solutions, and affordable housing supply. Lastly, governance factors disclosed include, but is not limited to, pension and OPEB updates, stormwater system compliance and funding solutions, and mayoral priorities.

In our opinion the information that rating agencies request has shifted focus to more ESG-related matters but not in significant ways.

All Market Participants

There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. Does the availability of these voluntary, market based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?

- The City has not had direct experience with these voluntary standards and has not issued ESG-labeled bonds. The City acknowledges that third party certification could be burdensome and costly if required for ESG labeling and disclosure.

There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?

- The City monitors industry-led ESG-related initiatives to ensure the City is utilizing the best practices for ESG-related disclosures and continues to be an industry leader in issuer disclosures.

There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?

- The City created its own customized issuer page on the MSRB's EMMA platform to alleviate any market confusion on the City's climate change mitigation efforts and to provide information directly to investors instead of using a third party to provide outreach to investors.

The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website. This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA

website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?

- The ESG indicator on EMMA seems helpful and provides additional transparency on ESG-labeled issuances. However, the City believes ESG indicators may create a divide and disparity between the issuers that have consultant verified ESG-labeled bonds, ESG-labeled bonds that are not verified, and the issuers that do not have ESG bonds.

What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

- As the MSRB continues to enhance the EMMA website, such as with the ESG indicator referenced in the prior question, any future updates on search functionality and improved issuer customizations will assist in providing additional market transparency.

Not related to ESG matters, it would be beneficial if issuers could make updates or corrections to disclosures after they are published.

Is there any additional information that you would like to share with the MSRB regarding any other ESG-related activities or trends in the municipal securities market?

- The City thanks the MSRB for the opportunity to provide information regarding ESG-related matters.

Sincerely,

Lakshmi Kommi
Debt Management Director

Comment on Notice 2021-17

from Joyce Coffee, Climate Resilience Consulting

on Friday, December 17, 2021

Comment:

Where an investor seeking to identify bonds that explicitly created racial and social equity, how would she do so? The S in ESG frequently identifies projects that improve health, education or workforce outcomes.

However, these outcomes could be ascribed to any demographic.

Given a: the historic racism embedded across the financial system and b: the disproportionate risk that "frontline" minority and lower income communities face to the growing impacts of climate change, ESG without equity is frail and ineffective.

Disclosure systems that include, for instance, measures related to the social vulnerability index: <http://artsandsciences.sc.edu/geog/hvri/sovi%C2%AE-0> (or search the Center for Disease Control, NOAA and others) could help.

So would embedding principles of targeted universalism (Targeted universalism means setting universal goals pursued by targeted processes to achieve those goals. Within a targeted universalism framework, universal goals are established for all groups concerned. The strategies developed to achieve those goals are targeted, based upon how different groups are situated within structures, culture, and across geographies to obtain the universal goal. Targeted universalism is goal oriented, and the processes are directed in service of the explicit, universal goal. From <https://belonging.berkeley.edu/targeted-universalism>)

Finally, ESG that uses traditional CBA or even holistic CBA is one key to inequity. Ascribing greater benefit value to beneficiaries who are subject to historic racism can begin to create equity within municipal bonds.

Thank you for the opportunity to respond to the request for information to solicit public perspectives on environmental, social, and governance (ESG) practices in the municipal market.

Community Capital Management (CCM) has over two decades of experience as an impact and ESG investing manager. We manage mutual funds and separate accounts across various strategies, with our largest strategy in fixed income. Our mission seeks to deliver superior risk-adjusted returns through investment strategies that contribute to positive environmental and social outcomes. Our strategies utilize an innovative approach to fixed income and equity investing by combining the positive outcomes of impact and ESG investing with rigorous financial analysis, an inherent focus on risk management, and transparent research.

We support the MSRB's efforts to improve ESG disclosure and transparency. ESG information is helpful to purchasers of bonds to evaluate the credit attributes, trends, fiscal health, and possible risk of governmental entities more accurately. The comments that follow are made in recognition of the clear alignment of interests that exist between the MSRB's mission of protecting and strengthening the municipal market, and the professional needs of analysts of municipal risk.

In our opinion, municipal financial disclosure is of poor quality compared to other markets in which we participate. This is due to a myriad of reasons, including but not limited to, size of the market, issuer size, and approvals needed for releases. Like financial disclosure, ESG-related disclosure is of poor quality when compared to other sectors, such as corporate bonds. We believe issuers have the ESG information/data already collected and therefore disclosing this information should not be a major undertaking.

Section (B): Investors in Municipal Securities

- 1. Do you consider ESG-related information material to your investment decisions? If so, in what way? Is ESG-related information important to your evaluation of a municipal issuer's creditworthiness? If so, what ESG-related information do you consider most relevant to a municipal issuer's creditworthiness and why?**

ESG-related information material is critical to every investment we purchase. As an impact and ESG investment firm, we must have a high degree of confidence that the security will have a positive environmental and/or societal outcome(s) to people and communities. In addition, we must be able to quantify and report on these ESG metrics and outcomes to our investors. Therefore, the investment team uses the ESG-related information to help understand the benefits of the investment and is an important resource in our evaluation process.

These materials are also helpful when evaluating a municipal issuer's creditworthiness given some sectors are more prone to ESG-related risks, such as public power, which could increase the



financial risk. More ESG-related information gives analysts a better understanding of potential risks, which can contribute to our evaluation of an issuer's creditworthiness.

- 2. Do you generally have access to all the ESG-related information you need to make an informed investment decision? If so, can you identify the source(s) of the information you use (e.g., municipal issue disclosures on the EMMA website, other municipal issuer communications, time-of-trade disclosures, third-party vendors or proprietary analyses? If not, please identify the gaps in information and market transparency.**

Yes, CCM generally works closely with issuers and underwriters to gather all required information to make an informed decision and be able to adequately quantify and qualify the impact and ESG investment for investors.

- 3. Does your expectation as to the availability and sufficiency of ESG-related information change depending on whether the purchase of the municipal securities is made in the primary market or secondary market? If so, how?**

We primarily buy in the new issue market vs. secondary market since investors typically get better information about the underlying loan(s) in the primary market than what is available to buyers in the secondary market. Once a bond is trading in the secondary market, issuers seem to have less interest in providing additional, or updated, information. However, as we move toward greater transparency as it relates to the ESG outcomes of the deal, we would expect more information to be made available for bonds trading in the secondary market.

- 4. In light of the potential availability of ESG-related information from other sources, how can municipal issuers best present and disseminate their ESG-related information to investors? What topic areas do you believe are most relevant for municipal issuers to include when providing ESG-related disclosures? In your view, is it sufficient for ESG-related disclosures to just describe material ESG-related factors? Is there a benefit to municipal issuers further describing the initiatives and other projects they are pursuing to address such risks?**

EMMA would be a good resource to disseminate information as it is free to investors and issuers. Another resource could be the issuers website. Often times, it is difficult to find information on an issuers website and many times investors have no idea what the issuers have or have not posted. An issuer would be prudent to have a plan that addresses ESG factors in the short, medium, and long term for municipal market participants and all stakeholders (i.e., tax payors and regulators). Understanding how the project fits into the issuers larger plan – such as if the project is standalone or if it's a local, state, or national plan – would be helpful information to disclose.



Since some sectors are more prone to ESG risk, it would be critical to have certain disclosures that makes these risks clear and that there can be varying financial risk associated with the ESG risk. The risk of “E” is different than “S” and “G.” An example of “E” (or environmental) is the ramifications after the Texas snowstorm of 2021. Some public power utilities ended up having to declare bankruptcy. This risk was more related to a physical risk. On the “S” (or social) side, disclosing what communities and persons are ultimately being helped, served, and addressed is a great start. As for “G”, governance has always been important in municipal analysts so would be an important part of the disclosure.

We believe that better disclosure allows for more possible purchasers of the security, which over time could improve pricing for the issuer.

- 5. Certain market participants have expressed concerns that, while analysts and investors have expressed their desire for more standardized ESG-Related Disclosures, there is no consensus on which data and metrics are important or essential. Do you believe such disclosures should be standardized? Do you believe there is a consensus on which data and metrics are important or essential? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus?**

We believe the reason there is no consensus for the data or metrics that are important is due to the fact that investment decisions made by municipal bond analysts vary because of 1) the subjectivity in assessing the degree of importance that any known factor may have on the repayment of debt in the future; and 2) the investment context including, but not limited to, risk tolerance, investment strategy, type of bond (e.g., current interest v. zero-coupon), interest rate/yield, and time horizon. Therefore, it is essential that ESG disclosures are sufficiently detailed and comprehensive in order to support a variety of research methodologies.

Given the fact that issuers are the experts on their ESG projects – they must report on these projects internally, to taxpayers, and if rated, to rating agencies – they have already collected detailed ESG information. We believe issuers should share all their data to the market through EMMA. This includes measurable and quantifiable metrics, and if the project is being pursued to provide impact and ESG outcomes, the issuer should report on the achievements of each particular outcome.



6. When purchasing municipal securities for ESG-Designated Funds, what ESG-related information is most useful for the investment decision? How do fund managers screen securities to ensure that they meet a fund's criteria? Once purchased, what information is most relevant in assessing that a security continues to meet the ESG criteria established for an ESG-Designated Fund?

We will always go through the preliminary offering documents (for new issue) and official statements (already trading in the market) to get detailed information on the ESG aspects of the bond. In reviewing the documents, we decide whether the security will fit in our portfolio. After issuance, reporting has become just as important and should be part of all ESG-related municipal deals. For those that provide this documentation, we will review and monitor the deal to ensure the initial ESG goals of the deal are being met.

7. When purchasing ESG-Labeled Bonds, do you evaluate municipal securities with an independent certification differently from bonds that do not have such a certification? If so, how? If not, why not? In your view, what are the benefits to an investor of purchasing a bond with an independent certification?

We will always do our own due diligence. Any additional information we can gather from other sources is looked at and considered. As ESG continues to grow and mature the information cannot be static. It should continue to evolve with the market.

Thank you for the opportunity to provide our comments on the request for information to solicit public perspectives on environmental, social, and governance (ESG) practices.

Sincerely,



Julie Egan

Director of Research/Portfolio Manager
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results. CCM has distinct investment processes and procedures relating to the management of investment portfolios for institutional clients. The firm's strategies are customized, rather than model-based, and utilize an innovative approach to fixed income and equity investing by combining the positive outcomes of impact and environmental, social, and governance (ESG) investing with rigorous financial analysis, an inherent focus on risk management, and transparent research. Bonds are subject to interest rate risk and will decline in value as interest rates rise. Stocks will fluctuate in response to factors that may affect a single company, industry, sector, or the market as a whole and may perform worse than the market. A sustainable investment strategy which incorporates impact investing and/or ESG criteria may take into consideration factors beyond traditional financial information to select securities, which could result in relative investment performance deviating from other strategies or broad market benchmarks, depending on whether such sectors or investments are in or out of favor in the market. Further, ESG strategies may rely on certain values-based criteria to eliminate exposures found in similar strategies or broad market benchmarks, which could also result in relative investment performance deviating.

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Consumer Federation of America

March 14, 2022

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Mark T. Kim
Chief Executive Officer
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

**Re: Request for Information on Environmental, Social and Governance (ESG)
Practices in the Municipal Securities Market**

Dear Mr. Smith and Mr. Kim:

I am writing on behalf of the Consumer Federation of America (CFA)¹ in response to the Municipal Securities Rulemaking Board's (MSRB) request for information on environmental, social and governance (ESG) practices in the municipal securities market.² Specifically, the Board requests further stakeholder dialogue regarding how best to enhance issuer protection, investor protection, and the overall fairness and efficiency of the municipal securities market in relation to the disclosure of information regarding ESG-related risk factors and ESG-related practices ("ESG-Related Disclosures") and the labeling and marketing of municipal securities with ESG designations ("ESG-Labeled Bonds").

Across markets, investors are demanding, and are fully entitled to receive, more consistent, more comparable, and more generally decision-useful ESG-related information. Where such information is lacking, inconsistent, or unreliable, investors and markets are excessively and unnecessarily exposed to the physical and transition risks of climate change. As such, it is incumbent on market regulators, including the MSRB, to facilitate the disclosure of

¹ Consumer Federation of America is an association of more than 250 national, state, and local pro-consumer organizations founded in 1968 to advance the consumer interest through research, advocacy, and education.

² See MSRB, *Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market* (Dec. 8, 2021), <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2021-17.ashx?>.

consistent, comparable, and reliable ESG-related information, and wherever appropriate and permitted under the law, to actively require it.

Therefore, we applaud the MSRB for undertaking this request of information, and we support its efforts to pursue such steps as may be necessary to achieve greater investor protections and market stability in the face of unprecedented climate and ESG-related risks.

Climate Risk Exposure of the Municipal Securities Market

As of 2019 there were “approximately 50,000 issuers of municipal securities, including states, their political subdivisions (such as cities, towns, counties, and school districts), their agencies and instrumentalities (such as housing, health care, airport, port, and economic development authorities and agencies), as well as a variety of private entities that access the market through “conduit” financings (such as hospitals, senior living and continuing care retirement communities, and museums).” Additionally, “[t]here are approximately one million different municipal securities outstanding compared to approximately 30,000 corporate bonds outstanding[.]” with offerings that range in size from the thousands of dollars to the billions of dollars and payments that come from a variety of sources.³

The time horizons for municipal bonds (or “munis”) are long,⁴ with bonds maturing on timelines of up to 30 years.⁵ The long lifespans of these debt instruments, coupled with the diverse and nuanced nature of the municipal bond market, make assessing their vulnerability to the impact of climate change critically important and uniquely challenging, for issuers and investors alike. Indeed, as pointed out in a 2021 report by United Nations Principles for Responsible Investment (UNPRI), “[i]nvestors have been slower to formally incorporate ESG factors into muni bond analysis compared with other fixed income sub-asset classes,” in part because “the complexity of the market and its relatively better credit quality have made the need for a more holistic approach to risk assessment appear less urgent,” and also, again because of the muni market’s diversity and complexity, “it has taken longer than in other fixed income sub-asset classes for muni bond market participants to frame ESG considerations in investment decisions.” Municipal bond issuers “reflect the wide geographical diversity of the US, implying that environmental and social risks also vary significantly.”⁶

Due to the municipal bond market’s inextricable connectivity to physical infrastructure and assets,⁷ climate-related commentary frequently assesses the municipal securities market to be uniquely vulnerable to the impacts of climate change, especially climate change-related physical

³ Jay Clayton and Rebecca Olsen, *The Importance of Disclosure for our Municipal Markets* (May 4, 2020), <https://www.sec.gov/news/public-statement/statement-clayton-olsen-2020-05-04>.

⁴ UNPRI, *ESG Integration in Sub-Sovereign Debt: The US Municipal Bond Market*, at 10 (July 28, 2021), <https://www.unpri.org/fixed-income/esg-integration-in-sub-sovereign-debt-the-us-municipal-bond-market/8079.article>, (“The average maturity of munis at issuance is long. In January-May 2021, the average tenor was 16.9 years (compared with 15.7 for corporate bonds) reflecting the long-term nature of many projects being financed[.]”).

⁵ MSRB, *Facts about Municipal Bonds*, at 2, <https://www.msrb.org/msrb1/pdfs/Facts-About-Municipal-Bonds.pdf>.

⁶ UNPRI, *ESG Integration in Sub-Sovereign Debt: The US Municipal Bond Market*, at 11.

⁷ *Id.*, at 15.

risks such as damage from fires, floods, tornadoes, hurricanes, droughts, rising sea-levels, and the myriad other extreme or unpredictable weather events that result from a changing climate.^{8 9}

Physical risk can also have a cascading effect for municipal securities, as climate events may cause other downstream effects that can impact municipal debt issuers and revenue streams. For example, a 2021 Bloomberg article points to the challenges in Western states resulting from greater water scarcity and drought conditions, namely that the money needed to finance infrastructure projects (projects which may also be important for building resiliency to the effects climate change) can become significantly more expensive to obtain because of the current conditions. The article further states that, “[w]hile cities and utilities can manage a year of dry weather, the drought conditions west of the Rocky Mountains have persisted since May 2020, with no end in sight,” meaning the “conditions could slow overall local economic growth and dent property values, creating “revenue implications that can lead to rating changes.””¹⁰

And like the municipal bond market itself, extreme weather events are various and geographically dispersed. A recent Washington Post article observed, “More than 4 in 10 Americans live in a county that was struck by climate-related extreme weather last year, according to a new . . . analysis of federal disaster declarations, and more than 80 percent experienced a heat wave.”¹¹ This new reality for many Americans is reflected in the following graphic from the same article:

⁸ See, e.g., Danielle Moran, *Climate Change: The Next Great Risk to Munis Is Already Here*, Bloomberg (April 18, 2019), <https://www.bloomberg.com/news/articles/2019-04-18/climate-change-the-already-present-next-great-risk-to-munis>, (“BlackRock Inc., the world’s largest asset manager, says that within a decade, more than 15 percent of debt in the S&P National Municipal Bond Index will come from regions that could suffer losses from climate change adding up to as much as 1 percent of gross domestic product annually.”).

⁹ See also Parker Bolstad et al., *Flying Blind: What Do Investors Really Know About Climate Change Risks in the U.S. Equity and Municipal Debt Markets?*, Hutchins Center Working Paper #67, at 12 (Sept. 2020), https://www.brookings.edu/wp-content/uploads/2020/09/WP67_Victor-et-al.pdf, (“For our purposes, this market is particularly important because, in principle, it should be a place where the physical effects of climate change are most evident. Much of what municipalities do with funds raised from these bonds (e.g., infrastructure) is vulnerable to physical impacts; looking to the future, even more infrastructure spending (e.g., sea walls) will be needed to ameliorate climate impacts, and localities will be expected to pay for some of that. Moreover, the revenue supplied to assure bond repayment (e.g., property, sales, and income tax) is itself potentially vulnerable to climate change if repeated climate-related events (e.g., floods, fires, and heat waves) lead to outward migration and loss of local appeal and wealth.” [Internal citation omitted]).

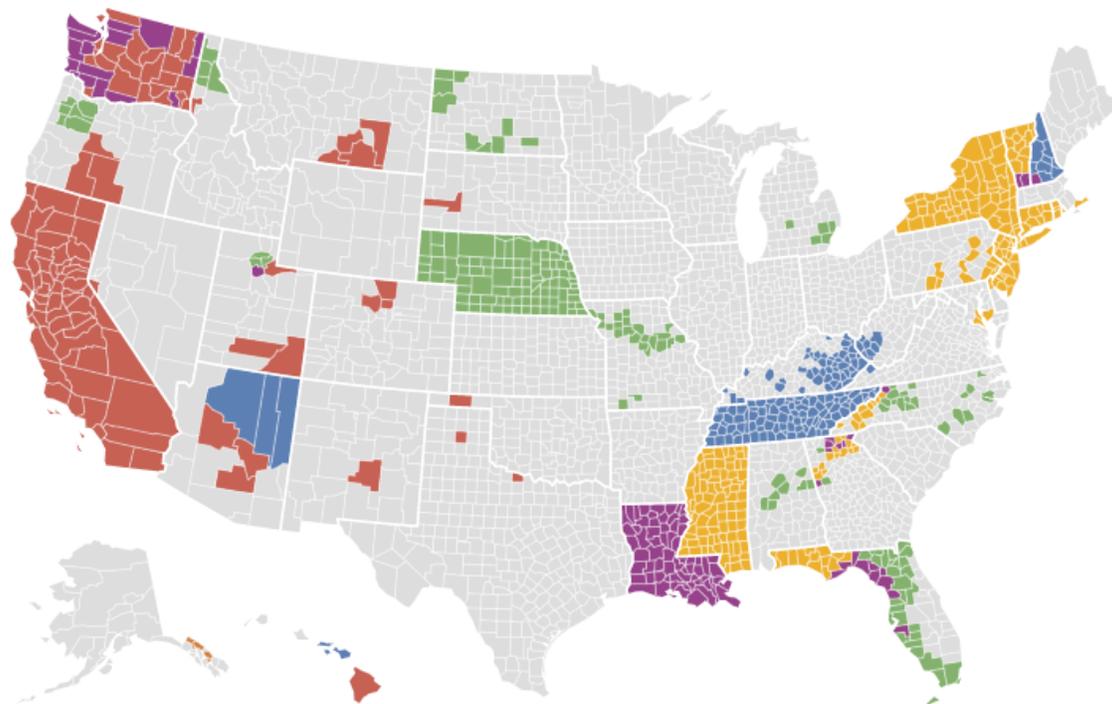
¹⁰ Lauren Coleman-Lochner, *Another Climate Risk for Cities: Higher Borrowing Costs*, Bloomberg (Aug. 23, 2021), <https://www.bloomberg.com/news/articles/2021-08-23/another-climate-risk-for-cities-higher-borrowing-costs>. (“Higher borrowing costs from extreme dry weather would add to expenses governments are already shouldering to shore up infrastructure, deal with damage from other extreme climate events such as floods and wildfires, and supply adequate power.”).

¹¹ Sarah Kaplan and Andrew Ba Tran, *More than 40 percent of Americans live in counties hit by climate disasters in 2021*, Washington Post (Jan. 5, 2022), <https://www.washingtonpost.com/climate-environment/2022/01/05/climate-disasters-2021-fires/>.

Climate-related disasters declared in 2021

Fires, floods and other climate-related disasters hit 820 counties where 40 percent of Americans lived last year.

■ Fire ■ Flood ■ Hurricane ■ Mud/Landslide ■ Multiple ■ Severe Storms



Source: FEMA

THE WASHINGTON POST

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Additionally, evidence indicates that exposure to climate risk is on the rise, meaning even those municipal securities that may be relatively safe from climate change today, may very well become exposed to the impacts of climate change in the future, perhaps unpredictably and dramatically. For example, an alarming report was recently published by the National Oceanic and Atmospheric Administration (NOAA), which revealed that “[i]n 2021, the U.S. experienced 20 separate billion-dollar weather and climate disasters, putting 2021 in second place for the most disasters in a calendar year, behind the record 22 separate billion-dollar events in 2020.”¹³

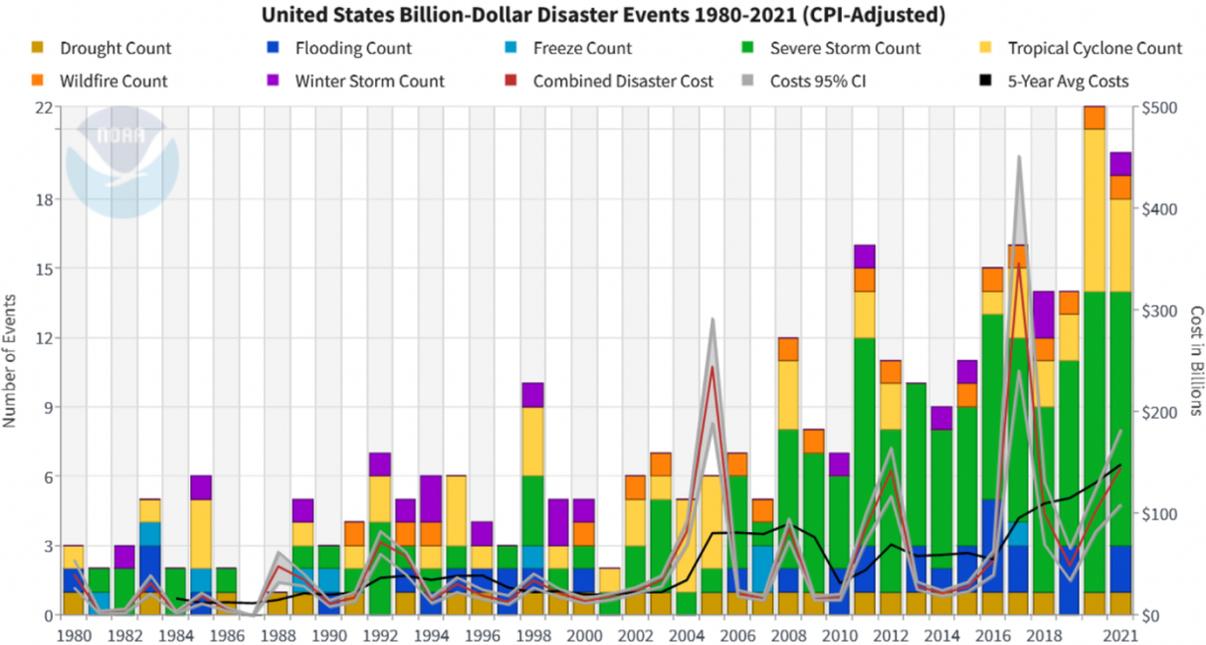
As described in the report, these billion-dollar events included, “1 drought event, 2 flooding events, 11 severe storm events, 4 tropical cyclone events, 1 wildfire event, and 1 winter storm event.” Further, “[t]he 1980–2021 annual average is 7.4 [billion-dollar] events (CPI-adjusted); the annual average for the most recent 5 years (2017–2021) is 17.2 [billion-dollar] events (CPI-adjusted).”¹⁴

¹² *Id.*

¹³ NOAA, *2021 U.S. billion-dollar weather and climate disasters in historical context* (Jan 24, 2022), <https://www.climate.gov/news-features/blogs/beyond-data/2021-us-billion-dollar-weather-and-climate-disasters-historical>.

¹⁴ *Id.*

The chart below, taken from the same NOAA report, is a stark illustration of the frequency and cost of these events:



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In sum, there is compelling reason to believe that municipalities, especially those that are most vulnerable to the effects of climate change, are going to be on the front lines of the fight against climate change, and for both issuers of municipal debt and the investors that buy it, understanding the risks of this fight will be critical to protecting themselves and helping to maintain market stability.

The Rapid Expansion of “Green” Municipal Securities

Alongside the growing threat of climate-related risks, we have also seen evidence that a well-regulated and sufficiently ESG-transparent municipal securities market could carry some respite and benefit for its participants. Indeed, many observers view the municipal securities market as inherently ESG-oriented.¹⁶ Commentary also often points to the municipal market as an obvious choice for sustainable (and/or impact) investing,¹⁷ especially where the projects that

¹⁵ *Id.*
¹⁶ See, e.g., Maria Elena Drew and Hugh McGuirk, *Increased Risk Highlights Need for ESG Analysis in Municipal Bond Market*, T. Rowe Price (July 23, 2021), <https://www.troweprice.com/personal-investing/resources/insights/increased-risk-highlight-need-for-esg-analysis-in-municipal-bond.html>, (“[T]he municipal market is inherently ESG-focused, providing essential funding for key projects around the country. The proceeds from state and local government debt issuance often contribute to positive social and environmental outcomes, funding either new or upgraded physical infrastructure . . . or improvements in the social infrastructure, such as in education, health care, and renewable energy.”)
¹⁷ Morningstar, *Green Muni Bonds Are Blooming Slowly* (July 19, 2021), <https://www.morningstar.com/articles/1047804/green-muni-bonds-are-blooming-slowly>, (“. . . the U.S. muni

are funded through it are specifically designed with sustainability and/or climate resiliency in mind.¹⁸

Specifically, municipal bonds that are targeted toward sustainable, environmentally focused, or ESG-related projects are often issued as “sustainability bonds,” “green bonds,” “social bonds,” or something similarly tailored to a specific purpose. To focus in on green bonds, they are “fixed-income instruments whose use of proceeds are specifically linked to the undertaking of environmentally sustainable projects.”¹⁹ As the MSRB observed in 2019, green bonds represent “a fast-growing segment of the \$4.0 trillion municipal bond market.”²⁰ Additionally, because municipal bonds are typically considered among some of the safest investments available – many investors purchase them as “buy and hold” investments²¹ – this combination of “safety” and “sustainability,” as core features the muni market, has the potential to be of great benefit.

Today, however, there also remains pervasive uncertainty about whether and which municipal bonds are actually “green,” a dilemma that can be detrimental to issuers and investors. The current landscape for designating a bond as green or sustainable is complicated by multiple factors. One challenge is that “few local governments go through the trouble to market their bonds that way[.]”²² Another, “stickier” challenge is that green bonds are self-designated by the issuer²³ and assurance of their sustainable/green status is done by private sector third parties.²⁴

As we have seen in our public securities markets (and what has precipitated the need for additional ESG-related rulemaking by the Securities and Exchange Commission), when the only mechanisms for obtaining necessary ESG-related information or assurance is through private third parties, the result can be a disparate landscape consisting of many ESG-related service providers and stakeholder organizations, each filling a different niche but also contributing to the

market, where many issuers have been offering debt that supports environmentally responsible infrastructure projects for decades, appears a natural fit for green bonds.”)

¹⁸ See, e.g., Center for American Progress, *A Framework for Local Action on Climate Change* (Sept. 28, 2017), <https://www.americanprogress.org/article/framework-local-action-climate-change/>.

¹⁹ Morningstar, *Green Muni Bonds Are Blooming Slowly*.

²⁰ MSRB, *Green Municipal Bonds 101*, at 1 (2019), <https://msrb.org/~media/files/resources/green-municipal-bonds.ashx>.

²¹ MSRB, *What to Expect When Selling Municipal Bonds Before Maturity*, at 1, <https://www.msrb.org/msrb1/EMMA/pdfs/Selling-Before-Maturity.pdf>.

²² Bloomberg, *Munis Seen as New Well for World’s Do-Good Investors* (Feb. 19, 2020), <https://www.bloomberg.com/professional/blog/munis-seen-as-new-well-for-worlds-do-good-investors/>.

²³ See Jennifer P. Brooks et al., *ESG Disclosure in Municipal Offerings*, at 5 (Aug. 20, 2021), <https://www.ballardspahr.com/~media/Main/Articles/ESG-Disclosure-in-Municipal-Offerings.pdf?rev=074ba0af1a0e4b96aaa32dd71261bbb6>,

(“Municipal issuers may choose to self-designate their bonds or financing programs as “green” or “sustainable.” There are no specific regulatory requirements or even industry standards for municipal issuers who desire to self-designate their green bonds[.]”).

²⁴ See *Id.*, at 4 (“The municipal bond market has yet to reach a clear consensus as to the precise requirements for any given project to qualify as “green,” and a municipal issuer may choose to rely on third parties to independently verify a bond’s green attributes, or may choose to self-designate its bonds as green. Certain standards, however, have developed, as have certain expectations of the investor community—given that the green bond market continues to expand.”).

inconsistencies that make ESG-related risk assessment more challenging.²⁵ The development of widely accepted third party standards has been of great benefit to bond issuers' ability to effectively issue ESG-related bonds,²⁶ and has certainly engendered a level of assurance for these bonds that didn't previously exist, but the need remains for the MSRB to embed that trend in the regulatory context and establish rules that investors can rely on.

The continued lack of regulatory certainty is likely to only contribute to the persistent absence of a universal understanding of what "ESG" or "green" or "sustainable" means. While it is possible that agency rulemakings and/or guidance are unlikely to provide an immediate or permanent fix for all ESG-related disparities and alleviate the risks of greenwashing, agency action to help facilitate and require consistent, comparable, and reliable ESG-related information is a critical first step toward providing investors the ability to protect themselves from these risks. Relatedly, it should be noted that a regulatory system that tolerates significant information asymmetries in regard to those disclosures is also disparately disadvantageous to retail investors who may lack the time and resources to overcome the above-described information shortfalls.

ESG-related Considerations for All Municipal Securities

Although the market for "green" municipal debt is certainly growing, analysis from Morningstar indicates that it represents only a very small portion of the muni market, stating, "[the] growth is impressive but represents merely a drop in the bucket of total U.S. muni issuance. . . [as] the \$15 billion in green muni debt . . . represents just 3% of that total issuance[.]"²⁷ which spells even greater ESG-related uncertainty for the majority remainder of the municipal debt market, that which lacks even a self-designated green status. This leads us to the question of whether and how investors are currently able to understand and assess ESG-related risks in the municipal market overall.

Research from UNPRI observes that, "[m]any ESG factors have traditionally been viewed as inherent in, and integrated into, muni risk assessment, similar to other fixed income instruments," but, "[i]t is only recently that institutional investors have started to frame muni ESG risks in a more formal fashion."²⁸ The report also observes that, "ESG factors are considered material if they affect the bond's initial pricing, its performance or credit quality (i.e. the issuer's willingness or ability to service and repay debt)."²⁹

Currently, the municipal securities market lacks a standardized methodology for measuring climate change risks for issuers. As it stands, climate-related disclosure by municipal

²⁵ CFA, *Comment Letter Re: Public Input on Climate Change Disclosures*, at 16 (June 14, 2021), <https://consumerfed.org/wp-content/uploads/2021/06/SEC-Climate-Change-Disclosure-Letter.pdf>.

²⁶ See MSRB, *Green Municipal Bonds 101*, at 2, ("Under the [*Green Bond Principles*], green bonds have four distinguishing components: . . . An advertised objective to use the raised funds in a way that will achieve certain environmental goals[;] A process for deciding how the bond's funds will be allocated, consistent with its objectives[;] A commitment to independent analysis of whether the bond is achieving its environmental goals[;] [and] Transparent reporting on the bond's environmental impact").

²⁷ Morningstar, *Green Muni Bonds Are Blooming Slowly*.

²⁸ UNPRI, *ESG Integration in Sub-Sovereign Debt: The U.S. Municipal Bond Market*, at 11.

²⁹ *Id.*

debt issuers is limited and variable,³⁰ and at times inconsistent with the known climate risks present in a geographic area.³¹

These limitations, coupled with the sheer size and complexity of the municipal debt market, make it exceedingly difficult for investors and regulators to conduct the type of analysis needed to assess climate risks of municipal bonds. This information gap, taken together with the physical climate-related risks examined at the start of this comment letter, leads to the well-supported conclusion that investors are likely exposed to climate risks via municipal securities investments of which they are neither aware nor immune.³² With 2022 set to be another banner year for ESG debt issuance,³³ these stakes will only continue to rise. As such, CFA supports those in the investment community asking for better and more readily available ESG-related information in the municipal securities market.³⁴

Conclusion

In sum, ESG risk management has become a mainstream consideration for investors, ESG-related information is widely considered to affect asset pricing, and therefore, ESG-related information is material to investor decision-making. Investors are deserving of the same level of climate and ESG-related disclosure with the issuance of municipal bonds that we have advocated for in the context of public company disclosures. Therefore, the MSRB, consistent with its mandate and the securities laws,³⁵ must pursue rulemaking and/or guidance for the municipal securities markets, just as other regulators are doing in other parts of our financial markets. At a minimum, the agency should explore avenues to elicit and/or require the provision of necessary

³⁰ Danielle Moran, *Muni Investors Seek Proof From Governments Selling ESG Debt*, Bloomberg (March 4, 2022), <https://www.bloomberg.com/news/articles/2022-03-04/muni-investors-seek-proof-from-governments-selling-esg-debt>, (“[O]nly around half of muni ESG issuance is subject to outside verification, data compiled by Bloomberg show.”).

³¹ See, e.g., Parker Bolstad et al., *Flying Blind: What Do Investors Really Know About Climate Change Risks in the U.S. Equity and Municipal Debt Markets?*, at 13, (“There is some evidence that municipalities simply don't pay attention to climate change when it comes to their financial offerings even when they are focused on dangers of climate in other areas of policy.”)

³² Danielle Moran, *Climate Change: The Next Great Risk to Munis Is Already Here*, Bloomberg, (“Our early findings suggest investors must rethink their assessment of vulnerabilities,” BlackRock’s Global Chief Investment Strategist Richard Turnill wrote in a research note this week. “Climate-related risks already threaten portfolios today, and are set to grow.”).

³³ See David Caleb Mutua and Olivia Raimonde, *Runaway ESG Debt Issuance Poised for Fresh Boost From Junk Sales*, Bloomberg (Dec. 23, 2021), <https://www.bloomberg.com/news/articles/2021-12-23/runaway-esg-debt-issuance-to-see-junk-bump-as-scrutiny-rises>.

³⁴ See, e.g., UNPRI, *ESG Integration in Sub-Sovereign Debt: The US Municipal Bond Market*, (“[PRI’s] research found that, to improve their ability to incorporate ESG factors, investors would like: data that is tailored to the issuer’s sector and geography, but allows for comparability across the sector; information on issuers’ strategies to identify and manage ESG risks; more openness to engagement; and better dissemination of ESG information, for example on a dedicated page on the issuer’s website or in financial statements.”)

³⁵ See MSRB, *Making an Impact: ESG Investing and Municipal Bonds*, <https://www.msrb.org/EducationCenter/Investors/Preparing/Basics/ESG>. (“MSRB rules establish professional qualification requirements for dealers, prohibit false or misleading advertising, require dealers to disclose material information, and require fair pricing, among other requirements that ensure investors are treated fairly and appropriately. The MSRB is not authorized to require municipal issuers to make disclosures about their bonds, including ESG bonds, though municipal issuers are subject to the antifraud provisions of the federal securities laws.”).

ESG-related information from regulated stakeholders, both about the climate-related risks present across the municipal bond market and the ESG-related performance promises made by bonds that carry a “green,” “sustainable,” or similar label.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dylan Bruce". The signature is stylized with a large initial "D" and "B".

Dylan Bruce
Financial Services Counsel



March 8, 2022

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. Suite 1000
Washington, D.C. 20005

RE: MSRB Notice 2021-17 Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Dear Mr. Smith,

The Disclosure Industry Workgroup participants (collectively the “DIG”) appreciates the opportunity to provide comments regarding the request for information on ESG Practices. Our group meets regularly to discuss municipal market disclosure matters and seeks to attain greater market collaboration by providing practices and insights that may be helpful to all market participants. The DIG has been deeply involved in topics of current interest including voluntary disclosures in the form of COVID-19 risks, ESG risks and cyber security risks.

While many of the industry associations that are part of the DIG will be submitting their own letters on MSRB Notice 2021-17, this letter serves to highlight areas where we agree and believe it is important to speak collectively to the MSRB on the issues raised in the Notice. We will also take this opportunity to continue to suggest that the MSRB engage with industry groups, apart from formal Notices and Comments, to gather more information and insights into the many perspectives around ESG matters. We always welcome coordinating additional meetings with the MSRB and DIG.

Bright Line that Exists between Risk-Based Disclosures and Designated Bonds and Designated Bond Disclosures.

The DIG has been particularly interested in clarifying the language used by the MSRB and others that intertwine these three different matters regarding ESG disclosures and designated bonds. We all agree that a bright line exists in practice between (i) the ESG risk-based disclosures that relate to and have a nexus to all credits and obligations, (ii) the process of issuing designated/labeled bonds and (iii) the disclosures that relate to and are requested by investors

for such designated/labeled bonds. It is important not to confuse or actively conflate these topics because each is different.

Request for the MSRB to Concentrate on EMMA Improvements.

Collectively, we appreciate MSRB's efforts to improve EMMA. However, given the requested information in this release, we are concerned that the MSRB is actively working to expand EMMA in functionalities that will not be used to directly improve the information flow between issuers and investors and could detract from key work to improve the EMMA system as a whole. Clarity of data is the industry's largest concern with EMMA, both in the inputting and in the retrieval of data. We strongly encourage the MSRB to continue and expand its work on improving the overall EMMA system¹.

Issuers should be able to easily post voluntary ESG information that has a nexus to credit. GFOA² and other organizations have discussed and encourage governments to curate this information and disclose relevant information related to an entity's credit. We are concerned that posting information (both about ESG and other matters) just for the sake of posting, crowds out truly useful information. Thus, MSRB should consider making only those enhancements to EMMA that would promote the preparation and organized filing and access of all voluntary disclosures made by issuers, including relevant ESG factors.

Market-Based Solutions.

ESG risk-based disclosures and designated bonds are important but relatively new conversations in the marketplace. Even our own groups are challenged with the definitions and understanding of these matters. Without this consensus, and in the preliminary stages of understanding the topic, it is premature for the MSRB to be looking at regulatory matters and determining appropriate regulated market practices in this arena. It should be the responsibility of the industry working collaboratively as it has done in the past with COVID-19³, Voluntary, Pension Obligation⁴ and Bank Loan⁵ disclosures to find appropriate market-based solutions.

Regular DIG meetings consist of considerable dialogue about disclosures among many major participants of the market, including issuers from multiple segments of the market, as well as bond counsel firms, investors, underwriters, and municipal advisors, among others. As such, the DIG is collectively addressing many of the perceived concerns on disclosure related to ESG risks and the disclosures needed for designated bonds. Industry participants need to work together as these issues mature to address many of the topics discussed in the request for information and that are happening within the marketplace, and they can best do so without the pressure of unnecessary regulatory action. It is also important to note that as labeled bonds are issued and

¹ See coalition letter on EMMA improvements to MSRB [here](#).

² For more information about GFOA's ESG Risk-based Disclosure recommendations [see here](#).

³ See "[General Continuing Disclosure Considerations for Municipal Securities Issuers](#)"

⁴ See "[Considerations in Preparing Disclosure in Official Statements Regarding an Issuer's Pension Funding Obligations](#)"

⁵ See "[Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans](#)"

there is interest in ESG disclosures, issuers are responding to investor requests and guidance. We are unaware of any critical market pressures or disruptions related to either of these topics that would currently warrant regulation.

MSRB Scope and Authority.

There are many areas where the MSRB can contribute to the ESG conversation and where their authority rests. The primary contribution would be to improve EMMA and allow for disclosures to be readily entered and accessed. We cannot emphasize enough our consensus on this point and the need for general EMMA improvements to occur.

Second, anti-fraud provisions apply throughout ESG disclosures and designated bonds, according to the SEC Rule 10b-5. The MSRB authorizing statute 15B in the Exchange Act underpins MSRB's congressionally mandated mission to develop Rules to protect issuers and investors. The MSRB could remind the marketplace of these rules, which relate to any type of transactions, including labeled bonds.

We are aware that this RFI will result in a great deal of perspectives and opinions, but we are unaware of the MSRB's intentions with the data. The MSRB does not have the authority to determine materiality and the content of issuer disclosures and market participant preferred activity, outside of the MSRB's own rules over broker-dealers and municipal advisors. We would expect that any discussions related to disclosure matters fall under SEC Rulemaking. The MSRB should remain neutral on the definition of materiality, standardized and preferred voluntary disclosures, and the MSRB must avoid developing any new rules or guidance for regulated parties at this juncture of the ESG conversation without proper processes and discussions.

Going forward we encourage the MSRB to consider the role the industry plays in advancing initiatives important to all market participants, and the need for enhanced communications between the MSRB and market participants. Together, the DIG remains committed to developing and promoting industry approaches to ESG disclosures. Working alongside the MSRB as our individual and collective organizational efforts intersect with your work as a regulator, will best serve to address these topics in the marketplace.

Sincerely,

Government Finance Officers Association
Bond Dealers of America
National Association of Bond Lawyers
National Association of Health and Educational Financing Facilities Authorities
National Association of State Auditors Comptrollers and Treasurers
National Association of Municipal Advisors
National Association of State Treasurers
Securities Industry and Financial Markets Association
National Federation of Municipal Analysts



March 8, 2022

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Response to MSRB Request for Information on ESG Practices in the Municipal Securities Market

Dear Mr. Smith:

I am writing on behalf of Domini Impact Investments LLC (“Domini”), an investment adviser and sponsor of a proprietary family of mutual funds, to offer our response to the request for information on environmental, social and governance (“ESG”) practices in the municipal securities market. Thank you for the opportunity to submit comments. Domini has an Impact Bond Fund (“Fund”) which includes municipal securities. Through this Fund, we hope to serve investors seeking a fixed-income vehicle aligned with Domini’s goals of seeking universal human dignity and ecological sustainability, while achieving competitive financial returns. Domini was pleased to have the Fund recognized by Environmental Finance as the 2021 Impact Fixed Income Fund.¹

Please find our responses to the selected questions below in bold.

(B) Investor in Municipal Securities.

(1) Do you consider ESG-related information material to your investment decisions? If so, in what way?

Yes, Domini considers ESG-related information material to its investment decisions. We value ESG data in our research process and support the effort to increase ESG disclosures. We are in favor of the standardization of information to increase comparability and better inform our analysis. Domini seeks to identify investment opportunities across its five funds that meet our Impact Investment Standards and advance our two main goals of ecological sustainability and universal human dignity while seeking competitive financial returns (“Impact Investing”). The Domini Impact Bond Fund utilizes a two-step investment process, working with a subadviser. Domini identifies issuers and securities that are eligible for investment by the Fund based on the evaluation of environmental and social factors, including the core business in which an issuer engages and/or how the issuer treats its key stakeholders, such as its customers, employees, suppliers, ecosystems, local, national, and global communities, and/or investors

¹ <https://www.environmental-finance.com/content/awards/impact-awards-2021/corporate-statements/impact-investing-at-the-forefront-of-fixed-income.html>

(“environmental and social factors”). Our definition of material sustainability factors also reflects our belief that issuers that treat their stakeholders— communities, customers, ecosystems, employees, investors, and suppliers well will be rewarded over the long-term. Our Key Performance Indicators (KPIs) guide our analysts ability to capture relevant data within the context of a potential investment’s business operations and geographic areas and make issuer-to-issuer comparisons possible.

The Fund’s subadviser, Wellington Management Company LLP (the “Subadviser”), evaluates issuer creditworthiness and uses proprietary fundamental research to select investments to buy and sell from among those which Domini has identified as eligible for investment. The Fund will sell securities that Domini determines are no longer eligible for investment based on Domini’s ongoing evaluation of environmental and social factors.

For non-corporate issuers, we focus our evaluations on three key themes:

- **Increasing access to capital**, especially for those historically underserved by the mainstream financial community
- **Creating public goods**, especially for those most in need
- **Filling capital gaps** left by current financial practice

These three themes flow from our belief that healthy economies must be built on a strong foundation of fairness and opportunity for all. As an asset class, we believe fixed income is particularly well suited to help address a broad range of economic disparities in our society. Through our evaluations of both quantitative and qualitative data, we identify opportunities for impact across a broad range of issues, including access to affordable housing, education and health care, community revitalization, justice, security, water, social services, rural economic development, and environmental sustainability.

We generally consider municipal bonds to be fundamentally aligned with our investment themes of creating public goods, which are essential to meet basic needs of society, and are often not provided by the private sector. They help finance:

- Essential infrastructure and services such as buildings, roads, and power supplies
- Economic development
- Healthcare facilities and services
- Educational facilities and services
- Other services needed to close the gap between these localities and the rest of society

Municipal bonds can also help to ensure broad access to environmentally beneficial technologies to all members of society. We therefore look to invest in municipal bonds that generate environmentally positive impacts for historically marginalized communities. Municipal issuers have a key role to play in terms of:

- Low-carbon technologies
- Pollution control
- Climate adaptation, such as disaster prevention and recovery

We will seek to avoid purchasing the relatively few government-issued bonds that are explicitly issued to finance the development of projects which are fundamentally misaligned with our investment objectives,

such as weapons and firearms, nuclear power, fossil fuels, for profit prisons and immigration detention centers, and alcohol, tobacco, and gambling.

We may approve an issuance at the security level even if the issuer is generally excluded, if we determine the use of proceeds is aligned with our Impact Investment Standards.

In evaluating a municipal issuer, we generally review the following factors: governance systems, whether it has a history of prudent use of public funds or a recurring pattern of widespread misappropriation of funds, the presence of corruption, controversies, or excessive fines. We evaluate municipal issuers' stakeholder relations, such as employee relations, or if there is community support or opposition to a project. To the extent available and relevant, we also seek information on outcomes for constituencies, related to health, environment, quality schools, affordability of housing, and equity. For general obligation offerings, the security is approved at an issuer level. If an issuer has several mandates, we consider alignment of the use of proceeds for the mandate with the Domini Standards.

We analyze the use of proceeds and the community that will be served. We look to purchase municipal bonds that address climate change, for example through the financing of low-carbon and climate-resilient infrastructure, and support historically underserved communities by providing increased access, for example through healthcare, education, and increased access to capital. We also look for information about the community intended to be served, for example with median household income, demographic information, or rate of insured/uninsured (for health-related issuances). In our research, we also look for ongoing disclosure on the outcomes of the financing, whether the public funds reach the intended recipients and achieve the intended purpose, and how it helped the community achieve improved outcomes.

(2) Do you generally have access to all the ESG-related information you need to make an informed investment decision? If so, can you identify the source(s) of the information you use (e.g., municipal issuer disclosures on the EMMA® website, other municipal issuer communications, time-of-trade disclosures, third-party data vendors or proprietary analyses)? If not, please identify the gaps in information and market transparency.

Yes, we generally have access to all the ESG-related information to make an informed investment decision. However, we note there is a wide disparity in the availability and quality of sustainability disclosures among fixed income issuers, especially on systemic risks such as climate change, community impacts, and racial justice.

Domini analysts conduct research to evaluate issuer and/or each offering's alignment with the Domini Impact Investment Standards. The offering document is our primary source of information, and we also rely on other publicly available information, analysis, or data. We also use other issuer specific information, such as websites and annual reports, and press.

The timeline for reviewing a fixed income offering is generally quite compressed, and when using a subadviser it is further compressed due to the communication between entities. While information is generally available in a timely manner, locating it among different sources within a compressed timeline may present a challenge linked to market transparency. The EMMA website may be useful, but given the

compressed timeline, we note the importance of the ease and efficiency of use, and timely uploading of the initial offering information into the EMMA platform.

(3) Does your expectation as to the availability and sufficiency of ESG related information change depending on whether the purchase of municipal securities is made in the primary market or the secondary market? If so, how?

Our expectations on the availability and sufficiency of ESG information does not generally change if the offering is in the primary versus secondary market and our process and evaluation is the same. Once an offering is approved for alignment with our Impact Investment Standards in the primary market, it is eligible to be purchased on the secondary market by the Sub-adviser. However, we note that the quality and quantity of ESG data may be greater once an issuance is on the secondary market.

Secondary market offerings often contain information that is useful for an ESG analysis, including information on the specific project, whether there are controversies related to a project, information on the issuer, and governance information. Ongoing disclosure on use of proceeds and material changes in the issuer's ESG profile is important for any bond issuance. In addition, this information is helpful for proper pricing of the secondary market by providing continued information and progress reporting to ensure the intended purpose is being met and the operations are still intact.

(4) In light of the potential availability of ESG-related information from other sources, how can municipal issuers best present and disseminate their ESG-related information to investors? What topic areas do you believe are most relevant for municipal issuers to include when providing ESG-Related Disclosures? In your view, is it sufficient for ESG-Related Disclosures to just describe material ESG related risk factors? Is there a benefit to municipal issuers further describing the initiatives and other projects they are pursuing to address such risks?

Municipal issuers are encouraged to provide comprehensive, quality, reliable information in a timely manner in a format that is accessible, such as their websites, ESG or Sustainability Reports or ESG Tear sheets for issuances. It is valuable for municipal issuers to define not only their material ESG related risk factors, but also, the policies, management systems, evaluation tools, grievance mechanisms, and consultation processes to manage these risks and opportunities. It is also useful to have disclosure of impact assessments on relevant ESG factors and progress of the deal financed, including with ESG targets and metrics.

The topic areas that Domini believes are most relevant for municipal issuers to include when providing ESG related disclosures include, climate change, physical climate risk, water risk, pollution abatement efforts. We also want to understand the constituency served by a project, efforts on diversity, equity, and inclusion, access, and affordability.²

Issues of Inequality, Social Impacts, and Systemic Racism

² See, Bruno, Christopher and Hensz, Witold Jerzy, Environmental, Social, and Governance (ESG) Factors and Municipal Bond Yields (February 17, 2022). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4035995

It is important to consider the impact on marginalized and poor communities, especially with respect to infrastructure and housing. Marginalized communities often face special and additional challenges, especially those related to historical oppression including legal, and structural oppression. It is useful for municipal issuers to disclose information on the community composition, the impacts of the issuance on those communities, the existence of a racial wealth gap and how that may be addressed through the project, connections to criminal justice, policing, and prisons, the presence of income inequality and poverty, and how each of these constituencies or factors may be impacted or addressed by the issuance.³ It is also helpful to have information on access, availability, and quality of services, especially for historically marginalized communities, including outcomes for students in schools, availability of quality affordable housing, infrastructure, or health care. Proceeds may also be used to replace and repair critical infrastructure, which may be especially necessary where lack of infrastructure has led to worse outcomes for marginalized communities. Disclosure might address the following questions: How, if at all is the issuance increase access to capital for Black, Indigenous, and People of Color (BIPOC) communities through programs such as home ownership, land ownership, or financial services and technical assistance; how is workplace equity for BIPOC addressed through this issuance, for example through BIPOC representation on senior leadership, wage equity, DEI initiatives, or workplace health and safety; how does this issuance increase the availability, access, and affordability of products and services to BIPOC or people living in poverty in an inclusive and affordable manner.

Greenhouse Gas (GHG) Emissions

Disclosure of Scope 1, 2 and 3 emissions as defined by the GHG Corporate Reporting Protocol is essential for investors to understand and address climate risk and is especially critical for any investors committed to GHG emissions goals (e.g., net zero by 2050 or sooner). These disclosures should include an inventory of direct and indirect emissions as well as time bound targets for emissions reductions and progress towards those targets. Additionally, emissions data should be disaggregated to the zip code level both for the purposes of future auditing and to understand community, racial and climate justice impacts.

Physical Risk

It is important to identify physical climate-related risks associated with a project, for example related to an infrastructure project, where long-term scenario planning is needed. Disclosure of the risks and management systems to mitigate or prevent those risks is helpful, noting that the physical location of an issuer or project may contribute to increased physical risk. Evaluation and disclosure of these risks and impacts is especially relevant among municipal issuers due to their place-based and mission-constrained operations.

Ecosystems, Nature, and Biodiversity

It is useful to provide evaluation and disclosure of the systemic risks related to ecosystems, forests, biodiversity, and nature. The stability of the global food system and risks related to infectious disease are

³ See *Capital at a Crossroads: Redirecting Capital to Accelerate Racial Equity*, *Croatian Institute*, <https://croatianinstitute.org/2021/10/19/capital-at-a-crossroads-redirecting-capital-to-accelerate-racial-equity/>

just two examples of major systemic risks related to nature loss. The interconnection of biodiversity with climate change is also relevant – the continued loss of forests and the disruption of ocean ecosystems will affect nature’s ability to store carbon and may impact the ability to align with a 1.5 degree scenario. Municipal issuers are encouraged to disclose potential nature impacts or dependencies, biodiversity risks, impacts on ecosystems, and use emerging work on biodiversity and nature disclosures by the Partnership for Biodiversity Accounting Financials, the Task Force on Nature Related Disclosures (“TNFD”), the Natural Capital Finance Alliance, the World Benchmarking Alliance and others.

Systemic Risks

Disclosure requirements should capture policies, practice and performance related to these systemic risks in addition to issuer specific ESG risks and opportunities. These issues may pose systemic risks, or non-diversifiable risks, to investors. Issues like climate risk, transition risk, income inequality, systemic racism, gender equity, and access are largely overlooked by Modern Portfolio Theory (“MPT”). MPT, which is the basis of much contemporary investing, focuses instead on reducing risk through diversification. Yet more recent research demonstrates that these systemic issues are both highly financially material⁴ and can be affected by investor action.⁵

One example is access to healthcare. As observed during the COVID-19 pandemic, the inability of localities to meet a surge in increased need for healthcare required restrictions in commerce, loss of municipal revenue, and the potential collapse of these markets (exasperated by balanced budget constraints). With adequate and healthy society, this systemic risk would be mitigated or eliminated.

The practice of ESG investing has begun to address these risks and opportunities but has been hindered by a lack of robust, consistent, and comparable data. Ensuring equitable, timely, and consistent access to information will help improve overall fairness and efficiency in the market.

(5) Certain market participants have expressed concerns that, while analysts and investors have expressed their desire for more standardized ESG-Related Disclosures, there is no consensus on which data and metrics are important or essential.

Do you believe such disclosures should be standardized? Do you believe there is a consensus on which data and metrics are important or essential? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus?

⁴ See, for example: Dasgupta, Partha, *The Economics of Biodiversity: The Dasgupta Review*, HM Treasury (February 21), available at: <https://www.gov.uk/government/publications/final-report-the-economics-of-biodiversity-the-dasgupta-review> and Lydenberg, Musuraca, Burkart and Clark, *Why and How Investors Can Respond to Income Inequality*, UNPRI (2018), available at: <https://www.unpri.org/download?ac=5599>.

⁵ See, for example: Lukomnik and Hawley, *Moving Beyond Modern Portfolio Theory: 1st Edition*, Routledge (April 2021), and Burkart and Lydenberg, *21st Century Investing: Redirecting Financial Strategies to Drive Systems Change*, Berrett-Koehler Publishers (April 2021).

Yes, issuers should adopt peer-relative standardized disclosure. We anticipate that the Securities and Exchange Commission will be addressing issues related to climate risk and human capital management. To the extent possible, we strongly encourage alignment around expectations and disclosure standards.

While there may not yet be consensus on which data and metrics are important or essential for all ESG disclosure, there are widely accepted frameworks. These include the UN Sustainable Development Goals, UN Guiding Principles Reporting Framework, Global Reporting Initiative, Sustainability Accounting Standards Board (SASB), Taskforce on Climate Related Financial Disclosures (TCFD), or CDP. The information generated by a TCFD report provides valuable insight on how climate risks are understood, the governance, scenarios, and targets. A barrier may be lack of relevant expertise among issuers and their staff on relevant ESG information and emerging investor expectations. An additional barrier to reaching consensus may be the lack of dialogue between issuers, issuer representatives, and investors to discuss which information is relevant, likely use cases, expectations on disclosure, and challenges from the issuer perspective to gathering and disclosing that data. There may also be different priorities and expectations for types of disclosure among investors in order to fulfill their investment strategies.

(6) When purchasing municipal securities for ESG-Designated Funds, what ESG-related information is most useful for the investment decision? How do fund managers screen securities to ensure that they meet a fund’s criteria? Once purchased, what information is most relevant in assessing that a security continues to meet the ESG criteria established for an ESG-Designated Fund?

As discussed above, the most relevant information to evaluate the alignment of an issuance with the Domini Impact Investment Standards is a review of the use of proceeds and the overall aim of the issuer, as it relates to environmental and social topics. For example, on the issue of addressing climate change, evaluation of the physical climate risks and whether an issuer or security is exposed to extreme weather events, flooding, or fires. Information on whether there are disparate climate impacts for different communities related to race, income, or other factors is also useful. It is useful to have information on how the issuer intends to achieve its stated environmental objectives, whether its objectives are grounded in climate science and data-driven solutions, and how the effectiveness will be monitored.

Once a security is purchased, we seek information about the continuation of approved aims/ business of the issuer; appropriate use of proceeds; and outcomes for the constituency that it serves.⁶ It is also relevant whether the issuer/project is being evaluated by a third-party and whether it continues to meet auditing expectations.

(7) When purchasing ESG-Labeled Bonds, do you evaluate municipal securities with an independent certification differently from bonds that do not have such a certification? If so, how? If not, why not? In your view, what are the benefits to an investor of purchasing a bond with an independent certification?

At Domini we evaluate each opportunity at the security or issuer level and assess its alignment with our Impact Investment Standards, regardless of whether it is an ESG labeled bond. In the case of labeled

⁶ See SOCIAL JUSTICE BONDS ACTIVEST A New Model for Equitable Infrastructure Investment (April 2021), https://www.activest.org/wp-content/uploads/2020/11/Social_Justice_Bonds_ACTIVEST_Apr2021.pdf

bonds, we consider the second-party opinion issued for labeled bonds as part of our analysis, but while disclosure within such certification may be helpful input for our evaluation, we do not rely solely on external certifications, scores, labels, or rankings to make investment decision. In fact, there are cases where a bond is labeled as “green”, and we do not determine that this bond furthers ecological sustainability in an additive way.

As the market matures and expectations are clarified, it will be helpful to have ESG data that has been verified or audited. It is also important to maintain robust expectations (for example to align with climate science) and monitor adherence of the use of proceeds to the stated ESG objectives.

(E) All Market Participants

(2) There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. Does the availability of these voluntary, marketbased standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?

Clear and consistent standards, with rigorous expectations grounded in climate science or relevant substantive standards, such as the SDGs or human rights norms, are important. The presence of processes to monitor adherence to those expectations will also help to improve the relevance and benefit of standards.⁷

(4) There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?

We are seeking consistency, reliability, and availability of timely data to all market participants. Ideally, all material ESG issues should be free of charge, readily available through publicly accessible websites, such as through EMMA. We believe EMMA has significant potential. Standardization of expectations is also important to ensure clarity and avoid misleading or contradictory analyses of data.

In addition to ensuring information is accessible to the investor community through relevant channels, information should be made accessible to relevant stakeholders. This is especially true for public entities which are addressing material ESG information as these securities are intended to provide social or environmental benefits. Additional consultations or rulemaking regarding ESG disclosure may be beneficial to provide the opportunity for all stakeholders to provide input and share their perspective, especially on topics that require broader consensus such as climate-related risks or diversity information (both gender and race/ethnicity).

⁷ A Framework for Strengthening Municipal Market Green Bond Labeling, *Center for American Progress*, <https://www.americanprogress.org/article/framework-strengthening-municipal-market-green-bond-labeling/>

(7) What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

It is useful to have consistent and comparable supplemental information which is uploaded in a standardized manner.

It will be helpful to include on the EMMA website information about the relevant ESG issues for an issuance, how these will be addressed through an offering, and management systems, goals, or strategies, how stakeholders were consulted, and the systems in place to support adherence to the intended use of proceeds from an ESG standpoint. It would also be useful to integrate TCFD reporting for the issuer and security, as well as data on demographics (similar to what is provided in an EEO-1 disclosure on diversity), and governance information about the issuer into the EMMA website.

Increased communication about the availability of the EMMA website, the type of information that is available, and how to use it would help increase adoption among investors overall, as well as those investors seeking ESG related opportunities in particular. It would be helpful to have clarity on the timeliness of information availability on EMMA, including how long prior to an offering coming to market and how long after it is available through the issuance given the compressed timeline for reviewing securities.

We thank you for the MSRB's attention to these important topics and the opportunity to comment.

Sincerely,

Mary Beth Gallagher
Director of Engagement
Domini Impact Investments, LLC

(A) Municipal Issuers – *not answered***(B) Investors in Municipal Securities – ***Please note, answers in Section B represent the responses of the Goldman Sachs Asset Management Municipal Fixed Income team. In addition, the responses to all questions included in the RFI are not meant to define internal processes or speak to approaches on specific accounts or funds; but rather to discuss the industry broadly and offer high level suggestions*****(1) Do you consider ESG-related information material to your investment decisions? If so, in what way? Is ESG-related information important to your evaluation of a municipal issuer's creditworthiness? If so, what ESG-related information do you consider most relevant to a municipal issuer's creditworthiness and why?**

ESG-related information is a broad and very complex subject. At Goldman Sachs Asset Management, our approach to evaluating ESG-related risks is similar to the process we employ when analyzing other forms of municipal credit risk. For client mandates that specify ESG guidelines, ESG-related information is critical. For non-ESG specific mandates, we view ESG factors on a case by case basis and from a risk management perspective. For example, for project finance or single-site risk assets, Goldman Sachs Asset Management will consider certain relevant environmental aspects that impact credit worthiness. Depending upon the sector and risk profile, we could be interested in the following:

- Property and interruption insurance coverage
- Environmental remediation studies
- Historic experience in relevant environmental risks (ex. hurricane/fire impacts for relevant areas)

The above factors can be significant when assessing performance risk as well as recovery in liquidation/bankruptcy scenarios. Other factors that may play a bigger role in the investment decision making process in the future include:

- Carbon (or other) emissions and the cost to municipalities of shifting to a low-carbon future
- Health (and relative wealth) of the local constituents who support surrounding economies
- Law enforcement, misconduct cases/settlements or protests around racial equality
- Cyber security – policies and protection
- Pension and retiree healthcare policies and liabilities
- Opioid or other substance addictions in communities
- Online gambling / Predatory Lending

These topics/risks are important to ESG investors and have the potential to divert resources and lead to long term reputational harm for municipalities.

Lastly, Goldman Sachs Asset Management views governance as an important component of a municipality's risk profile. How well a municipality's management team performs from an operational and budgetary perspective will impact Goldman Sachs Asset Management's assessment of an issuer's creditworthiness. Stability and longevity of management teams and boards, where relevant, is part of our typical assessment. Further, it is important to understand controlling parties or decision-makers' potential entanglements and/or conflicts of interest.

- (2) Do you generally have access to all the ESG-related information you need to make an informed investment decision? If so, can you identify the source(s) of the information you use (e.g., municipal issuer disclosures on the EMMA® website, other municipal issuer communications, time-of-trade disclosures, third-party data vendors or proprietary analyses)? If not, please identify the gaps in information and market transparency.**

The availability of ESG-related information varies greatly by issuer and even by sector. Standard deal documents like a preliminary official statement (POS) and related issuer information tends to provide some, but often incomplete, information. The Goldman Sachs Asset Management Muni team has spent significant time and resources to augment the information used to both make an informed investment decision, as well as report on that decision to our clients. Goldman Sachs Asset Management Muni uses a combination of proprietary systems, publically available information, and third-party data sets in an attempt to fill the gaps left by municipal issuer communications. Though third-party data sets are helpful, they are often simply estimates, and do not necessarily reflect the actual data collected by the individual municipalities.

In our opinion, the biggest challenges to-date have been quantification of risk (whether environmental or social) as well as standardization of the information given. While some issuers have the resources to report on these risks, reporting is inconsistent between issuers. In addition, smaller issuers often times lack the same capabilities, leaving investors with less information to evaluate. This leads to challenges, especially when trying to make relative comparisons amongst investment opportunities.

- (3) Does your expectation as to the availability and sufficiency of ESG-related information change depending on whether the purchase of municipal securities is made in the primary market or the secondary market? If so, how?**

It is our expectation that any and all information made available at the time of initial offering remain available for public deals (private placements would be separate matter). We utilize the same rigorous analysis when transacting in the primary or secondary markets.

- (4) In light of the potential availability of ESG-related information from other sources, how can municipal issuers best present and disseminate their ESG-related information to investors? What topic areas do you believe are most relevant for municipal issuers to include when providing ESG-Related Disclosures? In your view, is it sufficient for ESG-Related Disclosures to just describe material ESG-related risk factors? Is there a benefit to municipal issuers further describing the initiatives and other projects they are pursuing to address such risks?**

If an issuer has, and is willing to share, ESG-related information, a standardized approach to collecting and disseminating this information would facilitate an investor's decision making process. Ideally, this information would be made available in primary issuance documents, or via a separate standard form that could be easily accessed by all interested parties on EMMA (or elsewhere). Material risk factors are the most important, and should fall under a unified taxonomy, so that issuers and investors can view the risks consistently across time/entities.

Further, municipal issuers should have the opportunity to describe initiatives and projects (diversity and inclusion policies, renewable energy targets, social services, programming etc.) underway that address and mitigate these risks.

- (5) Certain market participants have expressed concerns that, while analysts and investors have expressed their desire for more standardized ESG-Related Disclosures, there is no consensus on which data and metrics are important or essential. Do you believe such disclosures should be standardized? Do you believe there is a consensus on which data and metrics are important or essential? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus?**

Risk disclosures should be standardized wherever possible, but metrics and data are expected to vary by sector/issuer. Considerations could include both history of severe climate events (and classification of resources spent to mitigate) as well as estimated emissions on the environmental side. Potential social linked data could include demographics or relevant data points on the constituents. For enterprise entities, consistent reporting on management representation and initiatives (i.e. diversity of leadership positions, hiring practices etc.) would allow ESG investors to see a more complete picture of the underlying entity and its relationship with the local community.

- (6) When purchasing municipal securities for ESG-Designated Funds, what ESG-related information is most useful for the investment decision? How do fund managers screen securities to ensure that they meet a fund's criteria? Once purchased, what information is most relevant in assessing that a security continues to meet the ESG criteria established for an ESG-Designated Fund?**

Each fund, including an ESG-Designated Fund, will have a stated investment philosophy and objective driving investment decisions. The ESG-related risk factors mentioned in prior questions, along with ongoing reporting data for labeled securities (mentioned in # 7) will allow portfolio managers to make educated investment decisions, as well as report on them, pursuant to proprietary philosophies.

- (7) When purchasing ESG-Labeled Bonds, do you evaluate municipal securities with an independent certification differently from bonds that do not have such a certification? If so, how? If not, why not? In your view, what are the benefits to an investor of purchasing a bond with an independent certification?**

When bonds are ESG-Labeled (Green, Social, Sustainability) by the issuers without an independent certification, there tends to be less confidence that industry standards are being met. While an issuer may indeed use bond proceeds to invest in environmentally and/or socially focused projects, there is an additional perceived level of safety and rigor that comes with the certification process. A third party verification provides an additional layer of reassurance. Specifically use of proceeds are confirmed and future accountability is established whereby a project is mapped back to its original targets. Ongoing reporting requirements and independent authorization help add confidence to the investment process. Understandably, there are costs associated with these types of certifications and so it may not be economically feasible for all issuers to pursue additional verification. Issuers who choose to label securities without certification should be prepared to be held accountable, and report on, the bonds adherence to the industry standards (ICMA principles) that clearly lay out expectations for these types of securities.

(C) Dealers - *Please note, answers in section C represent the responses of the Goldman Sachs Investment Banking, PSI Syndicate team*****

- (1) Does the underwriting of ESG-Labeled Bonds raise any novel compliance issues for firms, such as challenges regarding fair dealing, due diligence, pricing or other related legal obligations? How is due diligence generally conducted regarding municipal issuers' ESG-Related Disclosures?**

Goldman Sachs has existing policies and procedures in place that serve to guide the underwriting and diligence process for all transactions that are underwritten by the firm. These policies and procedures are reviewed regularly by internal and external counsel, and they are designed to ensure compliance with all relevant regulations. These policies and procedures do not include additional steps and/or considerations related specifically to ESG-Labeled Bonds and/or municipal issuers' ESG-Related Disclosures.

- (2) Do primary offerings that prioritize certain ESG investors raise any novel compliance issues for firms? What criteria are used to define an ESG Investor for purposes of such priority provisions? How might investors be assessed to ensure they meet the applicable criteria?**

It is common practice for issuers (across markets and also within the municipal bond market) to structure the priority of orders in any manner that they see fit in order to meet their goals and objectives for an offering. To the extent an issuer informs the underwriting team that it would prefer to designate priority to ESG investors during a primary offering, the issuer would be responsible for outlining the process for which they would like investors to be assessed in order to ensure they meet the applicable criteria, and the underwriting team would be responsible for adhering to that direction when building a book and allocating orders.

- (3) Does the purchase or sale of ESG-Labeled Bonds in the secondary market raise any novel compliance issues for firms, such as challenges regarding fair dealing, pricing, suitability, best execution, time of trade disclosures or other related legal obligations? Does this answer depend on whether the customer is a retail customer, institutional customer or Sophisticated Municipal Market Professional?**

Goldman Sachs has existing policies and procedures in place that serve to guide participation in secondary markets. These policies and procedures are reviewed regularly by internal and external counsel, and they are designed to ensure compliance will all relevant regulations. These policies and procedures do not include additional steps and/or considerations related specifically to the purchase or sale of ESG-Labeled Bonds.

(E) All Municipal Market Participants - *Please note, answers in section E represent the responses of the Goldman Sachs Asset Management Municipal Fixed Income team*****

The MSRB seeks input from all municipal market participants, including input on the following questions.

(1) Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?

Most of the material ESG-related risks to municipal securities were discussed in the investor section (Section B). Encouraging disclosure of these risks provides better transparency to the market and its participants.

(2) There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. Does the availability of these voluntary, market-based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?

The ICMA/CBI standards have been developed and improved over time, and are incredibly thorough. These standards have been widely accepted by the market and seem to be comprehensive enough to provide investors with adequate information / guidance needed when making decisions.

(3) There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?

ESG initiatives are gaining ground in the Muni market as client interest in ESG has increased significantly and investors seek additional information necessary to create solutions and facilitate thoughtful investment decisions. The Municipal Issuer Racial Equity & Inclusion Engagement Framework led by several asset managers (including Goldman Sachs) and Just Capital is one example that was created in an effort to increase disclosure, and encourage issuers to continue to improve on various social factors.

(4) There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?

ESG data providers have evolved and developed various information to be disseminated to investors, but ultimately it is up to these individual investors or asset managers to access and interpret the underlying data. Ideally, all material information will be disclosed in formalized issuer-provided documents, so that investors without access to 3rd party data sets will not be penalized or disadvantaged. For those who do utilize the data sets, it can be a differentiator in providing clients with context and facilitating qualitative discussions around personal interests and values alignment.

(5) Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG-related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?

Foreign investors sometimes have a higher standard when it comes to ESG disclosures, taxonomy and reporting versus onshore investors. As the domestic market evolves, and consistency and standardization improve, this disparity between expectations should dissipate.

(6) The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website. This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?

Integrating ESG indicators into the EMMA domain is extremely helpful to market participants as previously hard to find information is now made more easily accessible and identifiable. The designation (self-labeled, 2nd party opinion, third party verification, etc.) is also a great uplift.

(7) What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

Create a separate ESG tab/portal where all ESG-related information/disclosure can be captured, organized and made easily accessible to the public – for both issuers and investors.

(8) Is there any additional information that you would like to share with the MSRB regarding any other ESG-related activities or trends in the municipal securities market?

All comments addressed in prior questions

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Government Finance Officers Association
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March 8, 2022

Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. Suite 1000
Washington, D.C. 20005

RE: MSRB Notice 2021-17 Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Dear Mr. Smith,

The Government Finance Officers Association (GFOA) appreciates the opportunity to provide comments regarding the MSRB's request for information on ESG. The purpose of this letter is to provide context from the municipal issuer perspective as the Board discusses ESG practices in the municipal market, and in particular discuss with market participants the potential action items MSRB may consider within its regulatory scope. We want to be sure that you are aware of our efforts and industry efforts to highlight ESG disclosures for issuers. The observations that we share below are reflective of the 22,000 issuers that GFOA represents.

BACKGROUND

As issuers of municipal debt, GFOA members have had differing experiences in the ESG space. But one key point is consistent—there is no core difference between longstanding disclosure principles and ESG disclosure principles – they are one in the same. GFOA and other issuer groups are taking active steps to make issuers aware of ESG factors that may impact their respective jurisdictions. GFOA is also taking active steps to promote to issuers that they consider voluntary disclosure, which extend the disclosures of ESG risks.

Recognizing the difference and resulting conflation by market participants between (i) ESG risk disclosures, (ii) issuing Designated Bonds or other bonds specifically designated for purposes as

outlined in the offering statement, and (iii) primary disclosure and ongoing disclosures related to issuing Designated Bonds (or bonds issued for specific purposes in which investors may make an ESG investment decision). GFOA took the initiative to create and promote a series of best practices articulating the difference in concepts and processes. For the purposes of framing our response to this RFI, we outline those best practices below.

ESG Risk-based Disclosures. Some municipal issuers have committed to providing voluntary ESG-based risk disclosures on bonds issued for a variety of purposes. In GFOA's approach to development of [ESG Risk Disclosure Best Practices](#), we provided a framework for issuers to use to deliberately determine how each ESG factor could potentially affect creditworthiness or its ability to repay its debt. This was informed by conducting listening sessions with market participants over the past year that use information provided by issuers to analyze our credits on a regular basis.

The best practices (BPs) developed by the GFOA not only encourage issuers to conduct internal due diligence to identify ESG factors that are material to creditworthiness or ability to repay bonds, but also to provide context about policy actions taken by jurisdictions to address those factors that are risks and to report that information in primary market or voluntary disclosures where appropriate. The BPs provide potential examples of factors that an issuer should consider discussing with their financing team and provides a roadmap to identify whether there are risks. The general disclosure template provides a useful tool for issuers who have made the choice to voluntarily disclose ESG risks.

To encourage voluntary disclosure, GFOA also developed a [Voluntary Disclosure](#) best practice, which is a complimentary best practice developed to accompany the suite of ESG disclosure best practices. In this best practice, we provide plain-language interpretation of the safe harbor provided in the May 2020 SEC commentary related to COVID-19 disclosures (CF Disclosure Guidance: Topic Number 9) as a proxy that should be used in developing appropriately framed voluntary disclosure to the market without being second-guessed by regulators. We believe the ESG and Voluntary Disclosure Best Practices will lead to more and better information available to the marketplace regarding ESG factors that have an impact on jurisdictions as we continue to educate our members.

The GFOA believes and notes in these best practices that there currently is no need for issuers to expressly expand disclosure in their official statements and other offering documents expressly devoted to ESG-related disclosures. Municipal issuers should continue to assess risks before determining what to disclose. Without this important step of issuers curating their risks and information, disclosure documents and even the MSRB's EMMA system would be clogged with information that is neither useful nor productive to an investor's decision making. This dovetails

with the concerns expressed by many market participants over the years that quality of information is far more important than the quantity of information.

Issuing Designated Bonds. Some issuers have chosen to issue Designated Bonds. The RFI continues to reference these types of issuances as “ESG-Labeled Bonds” which is a misnomer as there is presently no such Label. The GFOA debt committee recently authored a best practice that could be instructive to those interested in issuing and marketing [Designated Bonds](#), such as green bonds or social bonds. Among the recommendations of the best practice include discussing the potential initial costs and the costs related to ongoing ESG continuing disclosure responsibilities. Any benefit to justify the costs of issuing Designated Bonds should be evaluated critically as with any expenditure of public funds.

It is not the responsibility of issuers, as stewards of public funds, to assist banks or broker/dealers in marketing activities around ESG branded products, such as sustainable investment funds. And, if issuers are being requested by a subset of investors for non-material information to assist in that marketing activity under the guise of materiality, we do not view that as a qualified reason for expanding the long-standing concepts of materiality and required disclosures.

For governments considering formally designating bonds as having positive social, environmental, sustainable or other impacts, this best practice recommends that governments critically evaluate the potential benefits and associated costs. Governments should consider consulting their bond and/or disclosure counsel and municipal advisors and others on their financing team who can help them assess whether any benefit of issuing Designated Bonds outweighs the costs and any potential future legal or regulatory risks and consequences if the project goals do not meet the Designated Bond criteria.

It is imperative to ensure that the topics of Designated Bonds, disclosures related to Designated Bonds, and general disclosure of ESG factors are kept separate. Going forward, these discussions should be held separately from one another since they are about two very different concepts.

While we defer to specific issuers to describe their practice, aggregated observations from our membership on specific questions listed in the RFI is included below.

Issuer Question #2: *Do you believe the information included in ESG-Related Disclosures should be standardized? If so, how? If not, why not? In your view, is there a consensus on what information and which metrics are important? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are relevant and should be included in ESG-Related Disclosures?*

Uniform ESG disclosure standards or metrics will not improve investor protections or increase available, meaningful information for investors. Issuers are addressing ESG factors in rating agency discussions that, if material, will be part of disclosure language. Furthermore, as with any credit risk, each issuer will have different standards or metrics and be impacted differently. As with other types of voluntary disclosures, industry groups are and will come together to develop any necessary outlines of information that are agreeable and helpful to market participants.

Additionally, we believe sufficient investor protections already exist within the current legal framework of the municipal market (including the anti-fraud provisions of federal and state securities laws and SEC Rule 15c2-12) to ensure appropriate disclosure of risks.

Uniform/standardized disclosures are not applied under SEC rules as a disclosure responsibility for issuers. As this issue is still in its elementary stage, making determinations at this time – which would be under the SEC’s jurisdiction not the MSRB – would not provide meaningful assistance for investors, and cause needless workload for issuers. Issuers need to be aware before the issuance of such “ESG-Labeled Bonds” what the expectations are from investors with respect to disclosure and as with many elements of the ESG discussion, this disclosure expectation from investors is also evolving. Each issuer should determine what, if any, disclosures are appropriate as discussed with bond counsel.

Issuer Question #4: *If you issued ESG-Labeled Bonds, did you commit to providing any ongoing or continuing disclosure related to the ESG designation? If so, was that disclosure commitment incorporated into the continuing disclosure agreement or similar contractual obligation related to Securities Exchange Act Rule 15c2-12 (collectively, “CDA”)? If so, please consider providing an example of the CDA. If the disclosure commitment was not incorporated into the CDA, how is the information made available to an investor on an ongoing basis and at what frequency?*

Designated bonds are not uniformly defined nor mentioned in any SEC regulations. Issuers who issue designated bonds may describe the types of information related to the issuance in the OS and in the CDA that refers to ESG data or other disclosure information related to the type of “ESG-Labeled Bonds”. As such they have a responsibility, under current regulations, to fulfill those promises.

Any activity outside of what currently exists is unwarranted, unnecessary, would cause greater confusion and would be under the jurisdiction of the SEC.

Issuer Question #5: *Are you providing information to the credit rating agencies regarding ESG-related risk factors and ESG-related practices? If so, what type? In your view, how does this*

information generally compare to the information provided in your offering documents and continuing disclosures? Are the credit rating agencies requesting any new types of ESG-related information? Has the credit rating process changed in any significant ways in relation to ESG-related information?

Issuers are providing requested ESG information related to their credits in rating presentations and other communications. As rating agencies have noted, most of this information has previously been communicated by issuers over the years. And in many cases this information has been disclosed, but now these data are categorized into specific buckets, which highlights these issues. This is not an area where the MSRB has jurisdiction; but there may be interest in how the SEC may review and address rating agency ESG methodology and business practices.

Note: During rating calls, many check-list type questions are asked by rating agencies. These include questions that could be considered related to ESG (when was the last time you submitted a budget report to the legislature?), but, are not considered material and provided as normal on-going disclosure.

All Participants Question #1: *Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?*

We do not believe that there are any ESG factors that pose a systemic risk specifically to the municipal market.

The vagueness of this question reflects the conflation that exists between the topics of ESG-Related Disclosures and “ESG-Labeled Bonds”. With respect to ESG-Related Disclosures, currently there are rating agency reviews of relevant credit factors, that when coupled with continued improvements in municipal disclosure will result in an increased number of voluntary disclosures. We would also note that this matter is not specific to the municipal market, nor caused by any attributes of municipal credits or securities. ESG factors are a global matter.

The MSRB should focus its efforts to ensure that the EMMA system is easily accessible for the submission and retrieval of disclosure information, including voluntary ESG information. That is where the MSRB’s role rests. As stated above, there are current SEC rules that already apply to ESG disclosures and labeled bonds, which includes the 10b-5

anti-fraud provisions. MSRB's rules that generally apply in the similar vein – those that protect issuers and investors - could be highlighted as well.

If the SEC acts in a manner that presents new responsibilities to issuers and other market participants in this area, then that would be the time for the MSRB to determine and propose any regulatory actions. As with other matters, we do not believe that the MSRB, as a market regulator, should engage in non-regulatory actions, especially in this area, and most especially at this time. The MSRB should support and work with industry participants in their efforts to develop consensus in this area that help their members navigate and understand these multiple variables related to ESG risk-based disclosures, designated bonds, and disclosures for designated bonds.

All Participants Question #2: *There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. Does the availability of these voluntary, market-based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?*

ESG is an emerging area where GFOA, industry groups and specific issuers and market participants are learning and sharing information and experiences in order to develop industry guidelines related to designated bonds. As the industry itself is trying to determine what information is needed, it would be premature for any regulatory entity to dictate reporting of information that may be determined by the industry as not being useful. GFOA itself is working on Best Practices to help our members understand the meaning of designated bonds. Those best practices have not been in practice yet for six months and need market saturation to determine next steps. We know other groups as well are providing information in the marketplace and we support all of these initiatives. There is no need for the MSRB to enter into a conversation on the parameters of designated bonds, unless and until the SEC defines and acts on this matter.

All Participants Question #3: *There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?*

Yes and we believe it would be prudent to give industry-led initiatives, such as the GFOA's newly adopted BPs, time to work prior to adding any uniform standards that may serve to confuse or limit meaningful ESG risk disclosure. It would also be helpful that as the MSRB initiates and engages in conversations on these matters that it highlight the work of GFOA and other market participants, and direct interested parties to these

resources. GFOA currently leads a Disclosure Industry Workgroup that since 2019 has addressed matters related to municipal disclosure. This is one of many examples on how all industry participants are working together to improve the quality of ESG-Related Disclosures and to identify the clean and concise information that investors are needing for “ESG-Labeled Bonds”.

All Participants Question #4: *There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?*

Yes the growth of ESG has resulted in a growth of vendors that have a plethora of ESG information, data, and opinions. It is incumbent on issuers to determine the data and information that is correct and material to their credits. Issuers should dictate what is disclosed about their bonds. The MSRB and its EMMA system could assist here by ensuring that only issuers, and those specifically entitled by issuers, are making filings on the EMMA system related to ESG matters. Some investors are looking for specific categories on EMMA to file ESG disclosures. While this would allow issuers – the party that should be controlling the information about their credits and issuances – to file specific disclosures related to ESG factors, it could quickly lead to confusion on “where” in the EMMA system one can most quickly find information related to a credit. For example, if an issuer’s revenues are decreasing due to environmental factor and that factor being a risk on the credit, would filing any voluntary disclosure in an ESG factors’ section address an investor looking for budget or revenue updates?

When discussing separately the issue of labeled or designated bonds, the MSRB should allow the issuer – again the party that should be controlling the information about their credits and issuances – to indicate if a bond is designated as “green,” “social,” or “other”. The mere fact that there are vendors evaluating publicly available data, and charging for their analysis, does not mean that the unequal access to the analysis is “unfair”. Issuers need to make disclosure determinations with their counsel and financing team and not for the purpose of private sector vendors to ask for information so that it can be used outside of the nexus of credit to help with opinions and interpretations of data. We will continue our efforts to work with the industry to distinguish between “data” (which is objective), and opinions on and interpretations of the data.

All Participants Question #6: *The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website. This ESG indicator denotes when an issuer has self-labeled a bond issue as green,*

social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?

We do not believe that this information is valuable, and continue to express concerns that the MSRB is allowing a third-party vendor's information to be highlighted about an issuer's issuance. As you know, GFOA members were very disappointed with this feature becoming part of EMMA, without prior dialogue with issuers. If the information is valuable, the MSRB should allow primary sources (issuer, underwriter, municipal advisor) to enter the information, rather than unauthorized third parties. We hope that the MSRB does not look to allow other information to be tagged onto issuer credits generally, and certainly without discussion. An example of the former is posting credit ratings to issuances. The MSRB at that time spoke with GFOA and its members about this, and the GFOA supported this initiative.

All Participants Question #7: *What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?*

EMMA can be improved by allowing better and easier access for issuers to post information and voluntary disclosures that can be clearly identified for investors. Enhancing the voluntary disclosure section of EMMA should be the first goal overall for the MSRB, and would be the foremost contribution it could make today to this conversation. These continued improvements to EMMA should not be specific to just ESG-Related Disclosures, "ESG-Labeled Bonds", and other ESG-related information. As general improvements occur, coupled with the EMMALabs and other recent enhancements to EMMA, the EMMA System will become a very holistic system that will provide investors the opportunity to find information needed about an issuer or credit. Enhancements to the EMMA System that create silos and data traps, such as designations of disclosures that are ESG-related, will only be a step backwards from most of the improvements made over the past few years.

OTHER CONCERNS

Authority. The Government Finance Officers Association, representing issuers of various types and sizes, is concerned with the scope of this request for information, noting the authority of the

MSRB as provided in the Securities and Exchange Act. While the MSRB can ask for information on any topic, passing regulations regarding ESG could be challenged as being beyond its authority. A more fruitful approach might be to engage with industry workgroups as we come together to produce meaningful steps forward together. The GFOA respectfully requests that the MSRB engage in a dialogue with issuers and other groups about the appropriate role and scope of the MSRB within its expressed authority to act.

GFOA continues to engage all market participants - issuers as well as bond counsel, investors, municipal advisors among others – in considerable, effective dialogue in engaging the market to improve voluntary, COVID-19 and ESG disclosure issues as well as other credit variables. GFOA also coordinates industry groups, such as the Disclosure Industry Group, where market participants engage and discuss various market and regulatory issues, including ESG.

The MSRB is a regulator. The GFOA and other professional associations are trusted providers of information and best practices for their particular members. There is a difference. We would hope that as the MSRB determines its next course of action (with ESG and other projects) that it consider this specific and specialized role that the MSRB has in the market, and the roles that other issuer and market participant organizations have when assessing the potential action items that may come of this request for information.

Request for the MSRB to concentrate on EMMA improvements. We are aware of other investor-based efforts to collect information from issuers related to ESG factors that are not material to the ability to repay bonds and ultimately do not have a nexus to credit. We are further aware of some efforts that appear to prompt issuers to provide this information and post this information to EMMA. Our concerns are threefold: 1) Posting information on EMMA that does not have a nexus to credit is not consistent with longstanding municipal bond disclosure principles. We suggest that assessment should be done between an issuer and their bond counsel. 2) Any collection of information from issuers related to ESG factors where such information is identified and requested by a few investors will impair the need for a consistent and cohesive message to all investors. 3) Any MSRB advocacy to issuers to complete the private sector survey and post it on EMMA seems far afield from the MSRB’s stated mission, which is to...

“...creat(e) trust in our market through informed regulation of dealers and municipal advisors that protects investors, issuers and the public interest; building technology systems that power our market and provide transparency for issuers, institutions, and the investing public; and serving as the steward of market data that empowers better decisions and fuels innovation for the future.”

As has been laid out in your strategic framework, strengthening the EMMA platform is enthusiastically supported by the issuer community. We believe EMMA can be further enhanced

to augment communication between issuers, investors and the market. The GFOA has been a champion for improvements to EMMA, which we support and look forward to future invitations to participate in these enhancement opportunities. However, adding information to EMMA that does not have a nexus to credit unfortunately crowds out more useful information. It is our view that the MSRB continue to adhere to its stated mission and strategic framework, prioritizing the development of EMMA to facilitate the communication of thoughtful disclosure assembled by issuers to investors and remain neutral on the definition of materiality.

Again, as the regulator over broker-dealers, municipal advisors, and the steward of EMMA, we believe your focus should remain on protecting investors, issuers, and the public interest by ensuring a fair, efficient and neutral municipal securities market, separate and distinct from advocacy.

As you seek ways to regulate the market, consider the role the industry plays in advancing initiatives important to all market participants. As has been evidenced in many other initiatives in our industry in the past, we fully believe that a collaborative, inclusive approach will be the driver that will advance industry approaches to ESG disclosures. We have tried to model that in our inclusionary approach to the development of the ESG Best Practices and will continue to do so moving forward. We respectfully ask you to consider and promote the efforts of the market as whole as it intersects with your work as a regulator, and while all of us continue to advance these topics together.

Sincerely,

Handwritten signature of Emily S. Brock in black ink.

Emily Swenson Brock
Director, Federal Liaison Center

- [“ESG” Best Practice - “E” Environmental \(gfoa.org\)](https://www.gfoa.org/esg/best-practice-environmental)
- [“ESG” Best Practice - “S” Social \(gfoa.org\)](https://www.gfoa.org/esg/best-practice-social)
- [“ESG” Best Practice - “G” Governance \(gfoa.org\)](https://www.gfoa.org/esg/best-practice-governance)
- [Marketing Municipal Bonds as Green, Sustainable, Social, or Other Alternatively Designated Bonds \(gfoa.org\)](https://www.gfoa.org/marketing-municipal-bonds-as-green-sustainable-social-or-other-alternatively-designated-bonds)
- [Voluntary Disclosure \(gfoa.org\)](https://www.gfoa.org/voluntary-disclosure)



March 14, 2022

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

Re: Request for Information on ESG Practices in the Municipal Securities Market (MSRB Notice 2021-17)¹

Dear Mr. Smith,

Intercontinental Exchange, Inc. ("ICE"), on behalf of itself and its subsidiaries, appreciates the opportunity to comment on the Municipal Securities Rulemaking Board ("MSRB") Request for Information on ESG Practices.

We address our comments to specific questions asked by the MSRB with regards to market practices around disclosure, risk factors and labeling of ESG ("Environmental, Social and Governance") designations. As discussed below, ICE is supportive of sustainable and impact investing and regulatory initiatives designed to improve transparency and comparability that enhance investor protection and overall fairness and efficiency of the municipal securities market.

We believe that our five decades of experience providing evaluated pricing and related reference data and metrics covering over one million municipal securities can provide useful insights into ESG-related practices.

Background on ICE

ICE, through its ICE Data Services business unit, is a leading provider of evaluated end-of-day and real-time pricing services on approximately three million fixed income securities spanning approximately 150 countries and 80 currencies including sovereign, corporate and municipal bonds, mortgage- and asset-backed securities as well as leveraged loans. ICE's reference data complements this evaluated pricing by providing our clients a broad range of descriptive information, covering millions of financial instruments. ICE's ESG data covers a wide range of financial instruments including equities, municipal bonds, corporate bonds, mortgage-backed securities (MBS) and loans. Our municipal ESG data covers over 40 different demographic and workplace metrics which indicate the potential social impact of investment in a given municipality. In addition, these metrics are mapped to the UN Sustainable Development Goals to provide users a means to look at their impact within a commonly understood framework. Our company ESG data² includes widely reported and comparable ESG attributes and

¹ <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2021-17.ashx>

² <https://www.theice.com/data-services/esg-data/esg-reference-data>



indicators (over 500), which can help users better understand ESG risks and opportunities of global corporations.

In addition, for municipal securities and MBS, ICE offers climate risk data³ on the exposure of securities to climate risks. This service can help users quantify climate risk exposure and make strategic decisions across municipal securities portfolios by maturity, obligor or geographical boundary. Finally, ICE's terms and conditions data service⁴ includes classification of green, social and sustainable bonds, as well as details of any second party opinion that confirms the status of the bond.

Alignment with Other Regulatory Initiatives

ICE believes that it is in the best interest of the marketplace for regulators to coordinate their ESG oversight initiatives. We note that the U.S. Department of the Treasury ("U.S. Treasury") hosted a virtual roundtable on State and Local Efforts to Address Climate Change on March 3, 2022⁵, and we believe that the MSRFB could be instrumental in the U.S. Treasury's goals to foster resiliency to the impacts of climate change at the state and local government level. Specifically, we believe the MSRFB's inputs would be valuable to the Financial Literacy and Education Commission future publication regarding climate-related financial risks to households, especially in low-income and historically disadvantaged communities, among other areas.

We support ongoing efforts of U.S. regulators to work together, such that regulatory regimes are understandable and consistent in their overarching goals, without creation of specific regulatory burdens on the industry that are inconsistent or counter-intuitive to other regulator's requirements.

Industry Leadership in Standardization

ICE generally believes that industry-led initiatives for ESG-labelling, such as the International Capital Markets Association ("ICMA") and the Consensus Building Institute ("CBI"), are the optimal approach and supports frameworks for measuring "E", "S", and/or "G" factors that are rigorously data-driven, quantitative, objective, and transparent. The asset management industry has demonstrated an increasing usage of ESG factors in their decision-making processes and we believe that the industry will converge on financial product disclosure standards and methodologies.

Nevertheless, a key missing piece that the industry may benefit from regulator intervention is with regards to clarity on the Use of Proceeds ("UOP"). The use of voluntary labels from organizations such as ICMA or CBI can assist with this, and ICE supports industry best practices in the further use and development of these labels to ensure a degree of standardization and understanding of the assets. This also supports the important aspect of independent verification of these labels by a third party, something which is increasingly important to prevent the perception and reality of greenwashing. This is true across the broader fixed income marketplace and is equally applicable to the municipal marketplace.

³ <https://www.theice.com/data-services/esg-data/climate-risk>

⁴ <https://www.theice.com/market-data/pricing-and-analytics/reference-data/terms-and-conditions>

⁵ <https://home.treasury.gov/news/press-releases/jy0627>



Asset managers with a focus on ESG are seeking to better understand how debt funding is being utilized and whether, for example, it is reasonable to map a given bond's UOP to a particular taxonomy such as the United Nations' Sustainable Development Goal ("UN SDG").⁶ This mapping is challenging because the disclosures for a large percentage of General Obligation ("GO") bonds are vague about how debt funding is used. As a significant first step, MSRB could require, in connection with issuance of GO bonds, an issuer's disclosure of its municipal budget to be made in a standardized form. Such standardization would be fundamental in driving transparency for investors and providing a tool for asset managers to better allocate capital in accordance with their ESG goals.

Other than the above, we suggest that MSRB continue to monitor the evolving industry leading practices in the ESG space and evaluate if further regulatory intervention is required if ESG disclosures do not meet certain goals.

Access to ESG Data

The MSRB asks whether unequal access to ESG data results in disparate impacts to investors and other market participants and whether competing ESG data creates investor confusion.

ICE strongly believes that regulator concerns around asymmetry and confusion should largely focus on requiring vendor ESG data to be data-driven, contextual, and offer transparency of methodologies. By doing so, we believe that municipal market stakeholders will be better able to understand and appropriately compare among providers. For example, today, different credit rating agencies may provide different credit risk opinions on the same security without creating significant investor confusion, and we see no reason why ESG metrics are any different.

We continue to believe that if regulators demand quantitative, objective, and transparent characterizations of "E", "S" and "G" conditions, the industry will naturally evolve into a state of comparability even with disparate outputs from different providers. As a specific example, we believe the industry would benefit from requirements to disclose measurable characteristics of issuers in quantitative terms, especially in the "G" factors which have historically been more qualitative in nature.

In total, ESG data that is rigorously data-driven, transparent, and rooted in the interests of helping investors direct their capital to achieve their own ESG objectives, will be well positioned for wide adoption while mitigating common concerns about subjectivity and confusion.

Importance of ESG-Related Information to Potential Investors in the Municipal Securities Market

The MSRB asks whether the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influences the functioning of the municipal market and whether taxable ESG investors

⁶ <https://sdgs.un.org/goals>



expect the same timeliness and quality of ESG-related information for a municipal issuer as for a corporate issuer.

There is evidence from other financial markets that instruments which are focused on a specific ESG outcome (e.g. green bonds) often attract higher demand and potentially lower funding costs. The application of the voluntary frameworks discussed earlier could have a similar impact in the municipal market, providing capital to issuers at a lower cost.

There is significant research⁷ in the public domain highlighting that the demand for ESG investment options is growing rapidly, and this trend is expected to continue with the shift of generational wealth and increasing focus on global challenges, including climate risk and social inequality. Investors are becoming more sophisticated and seeking to understand how their capital is (or is not) working to achieve their own ESG objectives, in addition to their focus on financial returns and taxation benefits.

The municipal market is positioned to allow investors the ability to directly invest their money towards local climate resiliency infrastructure or educational equality⁸ projects. We believe, under an appropriate regulatory framework as described above, this creates significant opportunity for the municipal market to become a central focus for socially responsible and true impact investing options. In addition, we believe that the use of common frameworks, such as the UN SDGs, across multiple asset classes enables investors to better apply their respective ESG needs upon their investment strategies.

MSRB Use of ESG indicators

The MSRB asks whether making the ESG indicator from IHS Markit on the New Issue Calendar shown on the EMMA website can enhance market transparency regarding ESG-Labeled Bonds, and is valuable to investors, municipal issuers or other market participants. This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document.

ICE believes that such an ESG indicator provides useful information to the investor, especially when it is independently verified. In addition, we believe there is significant value to external (i.e. not reported by the issuer) ESG information which can be applied to all issuers and bonds further enhancing market transparency and adding value to municipal bond market participants. Larger issuers and those issuers with more affluent populations are more likely to have such certifications because of the fees required to obtain an independent ESG certification. Because investors could potentially incorrectly conclude that only those bonds or issuers with the “ESG-label” achieve a given social purpose, we suggest that the MSRB consider additional approaches that provide industry participants with ESG factors, metrics or scores for all issuers and bonds to avoid any non-

⁷ For example, <https://www.reuters.com/markets/us/how-2021-became-year-esg-investing-2021-12-23/#:~:text=A%20record%20%24649%20billion%20poured,10%25%20of%20worldwide%20fund%20assets> and <https://www.cnbc.com/2021/05/09/esg-investing-to-reach-1-trillion-by-2030-head-of-ishares-americas.html>

⁸ <https://www.forbes.com/sites/investor/2019/07/09/municipal-bonds-investing-in-our-communities/?sh=542975bd34f3>



inclusive assumptions or bias towards more-resourced issuers. ICE would be happy to discuss these ideas further with the MSRB.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Belcher', written in a cursive style.

Anthony Belcher, Vice President, Sustainable Finance
Intercontinental Exchange, Inc.



1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

March 8, 2022

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

Re: Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market (2021-17)

Dear Mr. Smith:

The Investment Company Institute¹ appreciates the interest of the Municipal Securities Rulemaking Board (Board) in learning more about environmental, social and governance (ESG) practices in the municipal securities market. Perhaps one of the most significant recent global trends is the increasing interest in ESG matters. We provide the perspective of registered investment companies (funds), which are large investors in the municipal securities market. As of the third-quarter of 2021, US households held 29 percent of the \$4.3 trillion in municipal securities through funds.

In the diverse and complex municipal securities market, ESG practices vary significantly and continue to evolve. Although municipal issuers must disclose material information, there is no “one size fits all” approach to issuer disclosure, including the type of information and level of detail provided. Nor is there a common approach to funds’ investment strategies, including the information considered in a fund adviser’s investment analysis. Given the diversity of the market and varied investment approaches by funds, there is no one answer to many of the questions raised in the request for information.

ESG-related investment practices are currently being shaped by the industry through, among other things, voluntary industry practices and market forces. These practices should be allowed to evolve before any regulatory actions are considered. As practices continue to evolve, we

¹ The [Investment Company Institute](https://www.ici.org) (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of \$31.6 trillion in the United States, serving more than 100 million US shareholders, and \$10.0 trillion in assets in other jurisdictions. ICI carries out its international work through [ICI Global](https://www.ici.org/global), with offices in Washington, DC, London, Brussels, and Hong Kong.

welcome additional opportunities to engage with the Board to help it stay informed about industry developments.

ESG practices vary significantly across the industry.

The municipal securities market is large, diverse, and complex. There are approximately 50,000 municipal securities issuers, including states, their political subdivisions (such as cities, towns, counties, and school districts), their agencies and instrumentalities (such as housing, health care, airport, port, and economic development authorities and agencies), as well as a variety of private entities that access the market through “conduit” financings (such as hospitals, senior living and continuing care retirement communities, and museums). Municipal securities offerings range in size from thousands of dollars to billions of dollars, and the payments of principal and interest on these securities come from a variety of sources, including general revenues, specific tax receipts, or revenues from a particular project.² Because of the diverse nature of this market, municipal issuer disclosures vary and depend on a wide variety of factors, including the size and location of the issuer and the type of securities offering.

Funds’ considerations of ESG-related information for municipal securities also vary widely, depending on, among other things, a fund’s investment objectives and strategies.³ A fund’s adviser might integrate ESG factors into its traditional investment process for the fund or use sustainable investing strategies, as summarized below.

Integration. Some fund advisers integrate ESG factors into their traditional investment processes to the extent that they consider those factors to be financially material. Fund advisers typically seek to enhance performance, manage investment risks, and identify emerging investment risks and opportunities that face the issuers in which they invest. As a result, a fund’s adviser may consider ESG factors along with other matters, such as interest rate risk, credit risk, duration, liquidity and the security’s attributes (e.g., coupon and maturity). The extent to which an adviser integrates ESG factors into its investment process may vary adviser to adviser.

Sustainable investing strategies. Funds with sustainable investing strategies generally engage in one or a combination of exclusionary, inclusionary, or impact investing strategies.⁴

² See SEC Chair Jay Clayton and Rebecca Olsen, Director of Office of Municipal Securities, *The Importance of Disclosure for our Municipal Markets* (May 4, 2020), available at <https://www.sec.gov/news/public-statement/statement-clayton-olsen-2020-05-04>.

³ Likewise, funds’ considerations of ESG-related characteristics of other types of securities vary.

⁴ In 2020, more than 90 new ESG criteria funds—focused on climate and broader ESG criteria—were offered in the United States alone, representing about 16 percent of total US open-end fund launches that year. ESG criteria funds are determined based on ICI’s application of predetermined rules and definitions to fund prospectus language. See

- An *exclusionary* investing strategy generally excludes certain issuers or sectors that do not meet certain sustainability criteria.
- An *inclusionary* investing strategy generally seeks to identify and invest primarily in issuers or sectors that reflect certain sustainability-related criteria or positively tilt the portfolio toward sustainability characteristics. Both approaches seek financial return.
- An *impact* investing strategy generally seeks to generate positive, measurable, reportable social and/or environmental impact alongside a financial return.⁵

The current regulatory framework requires disclosure of material ESG-related information.

A foundational and important component of the regulatory framework for municipal securities disclosure is that statements by municipal issuers are subject to the antifraud provisions of the federal securities laws.⁶ Thus, a municipal issuer must disclose material information, including ESG-related material information. Given the diverse nature of the market, however, what may be considered to be material information with respect to one municipality or one municipal offering may not be material with respect to another municipality or its offerings. For example, while information related to the risk of rising sea levels may be material information with respect to a coastal community's securities offering, it may not be material for that of an inland community. Thus, although municipal issuers must disclose material information, there is no "one size fits all" approach to such disclosure.

ESG disclosure practices are evolving and should have the flexibility to continue to evolve.

The type of information and level of detail municipal issuers provide about ESG matters continue to evolve and are currently being shaped by the industry through, among other things, voluntary industry practices and market forces.⁷ For instance, as with other disclosure topics, the

ICI, *2021 Investment Company Fact Book*, available at https://www.ici.org/system/files/2021-05/2021_factbook.pdf.

⁵ For more information and examples of these strategies, including funds using multiple sustainable investing approaches, see *Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction*, available at https://www.ici.org/system/files/attachments/20_ppr_esg_integration.pdf.

⁶ In general, antifraud provisions prohibit the making of any untrue statement of material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. A fact is material if there is a substantial likelihood that the information would have been viewed by the reasonable investor as having significantly altered the total mix of information available. As the SEC has stated, whether a statement of a municipal issuer significantly alters the total mix of information for purposes of the antifraud provisions is determined based on the facts and circumstances in each instance. See SEC, *Application of Antifraud Provisions to Public Statements of Issuers and Obligated Persons of Municipal Securities in the Secondary Market: Staff Legal Bulletin No. 21 (OMS)* (Feb. 7, 2020), available at <https://www.sec.gov/municipal/application-antifraud-provisions-staff-legal-bulletin-21> (Staff Legal Bulletin).

⁷ Several industry groups are working on voluntary best practice recommendations or common approaches that can help shape disclosure practices. See, e.g., National Federation of Municipal Analysts, *Municipal Analysts Bulletin*

information and level of detail that municipal issuers disclose may be influenced by investor demand and the ability of and cost to issuers of providing the information. Funds, as investors, seek robust, timely, and accurate issuer and security-specific information. A municipal issuer's access to financing and potentially the interest rates for its bonds may depend, in part, on the transparency and level of detail it provides.

The type of information provided also varies based on a range of factors, including the size and location of the issuer, type of debt issuance, and use of proceeds. For example, some municipal issuers may provide information related to environmental risks, such as historical weather events, flood zones, and insurance, among other things. A community located in an area prone to wildfires may provide information about earthquake risk, access to water, risk mitigation, and insurance, among other things. A municipal issuer seeking to finance a project with a social objective might disclose, depending on the objective, information relating to the number of children educated at a local school (access to education), clean water provided to economically disadvantaged areas (access to clean water), medical care provided to uninsured or low-income citizens (access to healthcare), or housing availability (access to affordable housing). It may also disclose the issuer's desired outcomes and measurement methods that are being utilized related to the financing project.

The relevance of ESG-related information to a fund depends on, among other things, the fund's investment objectives and strategies and the fund adviser's investment process. In general, material risks to the creditworthiness of a municipal issuer, whether or not they are ESG-related, is important information for funds investing in municipal securities. A fund that integrates ESG factors into the investment process may consider ESG-related information, such as climate change-related risks, along with other information, such as interest rate risk and liquidity.

Some funds may have an investment strategy to invest in securities whose proceeds, in the fund adviser's opinion, provide positive environmental and social benefits. In that circumstance, the fund's adviser might consider data and information relating to the bond's objective, such as access to education, clean water, healthcare or affordable housing as noted above.⁸

(Feb. 2022), available at <https://www.nfma.org/assets/documents/bulletins/vol32no1.pdf> (stating plans to release a paper on Green Bond disclosure); Government Finance Officers Association's best practices, available at <https://www.gfoa.org/best-practices/debt-best-practices>, and International Capital Market Association's *The Green Bond Principles*, available at <https://www.icmagroup.org/assets/documents/Sustainable-finance/2021-updates/Green-Bond-Principles-June-2021-140621.pdf> and *The Social Bond Principles*, available at <https://www.icmagroup.org/assets/documents/Sustainable-finance/2021-updates/Social-Bond-Principles-June-2021-140621.pdf>.

⁸ Fund advisers use information from a variety of sources, including municipal issuers, third-party vendors, and published reports, as part of their own proprietary investment analysis, and may access municipal securities data and disclosure documents through the Board's Electronic Municipal Market Access (EMMA) website. The extent to which a fund adviser considers any of the information in its investment analysis, including, for example, an independent certification of a green or social bond, varies. For example, based on a fund adviser's proprietary analysis, it may determine that a bond meets its environmental criteria, regardless of whether it has an independent

Like all investors, funds benefit from broad and deep disclosures by municipal issuers and generally seek as much data and information about an offering as possible. The overall market benefits from robust disclosure as well. For example, when issuer disclosure includes measurement parameters for related projects, investors can better evaluate an issuer's follow-through in connection with those parameters.

Industry practices should be given the time and flexibility to evolve before any regulatory actions are considered. We note that the Securities and Exchange Commission (SEC) plans to propose new disclosure rules for public companies relating to climate change, human diversity, and board diversity.⁹ The SEC's expected proposals for public companies follow years of evolving disclosure practices and use of voluntary standards, which may inform its considerations in connection with any proposed regulatory requirements.¹⁰ The municipal securities market should follow a similar iterative process in this complex arena, with learning evolving through voluntary efforts, before any regulatory actions are considered.¹¹ Due in part to its fragmented and diverse nature, practices in the municipal securities market, are at a much earlier stage of development.¹²

As practices continue to evolve, we welcome additional opportunities to engage with the Board to help it stay informed about industry developments.

* * * * *

certification. Disclosure by the municipal issuer enables the issuer to provide context regarding any ESG-related matters, such as risk mitigation steps, that may not be included in third-party vendor reports.

⁹ See SEC Agency Rule List, Fall 2021, available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=F93DDA75B0D952E153B7019FC53F68D720E4F59FC01A0970832F3257162E20C7F1A9A0711058A0E670BDD754797D30C59BC4.

¹⁰ See, e.g., Task Force on Climate-related Financial Disclosures, available at <https://www.fsb-tcfd.org/>, and the Value Reporting Board's SASB standards, available at <https://www.sasb.org/>.

¹¹ In the absence of a statutory scheme for municipal securities registration and on-going reporting requirements for municipal issuers, the SEC's investor protection efforts in the municipal securities market is accomplished primarily through regulation of broker-dealers and municipal securities dealers, including through rule 15c2-12 under the Securities Exchange Act of 1934, SEC interpretations, enforcement of the antifraud provisions of the federal securities laws, and SEC oversight of the Board. See Staff Legal Bulletin, *supra* n. 6.

¹² We note that practices in the municipal securities market also may be influenced by practices in the public company securities market. Although not all of the disclosures that may be mandated by the SEC for public companies may be pertinent in the municipal securities markets, other important topics, including the materiality of ESG-related information, are likely to be addressed in the SEC's rulemakings and could help inform disclosure considerations in the municipal securities context.

Mr. Ronald W. Smith

March 8, 2022

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We look forward to continuing this dialogue with the Board on this important topic. In the meantime, if you have any questions, please feel free to contact me at (202) 218-3563 or Annette Capretta, Associate General Counsel, at (202) 371-5436.

Sincerely,

/s/ Dorothy Donohue

Dorothy Donohue

Deputy General Counsel—Securities Regulation

cc: Mark T. Kim, CEO
Municipal Securities Rulemaking Board

Ernesto Lanza, Acting Director
Office of Municipal Securities
Securities and Exchange Commission



March 8, 2022

Mark T. Kim
Chief Executive Officer
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2021-17, Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Dear Mr. Kim and Mr. Smith:

We are writing regarding the Municipal Securities Rulemaking Board (MSRB) Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market. As the principal regulator of the \$4 trillion municipal securities market, the MSRB plays a vital role for municipal securities across the country.

It is a pleasure to submit comments on behalf of ISS ESG and with reference to our ISS ESG Muni QualityScore offering. Our comments represent our views in our capacity as a provider of ESG Scoring for over 51,000 Obligors and 1,100,000 CUSIPs in the U.S. municipal marketplace, and as a thought leader in the areas of corporate governance and responsible investment, and not necessarily the views of our clients. Our response is limited to the RFI questions pertaining to section (E) All Municipal Market Participants.

Background

ISS ESG is the responsible investment arm of Institutional Shareholder Services Inc. (ISS), a leading provider of corporate governance and sustainable investing solutions, market intelligence and fund services, and events and editorial content for institutional investors and corporations.

ISS ESG solutions enable investors to develop and integrate responsible investing policies and practices, engage on responsible investment issues, and monitor portfolio company practices through screening solutions. ISS ESG solutions

include corporate and country ESG research, municipal ESG research, climate data, analytics and advisory, governance data and screening and controversies.

ISS ESG also provides climate data, analytics, and advisory services to help asset owners, asset managers, hedge funds, and other financial market participants understand, measure, and act on climate-related risks across all asset classes. In addition, ESG solutions cover corporate and country ESG research and ratings enabling its clients to identify material social and environmental risks and opportunities.

MuniQuality Score is a product offering by the ISS ESG group that calculates ESG Scoring for over 51,000 obligors and 1,100,000 CUSIPs in the U.S. municipal marketplace. ISS ESG and its Muni QualityScore, endorse broad transparency for ESG in the municipal marketplace. The methodology for the calculation of Muni QualityScore was first published on our website in April 2020, and consists of an equal weighted methodology, with all datasets and inputs clearly detailed in the published methodology. Additionally, clients who license the Muni QualityScore feed not only receive the quarterly updated Muni QualityScore and rankings, but also all underlying datasets utilised in the calculation of the score.

The Muni QualityScore, and all underlying datasets are built to one index key – the census provided GEOID. datasets and ESG scoring as compiled for all locations in America (29, 500 towns / cities – 3,141 counties – 13,500 school districts, and 50 states plus DC). A total of over 45,000 GEOIDs / locations are scored.

All CUSIPs and Bloomberg IDs for the municipal marketplace are then mapped by ISS ESG to the respective GEOID. This enables ISS ESG to provide Muni Quality scoring for the location(s) of all operations of U.S. municipal issuers.

For clarity, where the municipal issuer has operations in multiple locations (e.g., a gas district that serves five differing counties), ISS ESG maps all five of these counties to the one Issue (CUSIP) and provides a blended ESG score for each county by utilizing the data and scoring for the specific five counties in question.

By utilizing this unique scoring mapping, ISS ESG is able to provide in-depth ESG risk measurement for both general obligation and revenue bond issuances throughout the entire U.S. municipal marketplace.

All underlying datasets utilized by the Muni QualityScore are publicly available datasets and are sourced from government sources, NGO's, or environmental awareness entities.

The datasets currently utilized in the calculation of Muni QualityScore ESG scores for the U.S. municipal marketplace are included in the Appendix.

We would like to thank the MSRB for seeking our input to its Request for Information (RFI) and would be pleased to discuss any questions you may have on our comments.

Sincerely,

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MSRB RFI as it pertains to:

(E) All Municipal Market Participants. The MSRB seeks input from all municipal market participants, including input on the following questions.

- (1) Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?

There are many risks that face the municipal marketplace but for the purposes of this RFI we will limit our items of concern to what we view as the three (a-c) largest systemic risks:

a. **Sea Level Rise / Coastal Flooding and Climate Change-impacted Weather-related Events¹:**

The table below, created by ISS ESG Muni QualityScore, represents a state-by-state estimate of U.S. dollar “value at risk” for both real property and separately for municipal bonds given a widely recognized and accepted likelihood of a 1ft rise in sea level / coastal flooding by the year 2050.

These figures, broken down by state, reflect a total **\$161 billion** estimated property risk, as well as a **\$18.4 billion** municipal bond risk associated with this particular scenario.

In addition, we also calculated the annual dollar value for property risk and again municipal bond risk that is possible due to the following climate change impacted events from the FEMA National Risk Index: wild fire, hail, flooding (pluvial and fluvial), drought, heat index, strong wind, ice storm, winter weather.

The annual dollar value at risk figures associated with these events from the FEMA National Index reflect an annual \$19.1 billion property risk and \$2.3 Billion municipal bond risk. When summarizing these risks from 2022 to 2050 (multiplying the annual figure by the 28 years between now and then), the dollar value at risk by 2050 for these Climate Change Impacted events is estimated to be **\$536.7 billion (?) for property risk**, and **\$66.8 billion for Municipal Bond Risk**.

¹ US dollar value risks were built at the county level and rolled up to each respective state level. One foot risk data was sourced from [SurgingSeas / Climatechange.org](#). Six foot risk data was sourced from the FEMA National Risk Index. Annual climate change impacted risks were sourced from the FEMA National Risk Index. Notional Municipal Bond outstanding amounts were sourced from Cusip Global Services and mapped to location of operation by ISS ESG.

State	Notional Municipal Bonds Outstanding	Property Coastal Flooding 1ft	Municipal Bond Risk Coastal Flooding Risk 1ft	Property Coastal Flooding Risk 6ft	Municipal Bond Risk Coastal Flooding Risk 6ft	Annual Risk (less Coastal Flooding)	Municipal Bond Annual Risk (less Coastal Flooding)
	Source: 5	Source: 1,3	Source: 6	Source: 4	Source: 7	Source: 4	Source: 8
Alabama	\$45,671,377,440	\$598,103,737	\$30,291,347	\$15,132,612,868	\$1,097,869,368	\$466,552,700	\$41,977,122
Alaska	\$9,561,386,210	\$11,418,204	\$6,457,878	\$367,144,835	\$207,648,818	\$3,559,856	\$599,389
Arizona	\$65,330,524,250	\$0	\$0	\$0	\$0	\$170,475,531	\$12,357,725
Arkansas	\$35,392,286,650	\$0	\$0	\$0	\$0	\$357,522,554	\$41,889,785
California	\$509,298,309,940	\$50,117,334,674	\$6,422,882,600	\$371,650,655,934	\$47,103,158,641	\$916,276,648	\$101,567,049
Colorado	\$71,297,979,620	\$0	\$0	\$0	\$0	\$429,298,302	\$52,096,274
Connecticut	\$44,744,956,030	\$1,861,910,220	\$170,739,218	\$51,799,461,530	\$4,292,549,432	\$37,294,552	\$3,509,902
Delaware	\$5,495,300,010	\$229,096,400	\$11,134,955	\$24,136,610,506	\$671,551,945	\$19,612,836	\$906,807
District of Columbia	\$24,131,980,000	\$2,200,841,417	\$564,006,820	\$4,589,549,253	\$1,176,157,928	\$15,975,500	\$4,094,021
Florida	\$202,926,579,340	\$37,127,750,885	\$3,528,548,160	\$928,445,092,357	\$91,714,767,500	\$1,394,243,413	\$106,150,610
Georgia	\$78,996,905,390	\$1,220,875,053	\$58,475,243	\$49,301,693,034	\$2,042,022,649	\$495,406,566	\$32,646,490
Hawaii	\$22,770,200,010	\$1,252,583,843	\$73,908,871	\$23,892,156,483	\$4,288,450,457	\$20,802,329	\$2,242,338
Idaho	\$2,970,700,170	\$0	\$0	\$0	\$0	\$56,407,309	\$924,047
Illinois	\$145,801,715,420	\$0	\$0	\$0	\$0	\$672,887,434	\$47,934,038
Indiana	\$45,469,888,390	\$0	\$0	\$0	\$0	\$355,512,713	\$17,323,637
Iowa	\$35,525,142,480	\$0	\$0	\$0	\$0	\$376,873,222	\$33,379,184
Kansas	\$38,587,333,260	\$0	\$0	\$0	\$0	\$349,344,358	\$36,447,910
Kentucky	\$38,106,236,250	\$0	\$0	\$0	\$0	\$381,751,139	\$31,663,774
Louisiana	\$25,681,522,350	\$24,158,072,403	\$2,653,618,950	\$245,375,166,091	\$16,538,445,878	\$1,022,925,249	\$67,912,323
Maine	\$4,018,112,100	\$402,911,762	\$7,551,592	\$10,670,589,831	\$385,912,975	\$29,336,667	\$615,603
Maryland	\$57,724,601,070	\$2,522,577,965	\$104,451,875	\$47,569,986,630	\$2,317,448,855	\$126,027,345	\$8,514,058
Massachusetts	\$78,200,441,790	\$13,358,266,714	\$2,607,523,939	\$137,713,077,565	\$23,918,634,412	\$83,010,877	\$7,673,076
Michigan	\$99,217,306,100	\$0	\$0	\$0	\$0	\$345,858,867	\$28,668,704
Minnesota	\$120,921,866,570	\$0	\$0	\$0	\$0	\$346,392,668	\$61,077,715
Mississippi	\$5,787,165,750	\$107,387,070	\$567,881	\$30,571,115,507	\$275,981,714	\$518,409,500	\$8,543,263
Missouri	\$61,810,688,090	\$0	\$0	\$0	\$0	\$694,990,022	\$56,064,447
Montana	\$4,609,783,570	\$0	\$0	\$0	\$0	\$44,949,599	\$1,768,223
Nebraska	\$42,203,182,650	\$0	\$0	\$0	\$0	\$272,891,603	\$55,560,526
Nevada	\$49,995,295,060	\$0	\$0	\$0	\$0	\$106,226,930	\$11,550,612
New Hampshire	\$2,405,500,030	\$0	\$0	\$3,014,322,634	\$40,847,489	\$30,514,215	\$391,024
New Jersey	\$65,177,807,540	\$7,158,182,430	\$339,988,648	\$227,773,284,482	\$11,732,461,272	\$328,047,265	\$19,844,789
New Mexico	\$14,507,353,090	\$0	\$0	\$0	\$0	\$95,422,679	\$3,123,000
New York	\$741,621,890,070	\$5,964,086,506	\$637,537,287	\$441,427,759,981	\$186,887,264,518	\$369,605,674	\$131,321,327
North Carolina	\$51,204,681,360	\$2,232,560,095	\$99,569,915	\$75,976,747,665	\$2,235,745,110	\$749,804,211	\$30,480,434
North Dakota	\$8,541,802,880	\$0	\$0	\$0	\$0	\$107,023,770	\$11,591,447
Ohio	\$112,312,919,910	\$0	\$0	\$0	\$0	\$405,722,152	\$31,195,257
Oklahoma	\$34,296,222,670	\$0	\$0	\$0	\$0	\$522,170,820	\$41,661,371
Oregon	\$45,184,210,280	\$0	\$0	\$9,362,515,510	\$730,748,915	\$68,144,884	\$6,793,664
Pennsylvania	\$174,854,858,300	\$148,201,258	\$27,200,734	\$24,908,057,777	\$4,958,478,232	\$341,678,304	\$37,779,420
Rhode Island	\$4,709,710,000	\$603,676,764	\$9,873,905	\$18,359,172,292	\$503,729,664	\$12,322,125	\$399,217
South Carolina	\$31,227,740,100	\$4,672,385,193	\$330,539,524	\$106,924,198,019	\$7,284,064,846	\$263,889,951	\$17,262,794
South Dakota	\$3,822,687,950	\$0	\$0	\$0	\$0	\$167,533,042	\$8,173,478
Tennessee	\$57,330,085,420	\$0	\$0	\$0	\$0	\$582,592,901	\$51,337,944
Texas	\$555,950,275,220	\$2,434,641,925	\$525,321,985	\$204,493,682,087	\$38,951,641,638	\$4,259,372,362	\$1,072,199,772
Utah	\$19,104,270,140	\$0	\$0	\$4,152,178,875	\$359,771,612	\$109,165,976	\$10,674,307
Vermont	\$5,319,510,130	\$0	\$0	\$0	\$0	\$19,822,440	\$464,546
Virginia	\$64,503,370,390	\$3,594,270,908	\$234,483,298	\$140,623,147,999	\$11,119,391,869	\$225,748,373	\$12,987,676
Washington	\$82,911,718,040	\$0	\$0	\$11,175,307,367	\$924,720,938	\$44,164,156	\$3,993,902
West Virginia	\$4,797,480,280	\$0	\$0	\$0	\$0	\$83,898,310	\$1,384,460
Wisconsin	\$49,212,272,970	\$0	\$0	\$0	\$0	\$235,559,117	\$15,799,697
Wyoming	\$2,645,020,100	\$0	\$0	\$0	\$0	\$35,188,069	\$1,221,248
Nation Total	\$4,103,890,152,830	\$161,977,135,429	\$18,444,674,625	\$3,209,405,287,110	\$461,759,466,676	\$19,168,207,086	\$2,385,739,428
2050 Assumption		\$161,977,135,429	\$18,444,674,625			\$536,709,798,394	\$66,800,703,976
		2050 assumption of 1ft Sea Level rise				(annual figure * 28)	

b. Safe Drinking water – both the supply of, and the quality of:

With over 390,000 providers of drinking water to the American public (source EPA), it is imperative to know the risks that exist in this mainstay of community, and life itself.

- Drinking water health-based violations are not taken into account for credit risk, and these risks and/or incidents are usually not well reported and available to the discerning public. Knowing what is in the water is critical to support the residents of a community, who in turn support the municipal bond issuance through their participation in the local tax base.
- The current LCR (Lead and Copper Rule) focuses on “after the incident reporting” and not prevention.
- Lead service lines (see Newark, New Jersey; Flint, Michigan; Benton Harbour, Michigan) are a widely recognized problem and are flagged as a concern to be addressed. Unfortunately, without a national repository of the location of all lines, these service lines may not get the priority they require in replacement to ensure safety and long-term viability of older communities.
- The ISS ESG Muni QualityScore tracks all health-based safe drinking water violations across the country, and also tracks all reported lead testing and levels in the drinking water systems of America.

c. The Dependence of Pricing Municipal Securities off of Ratings Curves:

As pricing evaluators in the municipal market rely heavily on utilizing the ratings curves as a primary basis for pricing these securities, there can be a disconnect when more ESG related data and risks are available beyond the few relevant datapoints currently used by the credit rating agencies.

As discussed at the Bond Buyer National Outlook conference on March 1st, 2022, S&P and Kroll utilize a small set of focused risks in their ESG considerations, which impact the Credit Risk. This focused view does not incorporate the numerous ESG risk and data elements that exist and can be sourced as data. Hence the credit ratings do not necessarily align with the separate and completed ESG Scoring that is available.

Also widely discussed by participants at the Bond Buyer National Outlook conference is the belief that current municipal bond pricing does not properly incorporate climate change risks (if at all).

While we believe it would serve the market well if the ratings agencies were to incorporate a more fulsome set of ESG risks and datasets, we recommend a bit of caution in moving in that direction so as to avoid severe volatility in the pricing of these assets. We recommend that the fuller incorporation of the available risks be taken up by the credit rating agencies on an incremental basis.

- (2) There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. 17 Does the availability of these voluntary, market based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?

Our concern here is that many of these organizations that are establishing standards are not directly involved in either the municipal marketplace or the sourcing and collection of data utilized in ESG scoring construction. The

municipal marketplace is an immense market, not just in the number of issuers, and issues, but also in locations across America.

The data and risk measurements across this vast domain are not limited to the scope of information and measurement often provided by private sector entities. And, notably, with respect to municipal issuers, these risks are often closely tied to their physical locations which typically cannot be altered. Municipal issuers cannot simply relocate their head office or plant of operations and are hence often obligated to manage through physical risks, transitional risks, or legacy infrastructure.

(3) There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?

We generally welcome market initiatives, especially ones designed to elicit more disclosure from issuers. We have some concerns, however, that these initiatives will indirectly and perhaps unduly hamper those issuers who do not have the time or resources to provide disclosures to satisfy the initiative or investors' expectations.

ISS ESG currently has the ability to offer to all issuers (should they choose) both their current ISS ESG Muni QualityScore report and all underlying data on an ongoing basis. This would allow municipal issuers, both small and large, to have full access to all datasets utilized in the ISS ESG Muni QualityScores (with historical data as well) that apply to their location.

The availability of this information would allow for an issuers, and investors to have verifiable and timely data covering risks from climate to crime, health to infrastructure. Issuers can use this data to clarify their interest on sustainable or green issuance as they can point to the risks that they are trying to address or abate.

This solution would also be cost effective with pricing being considered for issuers at a negligible level.

(4) There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?

We believe that there are enough providers of ESG data currently to provide opportunity for both investors and issuers to access ESG data without undue barriers (cost or physical). That said, the most important facet to avoid confusion in the marketplace is transparency around the types of data and analytics available from the various providers. The ISS ESG Muni QualityScore makes available to all subscribing clients all underlying datasets (source and links) utilized in the calculation of the Muni QualityScore for full transparency. The methodology for the calculation of the Muni QualityScore is also provided to ensure clients are informed of how these results are derived.

(5) Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?

Yes, the municipal market has always been and will continue to be a market adjacent to traditional equities and corporate linked fixed income securities. The reporting standards and practices in capital markets have always favored speed and transparency which the municipal market simply does not have nor need. Municipal securities are slow moving, thinly traded, and are often 'set and forget' investments. That said we believe the opportunity exists to change the place that municipal securities have in the marketplace by facilitating ESG related discussions to help investors (and issuers) analyze and evaluate risks and opportunities through a new and important lens.

(6) The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website. This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?

Yes, we believe that the MSRB's efforts to provide more information to the financial markets and its participants should be, and will be, well received as a positive step forward.

(7) What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

We would recommend that the MSRB / EMMA host the Second Party Opinion (and make available) reports that were created as the base for the "Green Verified" or "Impact Verified" issue. This would not cost the firm that created the report, as they are paid by the issue / issuer at the time of the verification and would give comfort and access to needed information to the investing public.

(8) Is there any additional information that you would like to share with the MSRB regarding any other ESG-related activities or trends in the municipal securities market?

ISS ESG would be happy to entertain any further or future discussions with the MSRB about how we can work together to further improve the municipal marketplace

Appendix

In calculating the Muni QualityScore ESG scores for the U.S. municipal marketplace, ISS ESG currently uses the following datasets:

Environmental:	Social:	Governance:
Climate Change exposure to Air Quality	Population	County Debt per Resident
Climate Change exposure to Water Quality	Median Income	School District Debt per Student
Climate Change exposure to Rising Sea Levels	Median Income Pay Gap (M/F)	Industry Concentration Risk
Climate Change exposure to Heat Index	Gini Index (Income Distribution)	Firm Concentration Risk
Bridges Deemed Structurally Deficient	Unemployment Rate	Real Estate Taxes as % of Median Housing Value
Coal Ash pits / landfills	Racial Employment Parity Score	Real Estate Taxes as % of Median Income
Dams at risk of failure	Gender Employment Parity Score	Broadband (usage)
Declarations of Disaster	Poverty Rate	Police per capita
Drought Conditions	Safe Drinking Water Violations	Firefighters per capita
Flood Plain risk (100 year flood)	Lead Testing - Safe Drinking Water	Teacher / Student ratio
Fracking Wells	Counties at Risk (CDC) - HIV / Zika	Dentists per capita
Abandoned Oil & Gas wells	% of Population with Diabetes	Doctors per capita
Lyme Disease	Opioid Prescriptions	
Power Plant Emissions - CO2	Mortality Overdose Rates	
Power Plant Emissions - SO2	Obesity Rates	
Power Plant Emissions - NOX	Cancer (Incidence Rates)	
Solid Waste Incinerator	Home Ownership	
Superfund Sites	Vacancy Rate	
Water Use	Median Housing Value	
	Median Income as a % of Median Housing Value	
	Homelessness	
	Bachelor's Degree or higher	
	Ransomware / Cyberattack	
	Incidents of Crime (Violent and Property)	
	Cost of Crime (Violent and Property)	

Sources and additional resources

Source:	Data from Source:
Surging Seas: Risk Finder (climatecentral.org)	County based Value of Property at risk 1 Foot Sea Level Rise from Surging Seas / Climatecentral.org <i>Data for Property at risk is consolidated from County level to State for the purposes of this report</i>
Explore Census Data	Median Home Value 2009 to 2019
Derived value from Surging Seas multiplied by Change in Home Value from Census	Consolidated State Value of Property at risk 1 Foot Sea Level Rise from Surging Seas / Climatecentral.org * Change in Median Housing Value (2009 to 2019) <i>State level Value of Property at risk at 1 Foot is multiplied by percentage change in ACS Median Housing Value from (2009 to 2019) - to better reflect the current market values of property at risk</i>
Coastal Flooding National Risk Index (fema.gov)	Value of Property at risk 6 Foot Sea Level Rise; and Annual Risk values less Coastal Flooding
FEMA National Risk Index	<i>Annual Risk is the sum of all Climate Change associated risks excluding Coastal Flooding risk</i>
Alaska's Sea Level Rise - Sea Level Rise	NOAA does not list 1ft risk for Alaska so confirmation was sought from additional sources This sources details 1ft risk by 2050 for Alaska coastal communities
CUSIP Global Services S&P Global Market Intelligence (spglobal.com)	Mapping of Notional Amount to each State of operations of Issuer (not where the bond is issued but where the project that funds were issued for, operates)
Notional Bond Amount Outstanding at risk due to 1ft Coastal Flooding / Sea Level Risk	<i>This is derived by multiplying the Notional Amount Outstanding for each State by the percentage calculated by the Property at Risk at 1ft (/) divided by the total "Building Value" from the FEMA National Risk Index</i>
Notional Bond Amount Outstanding at risk due to 6ft Coastal Flooding / Sea Level Risk	<i>This is derived by multiplying the Notional Amount Outstanding for each state by the percentage calculated by the property at Risk at 6ft (/) divided by the total "Building Value" from the FEMA National Risk Index</i>
Sea Level Rise Technical Report: Data (noaa.gov)	NOAA 2022 Sea Level Rise Technical Report Data Files We utilize the NOAA 2050 assumption of 1ft rise in Sea Level / Coastal Flooding
Additional Links	
Alaskan towns at risk from rising seas sound alarm as Trump pulls federal help Alaska The Guardian	Details multiple villages requiring relocation with estimates of up to \$400 million for each village migration
Alaska's Sea Level Rise - Sea Level Rise	Confirmation of 1ft by 2050 in forecasts
Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by Flooding and Erosion U.S. GAO	
Interagency Sea Level Rise Scenario Tool – NASA Sea Level Change Portal	
Sea Level Rise Smithsonian Ocean (si.edu)	

ESG Concepts in US Public Finance

Monica Reid, CEO & Founder
Kestrel 360, Inc.

March 2022

The overarching goal of integrating ESG concepts into public finance activities and related investment decisions, should be to advance the concept of a just transition to a decarbonized economy. A coordinated effort is urgently needed to address eco-systemic risk.

In the context of a climate emergency, global biodiversity crisis and deep societal unrest that threatens our democracy, the most significant public benefit to be derived from US public finance is a coordinated and impactful strategy to transition our country to a decarbonized economy in a way that brings everyone along.

Given the importance of the US capital markets to the strength of the US economy, protecting financial stability should also be paramount. Without a common understanding of the environmental, social and governance factors that are material to each investment, market participants are exposed to information asymmetries. These can impact liquidity, which can slow down or stop financial market activity. In severe cases, the financial system could become paralyzed and unable to channel capital to public finance.

Market-based crises are often characterized by a coordination failure, when a wide cross-section of financial market participants simultaneously decide to reduce perceived risk and pull back from financing activities. By coordinating adoption of a new dimension of analysis, namely the incorporation of climate risk into pricing, regulatory agencies can serve the market and protect financial stability.

The American economy and climate change are both dynamic and nonlinear systems. Small changes can produce large and unexpected outcomes. This presents both a grave threat and our best hope for meaningful climate action. The time to act is now.

If municipal market participants can come together and prioritize the *just transition to a decarbonized economy*, then we will not only reduce systemic risk in our financial system, but we will gain the chance to protect our planet from irreparable environmental collapse. The MSRB has a momentous opportunity to coordinate actions and facilitate this.



DISTINGUISHING ESG FROM GREEN, SOCIAL & SUSTAINABILITY BONDS

Environmental, Social, Governance (ESG) is an investment theory or approach to investing that takes a broader view of material risks and opportunities. This approach looks at an investment's relative value and considers additional (ESG) factors. ESG, as an investment approach can vary widely—some investors focus on assessing opaque risks, such as transition risk, others look for positive environmental or social impact. Green, social and sustainability bonds are tools that issuers of bonds can use to communicate positive environmental or social attributes of their financed activities. The additional transparency that should come with green, social and sustainability bonds allows investors to make informed decisions about alignment with their bespoke ESG strategies or investment mandates.

E CONCEPTS: ECO-SYSTEMIC RISK

A central finding of the US Commodity Futures Trading Commission's [landmark 2020 report](#) is that climate change poses systemic risks to the US financial system. Systemic risk can be thought of as the risk that some event (global climate change perhaps) will trigger a loss of economic value or confidence in the market, leading to increases in uncertainty about a substantial portion of the financial system, serious enough to have significant adverse effects on the real economy.

Climate change is expected to affect multiple sectors, geographies, and assets in the United States, sometimes simultaneously and within a relatively short timeframe. ...transition and physical risks—as well as climate and non-climate-related risks—could interact with each other, amplifying shocks and stresses. This raises the prospect of spillovers that could disrupt multiple parts of the financial system simultaneously.¹

*Climate change poses a major risk to the stability of the U.S. financial system and to its ability to sustain the American economy... This reality poses complex risks for the U.S. financial system. Risks include disorderly price adjustments in various asset classes, with possible spillovers into different parts of the financial system, as well as potential disruption of the proper functioning of financial markets. In addition, **the process of combating climate change itself—which demands a large-scale transition to a net-zero emissions economy—will pose risks to the financial system if markets and market participants prove unable to adapt to rapid changes in policy, technology, and consumer preferences.** Financial system stress, in turn, may further exacerbate disruptions in economic activity, for example, by limiting the availability of credit or reducing access to certain financial products, such as hedging instruments and insurance.¹*

1. "Managing Climate Risk in the U.S. Financial System," Report of the Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission, September 2020, <https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf>.



Since climate change poses a systemic risk to global financial systems and all of the world's ecosystems, "eco-systemic risk" seems a more appropriate term. The CFTC's assessment implies that the market needs a **coordinated effort** to incorporate climate risk into pricing:

... systemic shocks are more likely in an environment in which financial assets do not fully reflect climate-related physical and transition risks. A sudden revision of market perceptions about climate risk could lead to a disorderly repricing of assets, which could in turn have cascading effects on portfolios and balance sheets and therefore systemic implications for financial stability.¹

Positive feedback loops can trigger systemic failures in financial systems and ecosystems alike. The Financial Stability Board (FSB), which coordinates the policy work of national financial authorities and international standard-setting bodies for the financial sector, notes the potential for positive feedback loops in their November 2020 report.² The FSB lays out how risks to financial stability from climate change can be divided into physical and transition risks. The value of financial assets/liabilities could be affected by the actual or expected economic impacts of climate change (physical risks), or by an adjustment toward a low-carbon economy (transition risks). It is important to remember that the risks can be both positive and negative. The FSB noted how nascent we are in considering climate-related risks to financial stability.³

While there appears to be widespread discussion of climate-related risks, including physical risks and transition risks, what municipal market participants seem to be missing right now is an understanding of the urgent need for action. Time horizons are much shorter than most people realize, and climate change is moving much faster than we are. Municipal bonds may have maturities that extend 10, 20, 30 or even 100 years; but when it comes to addressing climate change, we have less than 10 years to take significant action.⁴ Climate impacts are already manifesting in economies of our largest states.⁵ If we fail to act decisively to decarbonize our economy right now, the positive feedback loops related to climate change will amplify destruction of earth's natural systems. Simultaneously, the increased risk and uncertainty will push financial markets toward instability and crisis. Secretary of Treasury Janet Yellen warned of this in November 2021 when she said, "The climate crisis is already here. This is not a challenge for future generations, but one we must confront today...Rising to this challenge will require the wholesale transformation of our carbon-intensive economies."⁶

2. "The Implications of Climate Change for Financial Stability," Financial Stability Board, November 2020, <https://www.fsb.org/wp-content/uploads/P231120.pdf>.

3. The FSB describes how climate-related risks might impact the financial system and examines potential mechanisms within the financial system that might amplify the effects of climate-related risk as well as the cross-border transmission of risks. <https://www.fsb.org/wp-content/uploads/P231120.pdf>.

4. "Global warming of 1.5°C – An IPCC Special Report," Intergovernmental Panel on Climate Change, 2018, https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf.

5. "Addressing Climate as a Systemic Risk – A call to action for U.S. financial regulators," The Ceres Accelerator For Sustainable Capital Markets, June 2020, <https://www.ceres.org/sites/default/files/reports/2020-06/Financial%20Regulators%20FULL%20FINAL.pdf>.

6. "Keynote Remarks by Secretary of the Treasury Janet L. Yellen," COP26 in Glasgow, Scotland, at the Finance Day Opening Event, November 2021, <https://home.treasury.gov/news/press-releases/jy0457>.



ECOSYSTEM SERVICES AND THE BIODIVERSITY CRISIS

Even in Muniland, the Earth provides essential ecosystem services on which we all depend: water for sustenance; pollinators and soils for agriculture; trees for lumber; air to breathe; and oceans for food, livelihoods and inspiration. In some cases, these services provided by natural systems seem to come at no-cost (sunlight). In other cases, we build infrastructure to harness and use them (Central Valley Project). Climate change affects not only when, where, and what ecosystem services will be available, but also the extent and cost of infrastructure and human effort that will be required to use those services.

The United Nations has declared a Global Biodiversity Crisis. Half of plant and animal species on Earth, or more, may be lost by 2070.⁷ This is not happening in some far-away place, this loss of biodiversity is happening across the United States every single day. It is happening right now. Last September, the United States Fish and Wildlife Service proposed removing 23 species from the Endangered Species list because the animals and plants have already gone extinct.⁸ We don't even comprehend all that we are losing. Researchers estimate that even today, much of the world's biodiversity is not yet known to science.⁹ Preserving biodiversity is one of the most urgent imperatives facing humanity. The biodiversity crisis is critical and intertwined with financial stability as all life on Earth depends on healthy functioning ecosystems. On a daily basis, US municipal bonds finance activities that can directly impact biodiversity in both positive and negative ways. Bond issuers can and should prioritize protection of biodiversity through project planning and restorative actions.

Last June, the UN Environmental Program¹⁰ issued a report¹¹ about tackling the biodiversity and climate crises together and discussed their combined social impacts:

Unprecedented changes in climate and biodiversity, driven by human activities, have combined and increasingly threaten nature, human lives, livelihoods and well-being around the world. Biodiversity loss and climate change are both driven by human economic activities and mutually reinforce each other. Neither will be successfully resolved unless both are tackled together. This is the message of a workshop report, published today by 50 of the world's leading biodiversity and climate experts.¹²

Climate change is truly a "threat multiplier." Making wise decisions at the intersection of ecosystems and financial systems, is at the heart of climate change adaptation, and central to the coordinated effort needed in US public finance. It may also be an aspiration of some ESG investing strategies.

7. Cristian Román-Palacios and John J. Wiens, "Recent responses to climate change reveal the drivers of species extinction and survival," Proceedings of the National Academy of Sciences, February 2020, 117 (8), <https://doi.org/10.1073/pnas.1913007117>.

8. "Press Release: US Fish and Wildlife Service Proposes Delisting 23 Species from Endangered Species Act Due to Extinction," US Fish and Wildlife Service, September 2021, https://www.fws.gov/news/ShowNews.cfm?_ID=37017.

9. Richard T. Cortlett, "Plant diversity in a changing world: Status, trends, and conservation needs," Plant Diversity, February 2016, <http://dx.doi.org/10.1016/j.pld.2016.01.001>.

10. Secretariat of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services

11. "IPBES-IPCC Co-Sponsored Workshop Report on Biodiversity and Climate Change," Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) and Intergovernmental Panel on Climate Change (IPCC), June 2021, <https://ipbes.net/biodiversityclimatescience>.

12. "Press Release: Tackling Biodiversity & Climate Crises Together and Their Combined Social Impacts," United Nations, June 2021, <https://www.un.org/sustainabledevelopment/blog/2021/06/tackling-biodiversity-climate-crises-together-and-their-combined-social-impacts/>.

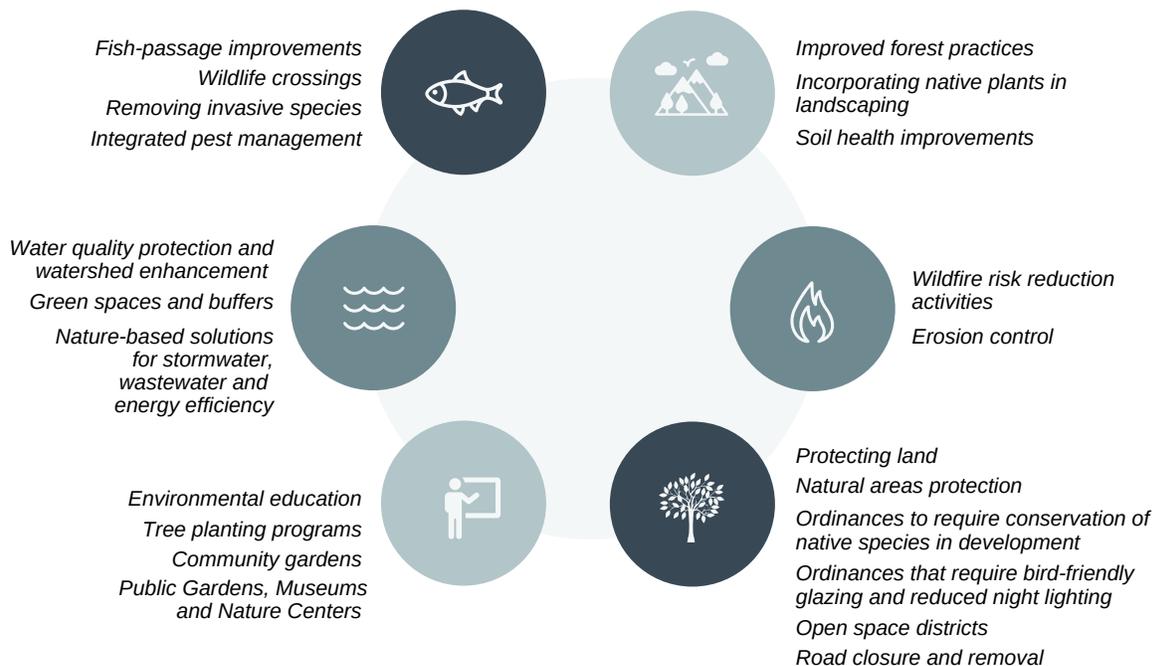


That intersection space of the two systems is complicated and messy: it includes the physical, chemical, and biological intricacies of the natural world and all the complexities of government, commerce and finance. A recent UN report about the rapid decline of nature globally highlights this:

*Ecosystems, species, wild populations, local varieties and breeds of domesticated plants and animals are shrinking, deteriorating or vanishing. The essential, interconnected web of life on Earth is getting smaller and increasingly frayed... This loss is a direct result of human activity and constitutes a direct threat to human well-being in all regions of the world.*¹³

Municipal bond issuers exist in this space, charged with making the daily decisions that increasingly involve applied science in unique local contexts. Some issuers are more prepared than others to acknowledge and plan for physical and transition risk related to climate change. In Kestrel, we believe that every municipal bond matters because the financed activities will either move us collectively toward the just transition, or not.

At the level of municipal bond-financed activities, prioritizing biodiversity could look like this:



What does prioritizing biodiversity look like?

The UN has clear guidance: "[A New Global Framework for Managing Nature Through 2030](https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/)"

13. "UN Report: Nature's Dangerous Decline 'Unprecedented'; Species Extinction Rates 'Accelerating,'" United Nations, May 2019, <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>.

S CONCEPTS: SOCIETAL RISK

Societal risk also contributes to instability in the US financial systems. Societal risk includes risk to stable democracy, risk to civil liberties and human rights, risk to labor supply, and risk to public health.¹⁴ Experts agree that polarization is increasing in the US, posing a threat to our civil society. Also known as sectarianism, polarization can lead to dysfunctional government, violence, insurgency, civil war and even disunion or partition. Economic hardship and wealth gaps, as well as inter-group and racial conflicts, contribute to polarization. Therefore, a key step toward decreasing polarization in the United States, and its attendant risks to our society and financial system, is to prioritize actions designed to lessen inequality. In US public finance, we must prioritize activities that work toward more even distribution of public goods and services.

Mitigating climate transition risk requires planning for structural changes to address climate change and societal inequity, with recognition of the risks associated with inaction. We refer to this as the *just transition to a decarbonized economy, or the just transition*. Bond-financed activities that are aligned with the just transition are characterized by the equitable inclusion and accommodation of all individuals, with a special focus on disadvantaged groups who are disproportionately affected by the cost and impacts associated with climate change. **The “just transition” is integral to the success of climate strategies, and also central to reducing societal/democracy risk.**

Bond-financed activities that support the just transition are planned in ways that incorporate understanding of physical, transition and/or societal risks, and consider the distributional and equity impacts on low- to moderate-income households and marginalized communities. Bond issuers can address societal risk by incorporating best practices of inclusive planning, and prioritizing actions to lessen inequality. In every sector of municipal bonds, there are concrete actions that can be taken to lessen inequality. Issuers should work to ensure equitable access, service and inclusion through their bond-financed activities and communicate their actions and intentions. Investors can address societal risk by prioritizing bonds that include best practices for lessening inequality, or that directly advance these concepts.

What does “lessening inequality” look like in public finance?

Examples include:

- utility rate assistance programs
- first-time homebuyer loans
- social equity programs in schools
- upward mobility in university graduates
- equitable healthcare delivery programs
- expanding transit services or internet service to new areas
- constructing water or sewer infrastructure in underserved areas
- prioritizing Tribal bonds
- prioritizing rural communities

14. Taylor Gauther and Financial Security Program, “The Devastating Effects of Climate Change on US Housing Security,” Aspen Institute, August 9, 2021, <https://www.aspeninstitute.org/blog-posts/the-devastating-effects-of-climate-change-on-us-housing-security/>.



CONSUMERS' CHANGING EXPECTATIONS

Consumers increasingly seek investments that are aligned with their values. Market makers want to reduce risk to financial systems. As the implications of climate change and not transforming our economy become more widely understood, it is not hard to imagine a world where bonds that move our country toward the just transition are prioritized, and outliers will be labeled—the opposite of the green bond market now.

G CONCEPTS: GOVERNANCE IN RELATION TO CLIMATE CHANGE AND SOCIETAL RISK

From cyber-security to climate change adaptation and deep societal unrest, issuers of municipal bonds are on the front lines of managing the day-to-day business of building and operating every piece of infrastructure and most social programs in the United States. Among state and local governments, there are vast differences in levels of acknowledgement and planning for climate change and addressing the wealth gap. Disparities in resources between urban and rural issuers, and wealthy and economically disadvantaged areas, can contribute to differences in cost of capital, creating a feedback loop that increases polarization.

Local governments across the US were greatly impacted by the Great Recession and many still deal with lingering effects such as reduced workforce.¹⁵ Post-COVID, the Great Resignation is resulting in even more loss of experienced public servants. This turnover is occurring at time when the functions of government have never been more complex or demanding. Municipal bond issuers would benefit from universal access to standardized tools and common benchmarks to assess and interpret physical climate risk. They also need minimum standards and a template for issuer-level climate action plans. The MSRB could help level the playing field by making available a single source of data for assessing physical climate risks. Then, every bond issuer could disclose these risks, and credit rating organizations could apply uniform data to their models and interpret this for investors.

At Kestrel, we consider the presence or absence of intentional efforts to address climate change and advance social equity to be an important lens for evaluating governance. This requires transparency on the part of the issuer, both in the offering documents and on the issuer's website. The market needs issuers to communicate about the actions they are taking to lessen inequalities and address climate change, and disclose the activities, impacts and risks that have been considered. Evidence of larger commitments to sustainability and meaningful climate action are indicators that the bond issuer prioritizes decarbonization and/or efforts to reduce inequalities.

An example of a standardized tool:

The Community Rating System (CRS) is a voluntary incentive program established by FEMA that encourages best practices for floodplain management aligned with the [National Flood Insurance Program \(NFIP\)](#). Over 1,500 communities participate nationwide.

In CRS communities, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the community's efforts that address the three goals of the program:

- 1 Reduce and avoid flood damage to insurable property
- 2 Strengthen and support the insurance aspects of the National Flood Insurance Program
- 3 Foster comprehensive floodplain management

Something like this is needed for a standardized approach to physical climate risk.

15. "Lost Decade' Casts a Post-Recession Shadow on State Finances," The PEW Charitable Trusts, June 2019, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/06/lost-decade-casts-a-post-recession-shadow-on-state-finances>.



CONCLUSION

The municipal market encompasses all of the physical infrastructure and much of the social infrastructure of the United States. There is a momentous opportunity to simultaneously address climate change, wealth gaps and systemic risk to financial markets through US public finance. We need a coordinated strategy.

- Issuers must communicate more about how they are addressing climate risk and societal risk.
- Investors can prioritize investments that advance the just transition to a decarbonized economy.
- Finance teams can engage with issuers to communicate the changing ESG landscape and the need for more transparency.
- Credit rating agencies can focus on evaluating relevant transition risks that are external to bond issuers.
- Regulators can set basic expectations for transparency and consistency to allow the markets to incorporate pricing of climate risk in an orderly way, and provide the market with some standardized tools and one public benchmark of physical climate risk.

In the context of the climate emergency, global biodiversity crisis and deep societal unrest that threatens our democracy, the most significant public benefit to be derived from US public finance is a coordinated and impactful strategy to advance the just transition to a decarbonized economy.

“*Financial stability is not an end [in] itself—it is a means to protect the assets of millions of Americans and to ensure that the financial system continues to support their goals and aspirations through an efficient and sustainable allocation of capital. In a world confronting climate change, it is imperative that the financial system continue to serve this purpose and, where possible, to advance the solutions needed to meet the climate challenge.*”

- U.S. Commodity Futures
Trading Commission

"[Managing Climate Risk in the U.S. Financial System](#)," Report of the Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the U.S. Commodity Futures Trading Commission, September 2020.

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ABOUT KESTREL

For more than 20 years Kestrel has been at the forefront of public finance helping state and local governments access capital for sustainable infrastructure.

Kestrel Verifiers, a division of Kestrel 360, Inc., is the market leader for verified green, social, and sustainability municipal bonds. As a Climate Bonds Initiative Approved Verifier, we have a critical understanding of the science and impact behind sustainable finance and have provided external reviews for over one hundred municipal bond issues—amounting to more than \$17 billion in funds.

With our data division, Kestrel ESG, we are proud to be at the leading edge, supporting sustainable finance with meaningful ESG data. Our data is independently developed—encompassing principles of sustainability, sector-specific best practices, and rigorous quality control.

Integrity is a core value of our company, and we always strive for excellence. Our team of environmental and social scientists adhere to best practices designed to remove bias and ensure consistency in our work. Kestrel supports a coordinated and impactful strategy to advance the just transition to a decarbonized economy.

ABOUT MONICA REID

Monica Reid is the Founder and Chief Executive Officer of Kestrel Verifiers and Kestrel ESG. Her current focus is on supporting the growth of Kestrel Verifiers as a provider of green bond services, and Kestrel ESG as a provider of ESG Data for fixed income. Kestrel Verifiers is the market leader for providing external reviews of green, social and sustainability bonds in US public finance.

Ms. Reid has over 20 years of experience as a Principal Consultant and thought leader in the field of innovative finance for infrastructure and sustainability efforts, and she currently serves on the California Green Bond Market Development Committee, convened by the State Treasurer. Prior to founding Kestrel Verifiers, Ms. Reid founded Kestrel Consulting Inc. which provided strategic environmental finance consulting and grant and loan services to local governments from 2000-2019.

Early in her career, Ms. Reid focused on natural resources conservation and public service. She worked in Public Affairs for the US Forest Service in the Pacific Northwest for eight years, and as an environmental educator for Miami-Dade County Parks. Her educational background includes a Bachelor of Science degree in ecology from The Evergreen State College in Washington, and graduate studies in marine science at Moss Landing Marine Laboratories in California. A native of South Florida, Ms. Reid now calls Hood River, Oregon, home. Ms. Reid holds Series 79 and Series 63 securities licenses and the Envision Sustainability Professional credential. [in](#)



Response to MSRB 2021-17

REQUEST FOR INFORMATION ON ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) PRACTICES IN THE MUNICIPAL SECURITIES MARKET

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(A) MUNICIPAL ISSUERS

ESG Disclosures

- (1) Are you currently providing ESG-Related Disclosures or ESG-related information beyond the legally required disclosures in your offering documents, continuing disclosures or other investor communications? Should municipal issuers include a separate section in their official statements and other offering documents expressly devoted to ESG-Related Disclosures?**

Kestrel Verifiers is the market leader for external reviews of green, social and sustainability bonds in the municipal market. We work closely with all deal participants, especially municipal issuers, to improve the amount of relevant information that is shared with investors. This work involves application of environmental science, social science and finance, as well as an understanding of best practices in the sector. Our report, which presents analysis and assurance for investors, is typically an appendix to the offering documents.

In our view, the market can be more efficient if there is a consistent approach to green, social and sustainability bonds. We frequently hear from diverse investors that they read and learn from our reports, and that the additional transparency (material information) contained in our Opinions is helpful. We hear from issuers, that as a result of our reports being included, they receive fewer requests for information from investors.

- (2) Do you believe the information included in ESG-Related Disclosures should be standardized? In your view, is there a consensus on what information and which metrics are important? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are relevant and should be included in ESG-Related Disclosures?**

Generally speaking, most bond issuers are not at all aware of how investors use ESG information. Most investors lack a clear understanding of the binding regulations and decision-making frameworks that bond issuers must operate within.

Issuer-level metrics that are important from the perspective of both risk and impact include:

- 1) The presence or absence of a climate action plan;
- 2) A social equity plan or comparable commitment to prioritize fair treatment, access, opportunity, and advancement for all—while striving to identify and eliminate barriers that have prevented the full participation of some groups;
- 3) How bond-financed activities align with these plans; and
- 4) How each of these types of risk are addressed through bond-financed activities: physical climate risk, climate transition risk, and societal risk.

(A) MUNICIPAL ISSUERS - *continued*

Labeled Bonds

(3) Have you issued ESG-Labeled Bonds? Did you utilize an independent party to validate or otherwise attest to the use of the ESG designation?

In our experience, these are the main reasons issuers give for choosing self-verification:

- Did it that way in the past;
- No perceived value of an external review;
- Irrational fear that it will be a lot of work with an external reviewer;
- Fear of underperformance—that they could somehow lose the green bond designation if they make changes to the project along the way; and
- Fear of onerous reporting.

Kestrel is the current market leader in US public finance external reviews, with more than 60% of the market share¹. Many of our clients report that the review process was efficient and pleasant. Many say that they learned through the review process, and that a primary benefit of the external review was the positive reception from their Board and/or stakeholders.

Not all external review providers are alike. There are distinct differences in approach. In Kestrel, we take a science-based approach, and strive to provide material information, context and interpretation of impact.

¹ Source: Ipreo from January 2021 to present.

(A) MUNICIPAL ISSUERS - *continued*

Continuing Disclosures

- (4) If you issued ESG-Labeled Bonds, did you commit to providing any ongoing or continuing disclosure related to the ESG designation? If so, was that disclosure commitment incorporated into the continuing disclosure agreement or similar contractual obligation related to Securities Exchange Act Rule 15c2-12 (collectively, “CDA”)? If the disclosure commitment was not incorporated into the CDA, how is the information made available to an investor on an ongoing basis and at what frequency?**

The purpose of labeled bonds is to 1) signal alignment with accepted international standards, and 2) disclose material information related to meeting the standards and impact. “Impact” means the environmental or social benefits to be achieved by the bonds. For all investors worldwide there are two universal standards in use: International Capital Market Association (“ICMA”) Green Bond Principles, Social Bond Principles, and Sustainability Bond Guidelines; and Climate Bonds Initiative Standards and Sector Criteria. An external review provides assurance to the marketplace that reporting—whether voluntary or a committed legal obligation of the issuer—will follow consistent guidelines provided by ICMA.

Reporting is one of the four required components of the ICMA standards. For bonds that align with the ICMA, it is expected that an issuer will report on the status of bond-financed activities at least annually until those proceeds are fully allocated. For Green Bonds – Climate Bond Certified, an Approved Verifier is required to provide one post-issuance report within 24 months of issuance, and issuers are expected to report annually on allocation of proceeds. Standard continuing disclosure agreements (“CDA”) disclosed on EMMA satisfy this requirement.

Consistency around reporting allows market participants to compare and properly evaluate green, social, and sustainability bonds. Reporting increases transparency and provides ongoing assurance to market participants on the environmental and social benefits of bond-financed activities.

Kestrel Verifiers works directly with issuers to identify reporting schemes for green, social and sustainability bonds that are meaningful and attainable. We often suggest key performance indicators and insist that issuers make these easy for investors to find. The majority of issuers that receive an external review from Kestrel provide a voluntary update report to the market. Voluntary reports can be standalone or added to an existing report, such as annual financial statements or annual sustainability reports. Several issuers have chosen to report through their continuing disclosure agreement under 15c2-12, providing investors with a legal commitment to report. The duration of reporting also varies. The duration may be one time, until all proceeds have been expended, until project completion, or until maturity.

Reporting should make it simple for investors to locate material information. Issuers should provide enough context so investors can refer to one document to obtain all the information they need to convey the impact of their investments to their clients. It is a best practice for issuers to make reports publicly available via an issuer’s website, an investor page, EMMA, or another site.

Not every issuer is comfortable putting impact reporting into their continuing disclosure agreement, but most recognize the importance of being accountable. The key is that they make a commitment

to report—whether that is a voluntary commitment or the CDA. We advise them to make impact data available to investors in any or all of these ways: EMMA page, investor relations page, issuer website, incorporate into the CDA, and/or public database (e.g., <https://www.green.ca.gov>).

A broader discussion of material ESG factors, such as climate risk is discussed in (C)(1).

(A) MUNICIPAL ISSUERS - *continued*

ESG and Credit Rating Agencies

- (5) **Are you providing information to the credit rating agencies regarding ESG-related risk factors and ESG-related practices? How does this information generally compare to the information provided in your offering documents and continuing disclosures? Are the credit rating agencies requesting any new types of ESG-related information? Has the credit rating process changed in any significant ways in relation to ESG-related information?**

Everyone is trying to price in risk in a time of great uncertainty about what those risks even are. The cry for issuers to provide more “transparency” is a reflection of this uncertainty, as is the intense focus on E, S and G factors.

One reason market participants focus on ESG is to better understand fair values of bonds and from that, the value at risk. The Securities and Exchange Commission (“SEC”) now requires fair value accounting which imposes a discipline that can force institutions to take action to address emerging problems that might not occur under historical cost accounting. In contrast, historical cost accounting is more likely to allow serious problems to go undetected and unaddressed for longer periods of time.

The SEC Fair Value of Financial Instruments rule directs institutions to determine fair value by: assessing and managing material risks associated with fair value determinations; selecting, applying, and testing fair value methodologies; and overseeing and evaluating any pricing services used. Market participants and ratings agencies may not be keeping up with value and risk as the ESG landscape is rapidly evolving due to climate risk and societal/democracy risk. Information asymmetries always affect one party adversely. When good securities are not upgraded, producers overpay for working capital. When bad securities are not downgraded, naïve investors suffer unexpected losses. Knowledgeable parties (for example, credit rating agencies and large investors) have not brought this connection to the public’s attention, nor would they be likely to since public ignorance conveys private advantage. The Brookings Institution examined this in 2016.²

The credit rating agencies are mainly focused on the issuer’s ability to repay, and do not yet systematically assess physical climate risks or transition risks. The credit rating agencies do not adequately assess planning and resilience for material climate risks, which vary significantly by sector. Credit rating agencies’ assessment of societal/democracy risk may not be keeping pace with rapid changes in the US social fabric. Societal risk is related to transition risk.

Prioritizing the just transition to a decarbonized economy is in everyone’s interest. Mitigating climate transition risk requires planning for structural changes to address climate change and societal inequity, with recognition of the risks associated with inaction. We refer to this as *the just transition to a decarbonized economy*, or *the just transition*. Bond-financed activities that are aligned with the just transition are characterized by the equitable inclusion and accommodation of all individuals, with a special focus on disadvantaged groups who are disproportionately affected by the cost and impacts associated with climate change. The just transition is integral to the success of climate strategies, and also central to reducing systemic risk in the US financial system.

² Ann Rutledge and Robert E. Litan, “A Real Fix for Credit Ratings,” The Brookings Institution, June 2014, https://www.brookings.edu/wp-content/uploads/2016/06/real_fix_for_credit_ratings_litan.pdf.

(B) INVESTORS IN MUNICIPAL SECURITIES

Materiality

- (1) Do you consider ESG-related information material to your investment decisions? Is ESG-related information important to your evaluation of a municipal issuer's creditworthiness? What ESG-related information do you consider most relevant to a municipal issuer's creditworthiness and why?

Kestrel interacts with investors through our work on green, social, and sustainability bonds and as providers of ESG data. We offer these observations on materiality.

Concept 1

In the context of climate risk, it is most common to think of materiality in terms of the issuer's ability to repay. In this situation, "material" climate risk means: **Will changing conditions directly impact the issuer's ability to repay?**

For example:

- *Does increased flooding or frequency of drought pose a risk to the long-term stability of the community or system?*
- *Will the cost of adapting to climate change (raising major highways, reoperating whole water systems, moving communities out of harm's way, changing or abandoning agricultural production) push certain communities/issuers toward insolvency?*
- *Does the issuer rely on revenues for repayment that might be directly and adversely impacted by climate change, for example, energy contracts, motor fuel taxes or tourism revenues?*

Some of the most significant climate-related impacts might be less direct but still affect ability to repay, for example:

- *Rising sea levels may accelerate seawater intrusion into coastal aquifers, affecting local water supplies.*
- *An area might experience out-migration as a result of extreme heat, increased hurricane activity, wildfire or drought.*
- *Increases in vector-transmitted infectious diseases may affect tourism-based economies and/or livability of certain areas.*

Concept 2

Some reasonable investors expand climate risk "materiality" to also mean: **Will changing conditions affect functionality or performance of bond-financed assets?** Essentially when considering climate risk, these investors ask, "**is the asset designed for the expected future conditions?**" Some investors refer to this as "sustainability."

For example:

- *Is the physical asset located in an area that is likely to be subjected to increased flooding or coastal inundation?*
- *Will extreme heat impact the performance of the wastewater treatment plant?*
- *Will changes in snowpack affect the operation of the hydropower system?*
- *Will the loss of biodiversity of pollinators affect agricultural economies?*

Concept 3

In this context, it is material to know: **Is the issuer aware of climate change related risks as they pertain to its operations and specifically to the bond-financed activities?** Some reasonable investors consider ESG factors related to governance and climate change planning in their investment strategies.

For example:

- *Have they done appropriate planning and studies?*
- *Have they planned any actions to adapt to and/or mitigate these risks?*
- *Have they made significant commitments to decarbonizing and/or improving social equity?*

In summary, we agree with Mr. Kim’s statement that “reasonable investors consider climate risk to be material” but suggest that the definition of “material” should be broadened beyond direct impacts from extreme events that might impact an issuer’s ability to repay. “Material” should also encompass the long-term sustainability (durability) of the bond-financed infrastructure in the face of changing conditions, and the issuer’s efforts to plan for and mitigate those risks.

Many of the world's assets are now pledged to net zero strategies and it is widely understood that climate change poses systemic risk to US financial systems. Every single municipal bond matters when it comes to decarbonizing the US economy. *Has the issuer acknowledged and planned for physical climate risk? Does the issuer have a climate action plan or sustainability plan that addresses transition risk? Do the bond-financed activities include decarbonizing actions? Has there been a just and equitable approach on the part of the issuer in establishing the need for the bond-financed activities?* These are the questions that must be answered to enable a coordinated effort to address systemic risk posed by climate change and societal unrest.

(B) INVESTORS IN MUNICIPAL SECURITIES - *continued*

Accessing & Availability of ESG Information

- (2) Do you generally have access to all the ESG-related information you need to make an informed investment decision? If not, please identify the gaps in information and market transparency.**

Issuers frequently lump all of their activities together in the bond offering documents, and it is sometimes impossible to discern how funds will be used. This is particularly troubling when bonds finance settlement of police brutality, sexual misconduct or other lawsuits. It should be mandatory for issuers to inform investors how funds will be used. Clear project lists with budgets would be a substantial improvement for investors to make informed decisions. In the context of ESG, reasonable investors want to know these things:

- What exactly is being financed?
- What are the physical climate risks expected in the asset-location as identified by nationally accepted models over the term of this bond?
- Is the issuer aware of these risks?
- In the context of the bond-financed activity, what has the issuer done to adapt to or mitigate these risks?
- What indirect climate risks potentially affect this issuer?
- Is the area likely to experience significant in-migration or out-migration?

- (3) Does your expectation as to the availability and sufficiency of ESG-related information change depending on whether the purchase of municipal securities is made in the primary market or the secondary market?**

Kestrel supports sustainable finance with meaningful ESG data. Our latest product, Kestrel ESG Data, is original ESG data for fixed income which provides impact transparency at the bond level. We also take into consideration the overarching environmental rules, anti-discrimination and civil rights laws, and permitting procedures that issuers are required to meet.

Kestrel ESG Data is available now on primary market issuances >\$20 million, and secondary market coverage will be available later this year. More information is available at kestrelesg.com.

- (4) In light of the potential availability of ESG-related information from other sources, how can municipal issuers best present and disseminate their ESG-related information to investors? What topic areas do you believe are most relevant for municipal issuers to include when providing ESG-Related Disclosures? In your view, is it sufficient for ESG-Related Disclosures to just describe material ESG-related risk factors? Is there a benefit to municipal issuers further describing the initiatives and other projects they are pursuing to address such risks?**

Municipal issuers should be as transparent as possible with:

- Climate action plans;
- Sustainability plans;
- Plans for addressing social equity; and/or
- Environmental justice.

(B) INVESTORS IN MUNICIPAL SECURITIES - *continued*

ESG Disclosures

- (5) Certain market participants have expressed concerns that, while analysts and investors have expressed their desire for more standardized ESG-Related Disclosures, there is no consensus on which data and metrics are important or essential.³ Do you believe such disclosures should be standardized? Do you believe there is a consensus on which data and metrics are important or essential? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus?

This is the information Kestrel views as essential:

- Pre-issuance disclosures: all project/activity list with budget.
- Any financing related to lawsuits.
- Links to previous bonds that are refunded.
- Links between financed activities and climate action plans, sustainability plans and/or social equity plans.
- Presence of any green building standards or features.
- Who will be served/benefit from the bond-financed activity?
- Post-issuance disclosures:
 - Project construction/implementation status.
 - 1-3 key performance indicators appropriate for each sector.
 - Have bond proceeds been allocated?

- (6) When purchasing municipal securities for ESG-Designated Funds, what ESG-related information is most useful for the investment decision? How do fund managers screen securities to ensure that they meet a fund’s criteria? Once purchased, what information is most relevant in assessing that a security continues to meet the ESG criteria established for an ESG-Designated Fund?

While there are many bespoke ESG strategies that may be centered on impact, risk or arbitrage, this measure works for all: **Does this investment move the United States toward the just transition to a decarbonized economy?**

Post-issuance, investors want to know that the issuer did what they set out to do, and have some key performance indicators to support that.

³ See, e.g., GFOA Climate Risk Letter (stating that “analysts and investors have not developed consensus on what data and which metrics are important to their analysis”).

(B) INVESTORS IN MUNICIPAL SECURITIES - *continued*

Labeled Bonds

- (7) When purchasing ESG-Labeled Bonds, do you evaluate municipal securities with an independent certification differently from bonds that do not have such a certification? If so, how? If not, why not? In your view, what are the benefits to an investor of purchasing a bond with an independent certification?**

There are green bonds, social bonds and sustainability bonds. Climate Bonds are a type of green bond. These are defined by ICMA's voluntary standards and the Climate Bonds Standard. "ESG Bonds" is confusing terminology because there are no standards for ESG Bonds. The market and MSRB should use the correct terms: green bonds, social bonds and sustainability bonds.

Labeled green, social, and sustainability bonds are a tool for investors interested in aligning their capital with more intentional outcomes. Making it more transparent to investors which bonds have followed best practices and/or requirements from internationally accepted self-regulatory organizations is crucial for market efficiencies and alignment with ESG investment approaches.

Just as an audit provides an independent examination of financial statements, an independent external review is a best practice for green or social bonds. The International Capital Market Association ("ICMA"), the standard-setting institution for green, social and sustainability bonds, recommends the use of an external reviewer. The Climate Bonds Initiative ("CBI") requires an external review.

As external reviewers, Kestrel went through an approval process with the Climate Bonds Initiative. We follow the International Auditing and Assurance Standards Board's *International Standard on Assurance Engagements (ISAE) 3000: Assurance Engagements Other than Audits or Reviews of Historical Financial Information*. Our external review attests to the credibility of the environmental or social benefit inherent in the bond-financed activities and provides assurance for investors that the benefits are real. The purpose of an external review is to clearly identify, and sometimes quantify, the green and/or social benefits of the bond-financed activities. Bonds that issuers have labeled themselves take a variety of forms and perpetuate inconsistency, confusion, dilute impact, potentially omit critical information and contain errors. Additionally, some self-labeled transactions use their own standards and may or may not describe conformance with internationally accepted standards.

Not all external review providers are alike. There are distinct differences in approach. In Kestrel, we take a science-based approach, and strive to provide material information, context and interpretation of impact.

(C) DEALERS

Due Diligence

- (1) Does the underwriting of ESG-Labeled Bonds raise any novel compliance issues for firms, such as challenges regarding fair dealing, due diligence, pricing or other related legal obligations? How is due diligence generally conducted regarding municipal issuers' ESG-Related Disclosures?**

Fair Dealing and Due Diligence

Municipal bonds that carry a green, social, or sustainability label verified by an external reviewer provide transparency to market participants. Specific to Kestrel Verifiers, our Second Party Opinions or Verifier's Reports travel with the offering document as an appendix. Second Party Opinions are made available to investors at the same time and in the same manner as all other information in the offering document.

External Reviewers have the responsibility to protect the integrity of the green, social and sustainability bond market by providing accurate and up-to-date information on verified bonds. Kestrel has a robust due diligence process for all transactions where we provide an external review. As part of this process, we hold a due diligence call with essential members of the deal team, including underwriters, municipal advisors, issuer leadership and project experts. The purpose of the call is to assess suitability and confirm our understanding of the project and associated benefits. This engagement allows us to determine and accurately communicate relevant facts to market participants. Further, as part of our contractual agreement, Kestrel requires issuers to notify us of any past or pending litigation, material information or changes to the bond-financed projects between the date of issuance and 45 days after the closing date.

As discussed in our response to (A)(4), issuers of labeled green, social, and sustainability bonds under ICMA are required to report on the status of bond-financed activities at least annually until those proceeds are fully allocated. For Green Bonds – Climate Bond Certified, issuers are required to provide one post-issuance report within 24 months of issuance. Issuers can choose to make these reports voluntary or make a legal commitment to report under their continuing disclosure agreement. In circumstances where facts changed from the original issuance documents or omissions occurred, issuers should provide updated information to the market via their chosen reporting method.

Pricing – Tools for Compliance

Accurately pricing risk requires good disclosure. Determining risks associated with ESG factors is nuanced. Independent external reviews or third-party ESG data providers give informed insights and data to aid in compliance.

Labeled green, social, and sustainability bonds alert market participants of inherent externalities of the bond-financed activities. From December 2020 to December 2021, Kestrel is aware of four transactions that had a clear pricing differential on a green bond versus a comparable non-green bond. All four transactions provided exceptional disclosure to the marketplace regarding ESG factors. Please find these case studies in Appendix A.

Pricing and Climate Risk Disclosure

The United States' 2030 emissions reduction target of 50%-52% below 2005 levels is substantial.⁴ Climate change and its related effects span every sector of the municipal market. Municipal market participants require climate risk disclosure to accurately price risk. It is imperative for the municipal market, serving as the main source of capital for America's infrastructure and underpinnings of the US economy, to prioritize climate action.

Climate risk in the municipal market is not being accounted for in a comparable coordinated fashion. The market is still at nascent stages of delivering climate risk disclosure. Large institutional and sophisticated investors have developed and measured climate risk on their own platforms or through third-party data providers. A combination of regulation, analytical tools, technology, and data can coalesce to bring the municipal market up to speed with necessary disclosure. Climate change and associated risks are material and deeply inherent in the municipal market.⁵ As the market continues to develop, the burden for issuers who do not account for climate risk will be incorporated into their overall cost of capital and long term value of assets.

These non-regulatory and coordinating actions from the MSRB would be helpful:

- Deploy a national level tool to assess climate risk by geographic location, so that risks may be identified uniformly.
- Include both immediate climate impacts (drought, increased wildfire, flooding, sea level rise etc.) as well as other climate-related risks (climate migration, water supply at-risk, infectious diseases).
- This tool could be accessed by issuers, investors and regulators alike.
- Set minimum standards and a template for issuer-level climate action plans. Encourage issuers to post their climate action plan which identifies risks and mitigation and adaptation activities.
- Work with leaders in this space to demonstrate best practices.

Credit Rating Agencies

- For credit rating agencies to incorporate climate risk into their analysis with minimal disruption to the market, they must all do it the same way, using the same reference data, at the same time.

⁴ "The gap between the current policy trajectory and the 2030 target is 1.7-2.3 billion metric tons. Putting this gap in context, that's the same as zeroing out emission from the entire state of Florida every year for the next nine years. Since 2005, the US has only cut emissions at that level in absolute terms." Pathways to Paris – A Policy Assessment of the 2030 US Climate Target – Rhodium Group, October 19, 2021, https://rhg.com/wp-content/uploads/2021/10/Rhodium-Group_Pathways-to-Paris-A-Policy-Assessment-of-the-2030-US-Climate-Target.pdf.

⁵ Analysis and risk modeling by BlackRock and the Rhodium Group concludes that under a scenario where emissions of warming gases are not controlled, "...within a decade, more than 15% of the current S&P National Municipal Bond Index (by market value) would be issued by MSAs [metropolitan statistical areas]..." per Brian Deese's 2019 whitepaper "Getting physical: Scenario analysis for assessing climate-related risks," <https://www.blackrock.com/ch/individual/en/literature/whitepaper/bii-physical-climate-risks-april-2019.pdf> as cited in the "Hutchins Center Working Paper #67 - Flying Blind: What Do Investors Really Know About Climate Change Risks in the U.S. Equity and Municipal Debt Markets?" September 2020, https://www.brookings.edu/wp-content/uploads/2020/09/WP67_Victor-et-al.pdf.

(2) **Do primary offerings that prioritize certain ESG investors raise any novel compliance issues for firms? What criteria are used to define an ESG Investor for purposes of such priority provisions? How might investors be assessed to ensure they meet the applicable criteria?**

Underwriters and broker-dealers follow rules that address communication, book record-keeping and duty to deal fairly (Rules G-11, G-8, G-17 and G-32). They must comply with an issuer's chosen priority of orders and related requirements. Underwriters must also demonstrate taking reasonable steps to fill orders in accordance with an issuer's priority preference request. The following could affect an underwriter's ability to properly adhere to these standards:

- **Lack of a Tracking System** – At present there is no universal system for broker-dealers to confirm investors, institutional or retail, committed ESG orders or validate an “ESG” account.
- **ESG Investor Regulation** – There is no regulation in the United States for investors who classify their investment vehicles as ESG.
- **Priority Order Formats** – ESG priority requests are not standardized and are written in free form.
- **Internal Controls** – Underwriters need to set up proper controls and audit processes to accurately account for ESG orders.

(C) DEALERS - *continued*

ESG in the Secondary Market

(3) Does the purchase or sale of ESG-Labeled Bonds in the secondary market raise any novel compliance issues for firms, such as challenges regarding fair dealing, pricing, suitability, best execution, time of trade disclosures or other related legal obligations? Does this answer depend on whether the customer is a retail customer, institutional customer or Sophisticated Municipal Market Professional?

The municipal market has roughly thirty times more bonds to trade than the corporate market⁶, yet it is less liquid, and experiences relatively infrequent trading compared to all other fixed income asset classes⁷. The sheer size of the municipal market in terms of number of issuers and issues outstanding, coupled with over-the-counter trading methods, contribute to the fragmented nature of the market. More access, more data, and better technology is shifting the municipal market buyer base slightly, but individuals still represent the largest holders of municipal bonds. The combination of these unique attributes and the nascent stage of ESG municipal market solutions present compliance challenges for secondary market participants.

Labeled Green, Social and Sustainability Bonds⁸

- Self-labeled bonds do not provide market participants with an audit trail for disclosing material environmental or social attributes of the bond-financed activities. This may affect one’s ability to discern suitability.
- Pricing – Recent findings have shown that labeled bonds can directly affect bond pricing in the secondary market.⁹ That is, labeled bonds can have lower yields and higher prices in the market. In certain situations, this might affect fair dealing and best execution, especially if the bond was self-labeled.
- Surveillance – One of the challenging aspects of labeled bonds in the secondary market is the absence of surveillance. Market participants currently do not have a way to know if the bonds achieved the intended environmental or social benefits. In certain situations, this could affect best execution. An issuer’s commitment to meaningful and robust reporting can mitigate this challenge.
- Labeled Bond Tickers – Currently, a globally accepted standard for warehousing infrastructure/technology to identify labeled bonds does not exist. This affects the supply of labeled bonds. Investors have a smaller pool⁷ of bonds to choose from in response to the increasing demand for labeled bonds. This impacts best execution in situations when the investor is required to select a labeled bond to meet firm ESG mandates or client requirements.

⁶ “The Modernization of Municipal Bond Trading,” Greenwich Associates, Q2 2019, <https://www.theice.com/publicdocs/Modernization-Municipal-Bond-Trading.pdf> - SIFMA third quarter stats in 2018.

⁷ “Of the one million outstanding municipal securities, approximately one percent of those bonds trade on a given day. Aggregate daily trading activity from 2010–2017 averaged nearly 39,000 transactions each business day, resulting in an average total par value of about \$11 billion traded per day.” Analysis of Municipal Securities Pre-Trade Data from Alternative Trading Systems, October 2018, <https://www.sec.gov/spotlight/fixed-income-advisory-committee/msrb-staff-analysis-of-municipal-securities-pre-trade-data.pdf>.

⁸ Labeled bonds in 2021 represented ten percent of the municipal market by par and two percent by number of issuances. Ipreo Buyside, <https://buyside.app.ipreo.com/v2#/muni-deals/calendar?weekOf=2022-02-21>.

⁹ 2022 Sustainable Bond Update – Bloomberg Intelligence Muni Strategy, North America Dashboard, Eric Kazatsky.

(D) MUNICIPAL ADVISORS

Not addressed.

(E) ALL MUNICIPAL MARKET PARTICIPANTS

ESG and Systemic Risk

- (1) Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?**

For a complete discussion of systemic risk and ESG factors, please see Kestrel's "ESG Concepts in US Public Finance" provided as Attachment 1 in our response to MSRB Notice 2021-17.

By coordinating adoption of a new dimension of analysis, namely the incorporation of climate risk into pricing, the MSRB can serve the market and protect financial stability.

Here are some non-regulatory ways the MSRB could approach systemic risk:

- 1) Suggest appropriate disclosures as listed above in response (B)(5);
- 2) Provide uniform tools to be used by all for assessing physical climate risk;
- 3) Recommend best practices per sector;
- 4) Work with FINRA to require climate risk and systemic risk training for all dealers; and
- 5) Stay open to innovation, especially when it comes to a common yardstick of risk and value.

(E) ALL MUNICIPAL MARKET PARTICIPANTS - *continued*

Voluntary Standards

- (2) There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. Does the availability of these voluntary, market-based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?**

Issuers should not be allowed to self-label. Problems caused by self-labeling include: inconsistent use of standards (some issuers create their own standards), omission of critical information, errors, and greenwashing. These are not at all conducive to market efficiency.

The purpose of an independent external review is to provide assurance to the market that internationally accepted standards are met through a standardized approach. Kestrel Verifiers' external reviews provide these benefits: consistency, integrity, credibility, investor confidence, market efficiencies, and reduced risk to issuers.

(E) ALL MUNICIPAL MARKET PARTICIPANTS - *continued*

ESG Data

- (4) There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?**

Many investors are still figuring out their ESG strategies and don't know exactly what information to ask for. Please see previous descriptions of actions the MSRB can take.

- (5) Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG-related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?**

Taxable municipal bonds may attract European investors. The EU Sustainable Finance Disclosure Rules require investors to justify why various investments belong in sustainability portfolios. The external review on green, social, and sustainability bonds support this, as does Kestrel ESG Data.

Principle 1 of the UN Principles for Responsible Investment requires signatories to commit to incorporating ESG issues into investment analysis and decision-making processes.¹⁰ Investors are in the early days of compliance with this, and deciding which ESG factors are material is challenging.

Kestrel ESG Data, as described in (B)(3), is purpose-built to allow investors to make informed decisions regarding the ESG attributes of bonds.

¹⁰ "What are the Principles for Responsible Investment?" United Nations, <https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment>.

(E) ALL MUNICIPAL MARKET PARTICIPANTS - *continued*

MSRB, EMMA and IHS Markit

- (6) The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website. This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?**

The municipal bond market is highly complex and fragmented with over 50,000 issuers and one million individual bonds that typically trade on non-centralized exchanges.¹¹ Additionally, roughly forty two percent of municipal bond holders are individual investors.¹² An ESG indicator on EMMA assists individual investors in making more informed decisions, and promotes the integrity of the green, social and sustainability bond market.

The “independent ESG certification” is more accurately referred to as an “external review,” as per ICMA.

Standards and transparency promote investor confidence and market efficiencies. It is good to distinguish bonds with external reviews.

¹¹ “Re: Release No. 34-83463, Request for Comment, Draft FY 2018-2022 Strategic Plan for the Securities and Exchange Commission,” MSRB, July 2018, <https://msrb.org/Market-Topics/~media/F2EBC8FBD4AB4495B4FD87E421BD9F95.ashx>.

¹² SIFMA third quarter stats in 2018. Source: “The Modernization of Municipal Bond Trading,” Greenwich Associates, Q2 2019, <https://www.theice.com/publicdocs/Modernization-Municipal-Bond-Trading.pdf>.

(E) ALL MUNICIPAL MARKET PARTICIPANTS – continued

MSRB, EMMA and IHS Markit - continued

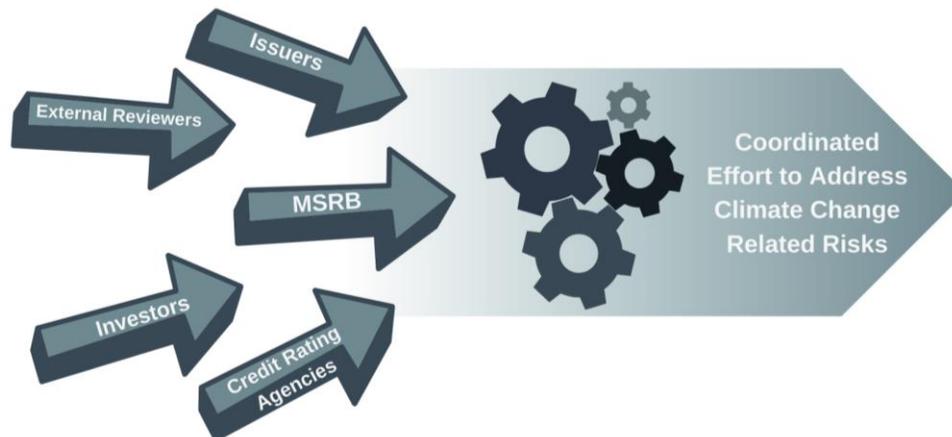
(7) What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

To improve market efficiency, these non-regulatory and coordinating actions from the MSRB would be helpful:

- Deploy a national level tool to assess climate risk by geographic location, so that risks may be identified uniformly.
- Include both immediate climate impacts (drought, increased wildfire, flooding, sea level rise etc.) as well as other climate-related risks (climate migration, water supply at-risk, infectious diseases).
- This tool could be accessed by issuers, investors and regulators alike.
- Set minimum standards and a template for issuer-level climate action plans. Encourage issuers to post their climate action plan, which identifies risks and mitigation and adaptation activities.
- Work with leaders in this space to demonstrate best practices.

The American economy and climate change are both dynamic and nonlinear systems. Small changes can produce large and unexpected outcomes. This presents both a grave threat and our best hope for meaningful climate action. The time to act is now.

If municipal market participants can come together and prioritize the just transition to a decarbonized economy, then we will not only reduce systemic risk in our financial system, but we will gain the chance to protect our planet from irreparable environmental collapse. The MSRB has a momentous opportunity to coordinate actions and facilitate this.



(E) ALL MUNICIPAL MARKET PARTICIPANTS – *continued*

Additional Information

- (8) Is there any additional information that you would like to share with the MSRB regarding any other ESG-related activities or trends in the municipal securities market?**

Please see the attached letter from Kestrel 360, Inc., ““ESG Concepts in US Public Finance.”

ABOUT KESTREL

For more than 20 years Kestrel has been at the forefront of public finance helping state and local governments access capital for sustainable infrastructure.

Kestrel Verifiers, a division of Kestrel 360, Inc., is the market leader for verified green, social, and sustainability municipal bonds. As a Climate Bonds Initiative Approved Verifier, we have a critical understanding of the science and impact behind sustainable finance and have provided external reviews for over one hundred municipal bond issues—amounting to more than \$17 billion in funds.

With our data division, Kestrel ESG, we are proud to be at the leading edge, supporting sustainable finance with meaningful ESG data. Our data is independently developed—encompassing principles of sustainability, sector-specific best practices, and rigorous quality control.

Integrity is a core value of our company, and we always strive for excellence. Our team of environmental and social scientists follow best practices designed to remove bias and ensure consistency in our work. Kestrel supports a coordinated and impactful strategy to advance the just transition to a decarbonized economy.

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Appendix A.

CASE STUDIES

Demand for Green Bonds, Social Bonds and Sustainability Bonds with independent, external reviews is increasing and in some cases has resulted in a pricing premium. The Climate Bonds Initiative **2020 Green Bond Pricing Report** describes tighter spreads and more oversubscription on green bonds versus non-green counterparts.

Fairfax County Economic Development Authority Case Study

Fairfax County Economic Development Authority (the "Authority") issued two series of Revenue Bonds in November 2021. The \$74,605,000 2021 Series A Bonds will partially finance construction of a new public works complex which includes significant innovation, green building features, and a geothermal pilot project. The Series A Bonds were designated as a Green Bond by Kestrel Verifiers and were the first Green Bonds in Virginia to seek an external review. The \$13,865,000 2021 Series B Refunding Bonds will refinance the County's Series 2012 A Bonds (Community Services Facilities Projects). Both Series were rated Aa1/AA+/AA+ by Moody's, Standard and Poor's and Fitch respectively. In comparable maturities with the same couponing, the Authority experienced a 1 to 3 basis point pricing benefit resulting in interest cost savings for the Authority. Both Series experienced strong subscription levels with the Series A (Green Bonds) showing stronger subscription levels of .9x to 1.8x over the Series B Bonds.

Issuer: Fairfax County Economic Development Authority Fairfax County Facilities Revenue Bonds, Series 2021A (County Facilities Projects) (Green Bonds)					
Bond Type					
Par Amount	\$74,605,000				
Sale Date	11/5/2021				
Dated Date	11/23/2021				
M/S&P/F Ra	Aa1/AA+/AA+				
Call Option	10/1/2031				
Maturity	1-Oct				
Maturity	Par Amount	Coupon	Yield	Spread (bps)	Spread to Non-Green
10/1/2022	2,245,000	5.00%	0.160%		
10/1/2023	2,360,000	5.00%	0.280%	+6	
10/1/2024	2,485,000	5.00%	0.390%	+8	
10/1/2025	2,605,000	5.00%	0.530%	+8	
10/1/2026	2,740,000	5.00%	0.670%	+7	
10/1/2027	2,885,000	5.00%	0.840%	+6	
10/1/2028	3,030,000	5.00%	1.000%	+8	
10/1/2029	3,185,000	5.00%	1.130%	+12	
10/1/2030	3,350,000	5.00%	1.210%	+11	
10/1/2031	3,520,000	5.00%	1.300%	+14	
10/1/2032	3,700,000	5.00%	1.370%	+18	
10/1/2033	3,890,000	5.00%	1.410%	+19	
10/1/2034	4,090,000	5.00%	1.480%	+24	
10/1/2035	4,300,000	5.00%	1.500%	+23	
10/1/2036	4,500,000	4.00%	1.640%	+34	
10/1/2037	4,685,000	4.00%	1.680%	+35	(3)
10/1/2038	4,895,000	5.00%	1.560%	+21	(3)
10/1/2039	5,150,000	5.00%	1.600%	+21	(3)
10/1/2040	5,385,000	4.00%	1.770%	+35	(1)
10/1/2041	5,605,000	4.00%	1.800%	+34	(1)

Issuer: Fairfax County Economic Development Authority Fairfax County Facilities Revenue Bonds, Series 2021B Refunding Bonds (County Facilities Projects)					
Bond Type					
Par Amount	\$13,865,000				
Sale Date	11/5/2021				
Dated Date	11/23/2021				
M/S&P/F Ra	Aa1/AA+/AA+				
Call Option	10/1/2031				
Maturity	1-Oct				
Maturity	Par Amount	Coupon	Yield	Spread (bps)	
10/1/2037	2,525,000	4.00%	1.710%	+38	
10/1/2038	2,645,000	5.00%	1.590%	+24	
10/1/2039	2,775,000	5.00%	1.630%	+24	
10/1/2040	2,900,000	4.00%	1.780%	+36	
10/1/2041	3,020,000	4.00%	1.810%	+35	

State Public Works Board of the State of California

The State Public Works Board (SPWB) of the State of California issued two series of Lease Revenue Bonds in November 2021:

- 2021 Series C Bonds (\$467,550,000) which financed a new natural resources headquarters in Sacramento for the Department of General Services which was designated as “Green Bonds – Climate Bond Certified” by Kestrel Verifiers; and
- 2021 Series D Bonds (\$94,950,000) which financed various capital projects.

Both Series were rated Aa3/A+/AA- by Moody’s, Standard and Poor’s and Fitch respectively. External review was from Kestrel Verifiers. Additionally, both Series had comparable structures with serial maturities ranging from November 1, 2022 to November 1, 2046. Where the same couponing structure was used, the “Green Bonds – Climate Bond Certified” Series experienced a 2 to 3 basis point pricing benefit over the non-green series, resulting in interest cost savings for the SPWB.

Issuer: State Public Works Board of The State of California					
Bond Type: Lease Revenue Bonds, 2021 Series C (Green Bonds - Climate Bond Certified)					
Par Amount		\$467,550,000			
Sale Date		11/3/2021			
Dated Date		11/17/2021			
M/S&P/F Ra		Aa3/A+/AA-			
Call Option		11/1/2031			
Maturity		1-Nov			
Maturity	Par Amount	Coupon	Yield	Spread (bps)	Spread to Non-Green
11/1/2022	9,940,000	5.00%	0.190%	+3	(2)
11/1/2023	10,450,000	5.00%	0.300%	+7	
11/1/2024	10,985,000	5.00%	0.420%	+10	
11/1/2025	11,550,000	5.00%	0.580%	+12	
11/1/2026	12,140,000	5.00%	0.720%	+11	
11/1/2027	12,765,000	5.00%	0.890%	+9	(2)
11/1/2028	13,420,000	5.00%	1.020%	+7	(3)
11/1/2029	14,105,000	5.00%	1.190%	+13	(2)
11/1/2030	14,830,000	5.00%	1.270%	+12	(2)
11/1/2031	15,590,000	5.00%	1.360%	+16	
11/1/2032	16,390,000	5.00%	1.440%	+21	(2)
11/1/2033	17,230,000	5.00%	1.520%	+26	
11/1/2034	18,115,000	5.00%	1.560%	+28	
11/1/2035	18,945,000	4.00%	1.740%	+43	(3)
11/1/2036	19,720,000	4.00%	1.800%	+46	(3)
11/1/2037	20,525,000	4.00%	1.850%	+48	(3)
11/1/2038	21,360,000	4.00%	1.860%	+47	(3)
11/1/2039	22,235,000	4.00%	1.880%	+45	(3)
11/1/2040	23,260,000	5.00%	1.770%	+31	
11/1/2041	24,325,000	4.00%	1.930%	+43	(3)
11/1/2046	89,670,000	5.00%	1.930%	+29	(3)
11/1/2046	50,000,000	4.00%	2.050%	+41	

Issuer: State Public Works Board of The State of California					
Bond Type: Lease Revenue Bonds, 2021 Series D (Various Capital Projects)					
Par Amount		\$94,950,000			
Sale Date		11/3/2021			
Dated Date		11/17/2021			
M/S&P/F Ratings		Aaa/AAA-			
Call Option		11/1/2030			
Maturity		1-Nov			
Maturity	Par Amount	Coupon	Yield	Spread (bps)	
11/1/2022	2,905,000	5.00%	0.210%	+5	
11/1/2023	3,040,000	4.00%	0.320%	+9	
11/1/2024	3,165,000	4.00%	0.440%	+12	
11/1/2025	3,290,000	4.00%	0.600%	+14	
11/1/2026	3,430,000	4.00%	0.740%	+13	
11/1/2027	3,580,000	5.00%	0.910%	+11	
11/1/2028	3,770,000	5.00%	1.050%	+10	
11/1/2029	3,960,000	5.00%	1.210%	+15	
11/1/2030	4,165,000	5.00%	1.290%	+14	
11/1/2031	4,360,000	4.00%	1.380%	+18	
11/1/2032	4,560,000	5.00%	1.460%	+23	
11/1/2033	4,790,000	5.00%	1.540%	+28	
11/1/2034	5,015,000	4.00%	1.650%	+37	
11/1/2035	5,220,000	4.00%	1.770%	+46	
11/1/2036	5,430,000	4.00%	1.830%	+49	
11/1/2037	2,800,000	4.00%	1.880%	+51	
11/1/2038	2,920,000	4.00%	1.890%	+50	
11/1/2039	3,035,000	4.00%	1.910%	+48	
11/1/2040	3,160,000	4.00%	1.940%	+48	
11/1/2041	3,290,000	4.00%	1.960%	+46	
11/1/2046	19,065,000	5.00%	1.960%	+32	

Oberlin College

In July 2021, Oberlin College issued two series of bonds to finance a new geothermal energy system. The College was able to demonstrate (1) a clear pricing differential on a Certified Climate Bond versus a non-green bond from the same issuer, and (2) a pricing differential on a Kestrel verified Climate Bond versus a self-certified green bond from a different issuer. Both deals were led by Tier 1 firms, with similar account coverage. After reviewing Oberlin's non-green bond and the self-certified bond from another issuer, the anchor investor chose to only submit an order for Oberlin's Certified Climate Bond, citing demonstrated ESG credentials verified in an external review. The anchor investor placed an order for the entire transaction and maintained the order despite a 5 basis point repricing.

Issuer	Oberlin College				
Bond Type	Taxable Bonds, Series 2021A (Green Bonds - Climate Bond Certified) Kestrel Verified				
Par Amount	\$80,625,000				
Sale Date	7/14/2021				
M/S&P/F Ratings	Aa3/AA-/-				
Call Option	Make Whole Call				
Maturity	1-Oct				
Maturity	Par Amount	Coupon	Treasury Yield	Spread (bps)	Spread to Non-Green
10/1/2051	80,625,000	2.87%	1.97%	+90	(5)

Issuer	Oberlin College				
Bond Type	Taxable Bonds, Series 2021A (Green Bonds - Climate Bond Certified) Kestrel Verified				
Par Amount	\$80,625,000				
Sale Date	7/14/2021				
M/S&P/F Ratings	Aa3/AA-/-				
Call Option	Make Whole Call				
Maturity	1-Oct				
Maturity	Par Amount	Coupon	Treasury Yield	Spread (bps)	Spread to Self-Certified Green
10/1/2051	80,625,000	2.87%	1.97%	+90	(2)

Issuer	Oberlin College				
Bond Type	Taxable Bonds, Series 2021B				
Par Amount	\$30,350,000				
Sale Date	7/14/2021				
M/S&P/F Ratings	Aa3/AA-/-				
Call Option	Make Whole Call				
Maturity	1-Oct				
Maturity	Par Amount	Coupon	Treasury Yield	Spread (bps)	
10/1/2051	30,350,000	2.92%	1.97%	+95	

Issuer	State of Connecticut Health and Educational Facilities Authority				
Bond Type	Revenue Bonds, Wesleyan University Issue				
Bond Type	Series 2021 (Federally Taxable) (Green Bond) - Self Certified				
Par Amount	\$55,520,000				
Sale Date	7/14/2021				
M/S&P/F Ratings	Aa3/AA-/-				
Call Option	Make Whole Call				
Maturity	1-Jul				
Maturity	Par Amount	Coupon	Treasury Yield	Spread (bps)	
7/1/2051	50,520,000	2.87%	1.95%	+92	

City of Boston

In December 2020, the City of Boston, Massachusetts, issued a series of General Obligation Bonds, (Aaa Moody's and AAA Standard and Poor's), in which the City experienced the widest green bond pricing benefit—or "greenium"—in the US Municipal Market to date. The City's \$121,660,000 General Obligation Bonds, 2020 Series A and \$23,885,000 General Obligation Bonds, 2020 Series B (Green Bonds) priced on the same day and maintained comparable structures, with the Series B (Green Bonds) experiencing a 3 basis point pricing benefit over the non-green tranche. Kestrel Verifiers provided the Green Bond Second Party Opinion.

City of Boston, Massachusetts					City of Boston, Massachusetts					
General Obligation Bonds, 2020A					General Obligation Bonds, 2020B (Green Bonds - Kestrel Verified)					
Issuer	City of Boston, Massachusetts				Issuer	City of Boston, Massachusetts				
Bond Type	General Obligation Bonds, 2020A				Bond Type	General Obligation Bonds, 2020B (Green Bonds - Kestrel Verified)				
Par Amount	\$121,660,000				Par Amount	\$23,885,000				
Sale Date	12/9/2020				Sale Date	12/9/2020				
Dated Date	12/30/2020				Dated Date	12/30/2020				
M/S&P/F Ratings	Aaa/AAA/-				M/S&P/F Ratings	Aaa/AAA/-				
Call Option	11/1/2030				Call Option	11/1/2030				
Maturity	1-Nov				Maturity	1-Nov				

Maturity	Par Amount	Coupon	Yield	Spread (bps)	Maturity	Par Amount	Coupon	Yield	Spread (bps)	Spread to Non-Green
11/1/2021	8,600,000	5.00%	0.120%	(12)	11/1/2021					
11/1/2022	9,030,000	5.00%	0.130%	(1)	11/1/2022					
11/1/2023	9,505,000	5.00%	0.160%	-	11/1/2023					
11/1/2024	9,985,000	5.00%	0.180%	-	11/1/2024					
11/1/2025	4,490,000	5.00%	0.230%	-	11/1/2025	6,000,000	5.00%	0.200%	(3)	(3)
11/1/2026	5,940,000	5.00%	0.310%	-	11/1/2026					
11/1/2027	6,245,000	5.00%	0.410%	-	11/1/2027					
11/1/2028	6,570,000	5.00%	0.520%	(1)	11/1/2028					
11/1/2029	6,905,000	5.00%	0.630%	-	11/1/2029					
11/1/2030	1,255,000	5.00%	0.710%	-	11/1/2030	6,000,000	5.00%	0.680%	(3)	(3)
11/1/2031	6,340,000	4.00%	0.820%	+3	11/1/2031					
11/1/2032	6,595,000	4.00%	0.890%	+4	11/1/2032					
11/1/2033	6,820,000	3.00%	1.200%	+30	11/1/2033					
11/1/2034	7,035,000	3.00%	1.270%	+33	11/1/2034					
11/1/2035	1,320,000	5.00%	0.980%	-	11/1/2035	6,000,000	5.00%	0.950%	(3)	(3)
11/1/2036	5,930,000	2.00%	1.570%	+55	11/1/2036					
11/1/2037	6,050,000	2.00%	1.620%	+56	11/1/2037					
11/1/2038	6,170,000	2.00%	1.670%	+57	11/1/2038					
11/1/2039	6,295,000	2.00%	1.710%	+57	11/1/2039					
11/1/2040	580,000	5.00%	1.181%	-	11/1/2040	5,885,000	5.00%	1.150%	(3)	(3)

San Francisco Public Utility Commission

In September 2020, San Francisco Public Utility Commission issued several series of Water Revenue Bonds (Aa2 Moody's and AA- Standard and Poor's). SFPUC issued their \$150,895,000 2020 Sub-Series A Bonds, designated as a Green Bond, and their \$85,335,000 Sub-Series 2020 C Bonds (no green designation) on the same day. The final term bond for both series were comparable with the final term bond on the Sub-Series A (Green Bonds) achieving a 1 basis point benefit over the final term bond on the Sub-Series C Bonds. SFPUC has noted implied benefits of 5 to 7 basis points in pricing benefits from issuing Green Bonds in the past, and the 2020 Sub-Series A and C provides the market with a clear comparison to recognize the green pricing benefit.

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ABOUT KESTREL VERIFIERS



For over 20 years Kestrel has been a trusted consultant in sustainable finance. Kestrel Verifiers, a division of Kestrel 360, Inc. is a Climate Bonds Initiative Approved Verifier qualified to verify transactions in all asset classes worldwide. Kestrel is a US-based certified Women's Business Enterprise.

For more information, visit www.kestrelverifiers.com

Comment on Notice 2021-17

from Heather Shawa, Lansing Board of Water & Light

on Thursday, March 3, 2022

Comment:

Lansing Board of Water & Light is providing comments in response to the MSRB's Request for Information on Environmental, Social and Governance Practices in the Municipal Securities Market.

Background: Lansing BWL is a combined utility that provides water, electric, steam and chilled water services to mid-Michigan. BWL is Michigan's largest municipally-owned utility and our two largest systems service over ~100,000 electric customers and ~58,000 water customers, respectively. Environmental stewardship is ingrained in our operations and is part of our mission statement.

General Observations:

- Having inquired about a "Green" designation with our prior bond issuance, our conclusion was that there were competing and sometimes conflicting standards. For example, there are the Green Bond Principles promulgated by the International Capital Market Association while another option is Sustainability Bonds. The UN Climate Goals developed from the Paris Accords also provide another benchmark that can be used to label bonds. To make matters more complex, all three major rating agencies report, and can provide, a "Green" or "ESG" scores based on their own criteria and evaluation methodologies.
- Clearly, there are competing criteria and the municipal market generally lags in this area. Europe has been on the forefront of ESG and American corporations have been getting more involved over the past several years.
- As BWL investigated these designations, we also researched some of the expected annual reporting requirements. We reviewed some of the reports published by larger municipal utilities as well as investor-owned utilities. While the content and quality differed between these reports, overall, we were struck by the level of effort required to report this information as well as package this in a manner understandable to ratepayers and stakeholders. We made several conclusions with this review:
 - o The information is generally available. Our permits (air, water, etc) require reporting select information to state and/or federal regulatory authorities for both the electric and water utility. Additionally, some of the "S" and "G" information is reviewed by the leadership of BWL as a management tool. We do note that the "S" and "G" information reviewed by management has changed over time, based on changes and adjustments in the strategy and priorities of BWL.
 - o BWL would need to designate a team, across the utility, to compile this information across our separate utility systems.
 - o BWL would also need to define a process for review of the information to ensure accuracy prior to publishing the report.
 - o BWL would have to designate a lead executive to oversee the information and process.
 - o Finally, we considered outsourcing this effort to a third-party as a means to streamline the process,. However, we concluded that this third-party would likely just require BWL to continuously provide information.

Recommendations:

- Given competing criteria, we think that the MSRB should take a disciplined approach and wait to see which framework gains the most traction from both issuers as well as investors prior to requiring municipal issuers to report information.
- In terms of what information to eventually report, we believe that the MSRB could have differing requirements across sectors. For example, a city would likely have different ESG priorities and efforts compared to a combined utility, such as BWL. Over time, we believe there will be much clarity, consolidation and consistency of the information voluntarily reported.
- Given the workload and effort needed to complete a "Green" or "ESG" evaluation, we believe that smaller utilities/issuers should be exempt. Perhaps the threshold could be determined by the amount of public market debt issued or size (population served) of the service territory

BWL is committed to operating our utility systems in an environmentally and socially conscious manner. It is part of our mission and vision. This is also demanded of us by our stakeholders. We do envision publishing a

sustainability report in the future so our stakeholders have a transparent view of how far BWL has come over the past decade to be less carbon-intensive. We do not anticipate posting this report to EMMA as a voluntary disclosure, but we do see providing access via our investor relations page on the BWL website.

We appreciate the ability to provide our thoughts on ESG reporting and please feel free to contact of for further information.

March 22, 2022

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market ("Notice")

Dear Mr. Smith:

The Large Public Power Council ("LPPC") is writing to provide our comments in response to the Notice as it relates to ESG disclosures by our members. We appreciate the opportunity that the MSRB has afforded the public to provide its thoughts on the appropriate regulatory approaches to ESG disclosures in the municipal securities market.

Founded in 1987, LPPC is a national organization comprising 27 of the nation's largest public power systems. LPPC's members are locally owned and controlled not-for-profit electric utilities committed to the people and communities we serve. LPPC advocates for policies that allow public power systems to build infrastructure, invest in communities and provide reliable service at affordable rates. LPPC members provide reliable, low-cost electric service to over 30 million people and our member utilities own and operate over 30,000 circuit miles of high voltage transmission lines and over 71,000 MW of generation with a significant amount of renewables, fossil, hydro, efficiency and demand side management. LPPC's members have been and will continue to be among the largest issuers of tax-exempt bonds because of the capital intensive nature of the electric utility industry. In addition, LPPC's members are at the forefront of the movement to an energy industry that relies on renewable energy and to reduce reliance on fossil fuel generation.

General Response to the Notice

In general, the LPPC believes that ESG disclosure practices continue to evolve and have substantially improved over the last several years. The municipal securities market as a whole, but particularly LPPC members, are increasingly understanding and disclosing climate change risks and factors to investors. As we explain below, though, climate change impacts affect issuers differently and, in particular, climate change impacts to the creditworthiness of municipal securities range a wide spectrum from irrelevant to impactful.

In addition, industry practices related to labeled bonds (*e.g.*, Green Bonds and Social Bonds) continue to develop as well. With respect to Green Bonds, the industry is normalizing to an approach whereby Green Bond designation uses objective criteria (usually the Green Bond Principles of the International Capital Market Association) and a third party expert to confirm that the financed projects conform to that objective criteria. Some issuers do use another objective basis to designate Green Bonds such as LEED certification. The municipal securities market is focused on the potential for "green washing," or the use of Green Bond designation in a subjective or inappropriate context, but those occurrences are rare and market participants are developing good practices on their own.

LARGE PUBLIC POWER COUNCIL MEMBER COMPANIES

AMERICAN MUNICIPAL POWER, INC. (AMP) / AUSTIN ENERGY / CHELAN COUNTY PUD NO. 1 / CLARK PUBLIC UTILITIES / COLORADO SPRINGS UTILITIES / CPS ENERGY / ELECTRICITIES OF NORTH CAROLINA, INC. / GRAND RIVER DAM AUTHORITY / GRANT PUD / IMPERIAL IRRIGATION DISTRICT (IID) / JEA / LONG ISLAND POWER AUTHORITY / LOS ANGELES DEPARTMENT OF WATER & POWER / LOWER COLORADO RIVER AUTHORITY / MEAG POWER / NEBRASKA PUBLIC POWER DISTRICT / NEW YORK POWER AUTHORITY / OMAHA PUBLIC POWER DISTRICT / ORLANDO UTILITIES COMMISSION (OUC) / PLATTE RIVER POWER AUTHORITY / PUERTO RICO ELECTRIC POWER AUTHORITY / SMUD / SALT RIVER PROJECT / SANTEE COOPER / SEATTLE CITY LIGHT / SNOHOMISH COUNTY PUD NO. 1 / TACOMA PUBLIC UTILITIES

On the whole, the LPPC believes that regulatory action is premature at this time but the LPPC understands the MSRB's desire to monitor the market and its ESG disclosure developments. The LPPC would appreciate the opportunity to continue to dialogue with the MSRB concerning ESG disclosure practices in the municipal securities market with a view toward an appropriate role for the MSRB.

Answers to the Questions in Notice

Our members are providing comments to the five questions in the Notice that are directed to Municipal Issuers. Here are our responses to those questions:

- (1) Are you currently providing ESG-Related Disclosures or ESG-related information beyond the legally required disclosures in your offering documents, continuing disclosures or other investor communications? If so, please consider providing examples. If not, please consider describing how you address ESG-Related Disclosures in your offering documents, continuing disclosures or other investor communications. In your view, should municipal issuers include a separate section in their official statements and other offering documents expressly devoted to ESG-Related Disclosures?***

For a few reasons, LPPC members have had to understand and absorb the impacts of climate change and environmental impacts on its operations and make related ESG disclosures for many years now. First, the operations of our members can be heavily impacted by the impacts of climate change and changes in environmental conditions (e.g., droughts can materially impact our members that rely on hydrological power). Second, the finances and operations of our members are regulated by federal and state regulations. Greenhouse emission regulations, for example, can impose significant capital costs on our members and can also result in material impacts to their operations. Finally, climate change and other environmental conditions can result in changes to demand among the customers of many of our members. For example, as power demands have increased and become more expensive, our members have seen an increase in the use of solar power which removes a significant portion of demand from the power systems of many of our members. Accordingly, climate change and environmental conditions have been and will remain an important focus of our members.

In general, LPPC members do provide disclosures in their primary offering documents describing the impact of climate change and other environmental considerations on their finances and operations. But, for the following reasons, those impacts are diverse, highly uncertain and in many instances speculative. First, the physical impact from climate change and other environmental conditions significantly varies among our members. Some members could experience an immediate impact – such as droughts and hydrological power or increased frequency or severity of damage to overhead power lines from storms. Other members though, may have more drawn out impacts from climate change. Second, regulatory impacts of climate change or other environmental matters also vary significantly but also remain fluid and uncertain. Regulations protecting against pollution and greenhouse emissions are evolving and many of the standards remain highly aspirational and unclear as to how they will ultimately impact our members. Importantly for LPPC members, much of the impact of climate change and environmental matters comes from state-specific regulation and monitoring that both creates significantly diverse impacts for our members but also can serve as important disclosure for investors when they give rise to material impacts. Accordingly, the nature of the disclosure that our members provide investors in their primary offering materials differs significantly based on these factors. It is important to note that often times the ESG-related impacts on our members are somewhat neutral to investors because the costs related to keeping up with ESG-related goals and requirements are passed onto customers through the rates and charges of our members.

Given the climate-change focus on the power industry as a whole, many LPPC members prepare ESG-related information for a variety of purposes that describe their progress or status with respect to climate change goals. This information is not provided under any continuing disclosure undertakings and is usually prepared for state-level or local-level constituencies. However, we are aware that some investors have taken an interest in that information to understand better the plans and work that our members undertake with respect to their ESG-related goals.

- (2) Do you believe the information included in ESG-Related Disclosures should be standardized? If so, how? If not, why not? In your view, is there a consensus on what information and which metrics are important? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are relevant and should be included in ESG-Related Disclosures?***

As we discuss above, our members believe that any standardized approach to disclosure of environmental and sustainability matters is neither practical nor helpful in the municipal securities market. Environmental changes and impacts have varying impacts across LPPC members – all of whom have power operations – but environmental changes and impacts vary even more across the spectrum of credits in the municipal securities market. Since many issuances of municipal securities are supported through tax revenues in one form or another and because municipal securities are debt securities, the credit supporting many issuances of municipal securities do not necessarily materially change even if the issuer needs to address ongoing impacts of climate change or environmental matters. Other issuers, on the other hand, can see the credit supporting their issuances of municipal securities immediately impacted either because the physical risks of climate change or environmental conditions touch that credit in known and specific ways or because the related operations are regulated to mitigate the impact of climate change. The key is that whatever disclosure standards are developed, those standards need to correlate to the impacts on the municipal securities themselves and given the substantial diversity among credits in the municipal securities market, we do not believe that any standardized approach would assist disclosures and also may have the result of misleading investors concerning the impact of ESG-related matters.

- (3) Have you issued ESG-Labeled Bonds? If so, please consider providing an example and describing what criteria were used to make the ESG designation. Did you utilize an independent party to validate or otherwise attest to the use of the ESG designation? Please consider explaining why or why not.***

Several of our members have issued municipal securities that are labeled Green Bonds. In the instances we identified, the issuer used the Green Bond Principles of the International Capital Market Association and used a third party expert to provide its opinion that the financed projects fell within the criteria established under the Green Bond Principles. We believe that the industry is moving toward this approach as a whole and instances where issuers self-designate without any objective criteria are relatively few. From our experience, the industry as a whole is well-focused on the potential for “green washing” or issuers who flood the municipal securities market with Green Bonds that do not fall within accepted objective criteria. We believe that the industry is addressing the issue on its own, practices are still developing and there may well be other legitimate practices that develop and, in the end, regulatory action will likely discourage issuers from labeling municipal securities.

- (4) If you issued ESG-Labeled Bonds, did you commit to providing any ongoing or continuing disclosure related to the ESG designation? If so, was that disclosure commitment incorporated into the continuing disclosure agreement or similar contractual obligation related to Securities Exchange Act Rule 15c2-12 (collectively, “CDA”)? If so, please consider providing an example of the CDA. If the disclosure commitment was not incorporated into the CDA, how is the information made available to an investor on an ongoing basis and at what frequency?***

As a part of the labeling of municipal securities as Green Bonds, our members have frequently undertaken to continue reporting on the use of proceeds to ensure that the use of the proceeds conformed to the Green Bond Principles. The manner and frequency of that reporting varies from issuer to issuer. However, our experience is that any undertaking to update investors is not included in the continuing disclosure undertaking or provided as a part of continuing disclosure. LPPC notes that the customs of how to provide investors with information concerning the use of proceeds in Green Bond-labeled municipal securities are still developing. But the LPPC would strongly discourage any changes to Rule 15c2-12 to create an obligation to update use of proceeds with ESG-labeled municipal securities. The industry is still developing its expectations and issuers have overwhelmingly sought to provide investors with sufficient information to assure them that proceeds were used in a manner consistent with the ESG label under which the municipal securities were sold. Like other areas we discuss above, we believe that a regulatory change to require these kinds of updates of use of proceeds under Rule 15c2-12 would discourage issuers from labeling their municipal securities and would likely thwart the industry developments that are already doing a good job of identifying the problems and solving them.

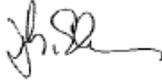
- (5) Are you providing information to the credit rating agencies regarding ESG-related risk factors and ESG-related practices? If so, what type? In your view, how does this information generally compare to the information provided in your offering documents and continuing disclosures? Are the credit rating agencies requesting any new types of ESG-related information? Has the credit rating process changed in any significant ways in relation to ESG-related information?***

In general, in the experience of our members, the rating agencies have not requested new ESG-related information. We are aware of a rating agency requesting information concerning carbon emissions and renewable

energy practices which appeared to be the start of a potential database and approach on ESG-related practices. Other than this request, the LPPC is not aware of the rating agencies altering the information they request from our members.

We appreciate your consideration of our comments and suggestions. The LPPC would be happy to meet with you or your staff to discuss these issues in detail.

Sincerely,

A handwritten signature in black ink, appearing to read "John Di Stasio".

John Di Stasio, President
Large Public Power Council



Investors in Municipal Securities

The MSRB seeks input from investors in municipal securities regarding ESG-Related Disclosures and ESG-Labeled Bonds, including input on the following questions.

- 1. Do you consider ESG-related information material to your investment decisions? If so, in what way? Is ESG-related information important to your evaluation of a municipal issuer's creditworthiness? If so, what ESG-related information do you consider most relevant to a municipal issuer's creditworthiness and why?**

Yes, we consider ESG information material to our investment decisions. We have developed a proprietary rating system which we apply to every bond we purchase. Our system is based on sector-specific matrices which enable us to identify and quantify the materiality of ESG characteristics for each issue. The degree to which each individual factor may impact our decisions will vary by sector. For example, environmental factors tend to be more material for Utilities while social factors generally tend to warrant a heavier weighting in housing bonds.

For the Lord Abbett Sustainable Municipal Bond Fund, we also analyze the use of proceeds for each issue considered for inclusion in the portfolio. In cases where disclosure is not clear, we typically will not purchase the bond for this portfolio.

- 2. Do you generally have access to all the ESG-related information you need to make an informed investment decision? If so, can you identify the source(s) of the information you use (e.g., municipal issuer disclosures on the EMMA® website, other municipal issuer communications, time-of-trade disclosures, third-party data vendors or proprietary analyses)? If not, please identify the gaps in information and market transparency.**

No, we do not have access to all the ESG information we need, and it is a very manual process to gather relevant ESG-related information for municipal bonds. We consider issuer disclosure, but we tend to acquire more ESG-related information from other sources, including census data, real estate data, and industry association websites. We continually evaluate third-party research providers but, to date, we have not identified an external resource that can provide enough ESG-related data to be considered a long-term solution. We have reviewed some offerings where we believe opportunistic vendors are exploiting the need in the market by offering information that, while interesting, falls short of our needs in terms of relevance to investment decision-making.

- 3. Does your expectation as to the availability and sufficiency of ESG-related information change depending on whether the purchase of municipal securities is made in the primary market or the secondary market? If so, how?**

Generally, we tend to receive better disclosure and access to issuers when they bring new issues. For ESG-related information, however, we typically do not receive sufficient data from issuers in the primary or secondary markets. When we engage with issuers, they often indicate that they only provide information that is required by lawyers and financial advisors. Some appear to have more information but do not provide it unless they are legally required to do so. Some suggest that they would provide more if the request was in the Request for Information associated with the deal. Some issuers have encouraged us to voice our opinion regarding the need





for inclusion of ESG-related data. We hope to see improvements in municipal bond disclosure as issuers recognize the increasing demand.

4. In light of the potential availability of ESG-related information from other sources, how can municipal issuers best present and disseminate their ESG-related information to investors? What topic areas do you believe are most relevant for municipal issuers to include when providing ESG-Related Disclosures? In your view, is it sufficient for ESG-Related Disclosures to just describe material ESG-related risk factors? Is there a benefit to municipal issuers further describing the initiatives and other projects they are pursuing to address such risks?

We believe the best practice would be to submit ESG disclosure information on EMMA, in the same manner as official statements, financial statements and operating data are currently posted. Simply describing potential risks in generic language is not sufficient. We would like to see issuers describe initiatives and other projects they are pursuing and disclose specific metrics to demonstrate their progress in ESG-related areas. For example, a hospital should focus on social factors by providing Medicaid revenues compared to industry averages. Housing issuers should disclose demographic data on the populations for which they provide housing, including but not limited to income data. Educational facilities should disclose how they are helping to make college affordable and how many first-in-family college students are enrolled. In the Utilities sector, we would like to see specific disclosure about carbon footprint and renewable/carbon plans. In all sectors, we would like to see disclosure of Board diversity as well as overall diversity plans and initiatives. While issuers might oppose disclosure expansion to these levels, the demand for ESG-related investments is growing and we anticipate that issuers will be more likely to be able to borrow at lower rates in the future if they can increase demand for their credit by enhancing ESG-related disclosure.

Additionally, the MSRB can play a role by moving this disclosure into a format that facilitates efficient review. For example, by encouraging text-searchable documents for all disclosure items, enforcing separation of disclosure documents, and requiring a consistent labeling framework in EMMA, both institutional and retail investors would be able to access and use the data more efficiently.

5. Certain market participants have expressed concerns that, while analysts and investors have expressed their desire for more standardized ESG-Related Disclosures, there is no consensus on which data and metrics are important or essential.¹⁶ Do you believe such disclosures should be standardized? Do you believe there is a consensus on which data and metrics are important or essential? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus?

We view the need for standardization of ESG-related disclosure as being like standardization of all other disclosure currently provided by issuers to facilitate credit analysis. It would be helpful to have standards in each sector, but we recognize the challenges associated with comprehensive disclosure harmonization across all sectors. Some metrics, such as board diversity, can be standardized across all sectors. Other metrics, however, may be applied differently by different sectors. For example, net zero plans and diversification of power sources are relevant for utilities and may require more detail than other sectors. We believe cities should provide standard data regarding the racial framework for their police forces. Hospitals typically report the percent of Medicaid revenue, but standardization and greater emphasis would be helpful. So, while we recognize that comprehensive standardization presents challenges, we believe there is room for sector-specific standards that would help





investors better understand key risk factors. We also believe sector-specific frameworks can leverage existing standards, such as SASB for healthcare and the “STARS” rating system for higher education.

6. When purchasing municipal securities for ESG-Designated Funds, what ESG-related information is most useful for the investment decision? How do fund managers screen securities to ensure that they meet a fund’s criteria? Once purchased, what information is most relevant in assessing that a security continues to meet the ESG criteria established for an ESG-Designated Fund?

There are several ways to approach an investment strategy for an ESG-focused fund. We apply proprietary ESG ratings to issuers for all our municipal bond investments. For our Sustainable Municipal Bond Fund (ESG-designated offering), we add another level to the research process by analyzing the use of proceeds of bond issues in the context of impact themes. Both ESG scores and the use of proceeds analysis are considered when purchasing a bond for our Sustainable Municipal Bond Fund. We also determine if the use of proceeds aligns with UN SDGs. We assess the same factors during ongoing surveillance of portfolio holdings. If at any point the information is no longer available, we would sell the bond. Use of proceeds generally do not change over time, but our ESG rating of an issuer may evolve. A negative change in our ESG rating may lead to sale of a bond.

Analyzing use of proceeds can present challenges. Most of the time, use of proceeds disclosure for new issues is clear. At times, however, use of proceeds as stated in the official statement is very broad and we are unable to clearly identify the projects. In those cases, we would not purchase the bond for our ESG-designated fund. Another challenge in analyzing use of proceeds occurs with refunding. In such cases we review official statements from previous deals because most often, the use of proceeds in the refunding documents do not include the use of proceeds disclosure from the original bonds being refunded. When there are multiple refundings within one official statement, it makes his analysis extremely difficult and, in some cases, impossible. As a result, issuers bringing issues with strong ESG purposes might not even qualify for purchase if the use of proceeds is not clear.

7. When purchasing ESG-Labeled Bonds, do you evaluate municipal securities with an independent certification differently from bonds that do not have such a certification? If so, how? If not, why not? In your view, what are the benefits to an investor of purchasing a bond with an independent certification?

An independent certification does not change our research process. Since many of these independent firms are trying to create a new business and may have varying standards, we have not developed full confidence in their conclusions. With many firms offering a range of labels to designate bonds, it has caused confusion among investors. So far, we have not observed any benefit in market pricing associated with such a designation, but as these firms evolve their processes, we believe they may have an impact in the future. In the current market, if the pricing for an issuer is the same for independently certified bonds and their non-certified bonds, we would buy the certified bonds with the hope that the market will price in that benefit in the future. The independent certification is a positive element, but it does not replace or eliminate the need for our own fundamental research.

All Municipal Market Participants

The MSRB seeks input from all municipal market participants, including input on the following questions.





- 1. Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?**

At this point in the ESG cycle, we do not believe there are systematic risks to the market due to ESG-related factors. In terms of fairness and efficiency, institutional investors, like our firm, have a distinct advantage over individual bond investors in our ability to gather ESG-related information. The information is publicly available, but individual investors typically do not know where to search for it. This is not an impropriety, per se, as we are dealing with public information, but without a well-structured central repository for the information, the result is an uneven playing field. Similarly, with fewer resources and less understanding, individual investors are more likely to assume that “green” or “social” labels are being assigned based upon a uniform and regulated set of principles, whereas we understand the need to evaluate the underlying bond rather than rely solely upon such certifications.

- 2. There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI.17 Does the availability of these voluntary, market-based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?**

With multiple sources applying different standards, transparency and guidance are still inadequate as the market lacks consistency. While it would be a challenge to get everyone to agree on all aspects of guidance, the market would benefit from a standard starting framework. There could be a short list of standard disclosures for all issues, and an additional list of optional disclosures that might be beneficial but not required. This would ensure a minimum level of consistency while enabling more bespoke guidance where warranted.

- 3. There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?**

Yes, these voluntary market-based initiatives are positive for the market. Many investors and issuers have their own ideas, and it is good to try many different methods in the beginning to see what works best. This is all new and issuers need to get a sense of what investors want from them to understand how to organize their resources. If we do not start by testing different ideas, we will never know what is possible. As more initiatives surface, the industry will be able to determine what works best. Eventually, an ideal state would be mandatory standards for essential items and a range of guidance on additional information that could be beneficial. We believe many issuers want to disclose more information and they may take varying approaches. We will not be able to determine which ideas work until they are tested.

- 4. There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?**





Yes, there is unequal information. For example, Bloomberg has started to indicate which bond issues have use of proceeds that could be considered for ESG purposes. They only have about 2,000 bonds categorized so far, but this list is growing, and they recently created indices with issuers that qualify, so we expect the number with a categorization to increase substantially. This gives a distinct advantage to Bloomberg subscribers, which are typically institutional investors. This information is integrated into our own fundamental analysis. Individual investors typically do not have access to this information. While this disparity may not have a great impact today, we believe it has the potential to create material information asymmetry in the future.

5. Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG-related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?

In the current market, much more is expected on the corporate side than the municipal side. Corporations already must provide information on various ESG metrics, such as board diversity, and there are third party research providers assigning them ESG ratings. Hence, weak disclosures result in lower ratings. The ESG rating services provide a fair amount of information to support their ratings, which gives corporate issuers the opportunity to respond by addressing those factors. We are seeing corporate issuers engage with investors to learn what information they need to provide. The municipal bond market has not yet reached this stage, but we expect that it will do so in the not-too-distant future.

In terms of taxable investors' expectations, we are seeing demand for ESG-related information as well as pressure to improve overall timeliness of all disclosure. In the municipal market, the lack of timely information creates a significant headwind for institutional investors. Without timely disclosure, we are forced to take a leap of faith that they will eventually provide the information, and, in some cases, information material to the quality of the investment is not disclosed until well after it should be available.

6. The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website.¹⁸ This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?

While any additional information is a plus, we do not yet have confidence in any data vendor's ability to make these decisions. Self-labeling by issuers further challenges our faith in this reporting. As a result, we continue to perform our own analysis. It is a good starting point to recognize that someone has made that determination, but we would still need to complete independent analysis to either ratify or challenge that conclusion. This is like bond credit ratings, where we always look at the major ratings agencies' ratings but also perform our own analysis to determine whether we agree.





7. What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

It would help to have a framework on the website and perhaps a standardized questionnaire for issuers to answer. Even if the issuer does not decide to provide certain information, it would help to know that they made such a choice. Another benefit of posting would be that issuers might feel pressure when seeing other issuers post critical ESG-related information, which would ultimately lead to enhanced disclosure on a broad basis. And, finally, improving the ability to search efficiently on EMMA would be a significant benefit for investors.

8. Is there any additional information that you would like to share with the MSRB regarding any other ESG-related activities or trends in the municipal securities market?

Generally, advancements in ESG-related disclosure are moving much faster in other markets, even though there are a lot more ESG investments in the municipal bond market. The market is heavily dominated by individual investors and would benefit from a wider range of investors, much like the way insurance companies and banks were more involved before the recent tax bill lowered rates and decreased their participation. Increased ESG disclosure is likely to be good for issuers because it presents the opportunity for them to receive lower borrowing rates if it spurs interest from a wider range of investors, and it is good for individual investors because more investors will result in more sources of liquidity in outflow cycles. During March 2020, individual investors who wanted withdrawals paid a high price for liquidity because there were not enough alternative buyers at market rates until they adjusted higher. ESG-focused investors could help facilitate the healthy functioning of the market by increasing demand, but they are less likely to increase participation until ESG disclosure improves.

Daniel S. Solender

Partner & Director of Tax Free Fixed Income

Lord, Abbett & Co. LLC



Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Phillip J. Ludvigsen, Pludvigsen@firstenvironment.com, ESG-consultant and 3rd-party ESG-bond verifier.

- (1) Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?**

The number one systemic risk to the municipal securities market is “greenwash” defined as the loss of market confidence due to the lack of evidence-based verification of specific conformance to self-declared requirements, accepted industry standards or compliance with official government regulations for pre- as well as post-issuance of Muni ESG Bonds.

From a regulatory perspective, a certain level of transparency must be required. For example, the sector criteria (via self-declared, third-party program, stated taxonomy – National (e.g., Canada), Regional (e.g., EU), or International (e.g., CBI or ISO 14030-3 – soon to be released) should be clearly stated and if conformance has been truly 3rd-party verified to accepted international assurance standards (e.g., ISAE 3000, ISO 14030-4) by an accredited validation/verification body or licensed accounting firm. It is important to realize that CBI’s (Climate Bond Standard) verifiers are “approved” by a small non-profit and not accredited by an international assurance organization that assesses competency, qualifications, and professional due care or a regulatory agency that assesses an auditing firm’s ability to meet minimum registration requirements to provide public assurance services. Because of the potential complexities of ESG-related bonds, any municipality that fails to comply with specified disclosure requirements should be allowed to publicly explain why (Comply or Explain doctrine – similar to Europe).

From a non-regulatory standpoint, MSRB can start by issuing specific voluntary guidance and guidelines as to best practices when issuing a ESG Muni Bonds. Once best practices are identified, MSRB could assess the evidence for which best practices are or not being followed as disclosed via the POS and/or Final Offering Document on EMMA (see question 4 and 7). The results could be posted via a simple assessment matrix (core elements of the ESG bond Principles vs. alignment with Best practices with citations to specific evidence) on EMMA or a separate Website. The assessment matrix could include core elements of ICMA’s bond Principles in columns and corresponding best practices in rows with citations to specific evidence supporting the level of alignment. If MSRB does not have the resources to conduct these assessments, it could be done by 2nd-party external reviewers or 3rd-party verifiers. Any issuer who opts out of having an external review, the bond assessment matrix would state “Not Conducted” for the external review attributes.

Because of the voluntary (non-binding nature) of this approach, it would require posting of both pre- as well as post-issuance assessment matrices. This ensure that the stated pre-issuance intent is followed-up by post-issuance action that is verified or publicly stated “Not Conducted.” In the rare event that disclosure may involve confidential information, the issuer would be given a chance to explain.

- (2) There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. Does the availability of these voluntary, market-based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?**

*The ICMA ESG-bond Principles has been a great help in providing insight into best practices. However, they are Principles and not standardized requirements that can be independently confirmed or verified for conformance. The vast majority of second opinions that address alignment to ESG Principles are limited to the issuer's ESG bond framework documents – **NOT** that actual bond issuance. These types of external reviews assess intent, **NOT** actual evidence of conformance of a specific ESG bond issuance. Unfortunately, this is not understood by most stakeholders, including ESG investors in the ESG ecosystem.*

Having been a co-author of the original Climate Bonds Standard 2.0, it was designed to be verifiable. The latest version 3.0 is now aligned with the Green Bond Principles. Although not of regulatory quality, CBI certification offers a great deal of credibility and transparency to sophisticated ESG investors – less so for retail ESG investors. For all its strengths, CBI certified bonds have some weaknesses. Climate Bonds are a subset of Green Bonds which in turn are a subset of ESG bonds. Thus, only a fraction of the ESG bond market is eligible for CBI certification. The newly released ISO 14030 series of green bond standards addresses multiple environmental objects, beside just climate. It also, by design, aligns well with the objectives of the EU's emerging green bond standard and Sustainable Financial Disclosure Regulations. Unlike CBI certification which relies on a handful of "approved verifiers" that are not formally accessed or accredited to any internationally accepted criteria, ISO 14030 follows internationally accepted criteria and a formal accreditation process. The focus, however, is limited to green bonds. The EU bases its environmental verification process on ISO 17020: Conformity assessment — Requirements for the operation of various types of bodies performing inspection.

- (3) There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?**

There are a few proprietary initiatives to provide quality ESG-related data in the municipal securities market. Even so, these data are not readily available – rather these vendors process public and private data into proprietary ESG performance scores. There are even fewer industry organization-led initiatives providing open-source access to quality ESG related data. Extremely little information is available that assesses the "quality" of these data. Basic information such as a clear citation and whether the information has been verified, scrubbed for errors (e.g., duplicates, outliers, etc.) is not offered on product web sites. Even though much of the data are from public sources (US Census, NOAA, and especially US EPA's EJScreen tool and database), the combined and checked data is not readily available. ESG scores can be

readily purchased, but it is very rare that the combined and QC'd databases are available for purchase. ESG "data" vendors typically charge access to its data platform or "engine." This allows clients to calculate their own geospatial KPI's (for given census tracks or Zip codes). Users typically never sees the actual data, just the analytical results.

(4) There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?

Here again, the vendors don't provide access to ESG data sets but rather to ESG scoring that is based on their proprietary data "engines." Obviously most retail investors can't afford to pay to access custom ESG scores, much less build their own data sets – even though much of the data are publicly available. With that said, there are some very good publicly available ESG datasets and tools such as EPA EJScreen. Not only is the tool easy to use but all the QC'd data sets are available for free download.

In my opinion, the real reason for ESG investor confusion is not unequal access to data but rather the inconsistencies in ESG vendor scoring. The correlation between bond credit scoring is .99 whereas the correlation between major providers of ESG score is .3.¹ In addition, most ESG data and resulting scores focus on ESG risks to the bond investment. However, most ESG investors value a score that includes "double materiality" (ESG risks to the bond and the bond's ESG impact on planet and people – "Do no significant harm"). There is no easy solution to this confusion because assessing ESG attributes is hard – much harder the assessing credit ratings.

As outlined in the response to question (1), at a minimum MSRB can answer key questions focused on the quality and credibility of ESG muni bonds. Such as: Is there a publicly available ESG bond framework document that explains the pre-issuance alignment with the ICMA family of ESG bond principles? Is there a link to this document? Has this document been externally reviewed for alignment to ICMA principles? [Remember most second opinions assess the bond framework – NOT the ESG bond]. Has each ESG labeled bond been externally reviewed against the framework and/or independently verified against internationally accepted standards, pre- and post-issuance reviews? Is there an annual impact reporting?

(5) Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?

¹ The Inconsistency of ESG Ratings: Implications for Investors, Eco-Business, Feb. 17, 2020. [The inconsistency of ESG ratings: Implications for investors | Opinion | Eco-Business | Asia Pacific](#)

No. The municipal bond market will continue selling non-labeled and labeled ESG bonds as well as the variations and to submarkets. However, misrepresentations (green and social washing) will continue and grow until there is clear regulatory guidance and, as necessary, regulations to ensure regulatory quality ESG-related information is available to all investors who feel it is needed. Since there is no formal enforcement or real threat of litigation, market makers probably feel the current “wild west” situation is working well.

(6) The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website. This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?

Yes – but it is just a start. How reliable is the certification? Is it based on a truly independent verification (following professional auditing or verification codes of conduct)? Does it answer all the market-based questions presented in the response to question (4)? Having a comprehensive assessment matrix with citations to evidence as described in the response to question (1) would be better than presenting just one, somewhat ambiguous, indicator.

(7) What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

As described in response to question (1), MRSB could identify best practices to provide ESG investors with an assessment matrix pointing to the available ESG related information (e.g., on-line access to ESG bond framework documents) and independent assurance (external reviews) of voluntary alignment with ESG bond principles and conformance with existing and future ESG related standards (e.g., ISO 14030 parts 1 to 4) – for the framework documents and the POS.

Unfortunately, it appears some Muni ESG bond issuers are pointing to statements from MSRB to justify that no such assurance can be given to investors! The following was taken from a recent (Dated February 17, 2022) POS:

“In a press release ‘New EMMA Feature Helps Investors Identify Green, Social, Climate and Sustainable Bond Investments,’ dated October 25, 2021, the Municipal Securities Rulemaking Board MSRB CEO Mark Kim stated ‘...there is no universally accepted [environmental, social and governance (ESG)] standard or definition on labeling an ESG security in the municipal market...’ No assurance can be given that a clear definition will develop over time, or that, if developed, will include the program to be financed with the proceeds of the Offered Bonds. Accordingly, no assurance is or can be given to investors that any uses

of the Offered Bond will meet investor expectations regarding ‘social’ or other equivalently labeled performance objectives”²

Having spoken to Mr. Kim regarding his green bond experiences while he was at DC Water, I do not think he meant to take Third-Party assurance off-the-table as suggested by the above POS excerpt. On the contrary, Mr. Kim seemed to hold external assurance in high regard as evidenced by his quote to the Climate Bond Initiative’s Sean Kidney regarding DC water’s 2014 green bond: “It was a no-brainer to do a second opinion. To us, not having one is really equivalent to saying you would consider going to market with unaudited financials!”³

This apparent confusion over the lack of standards as well as assurance being best practice for ESG Muni investors must be addressed by MRSB. If it goes unaddressed, why is MSRБ even bothering to request information when according to New York Mortgage Agency’s preliminary official bond statement – MSRБ has already decided on important issues such as 3rd party assurance or the ability to develop standardized definitions?

(8) Is there any additional information that you would like to share with the MSRБ regarding any other ESG-related activities or trends in the municipal securities market?

The U.S. government is very far behind other parts of the world when it comes to developing a regulatory framework for dealing with green and other ESG-related bonds. Because of this lack of leadership, U.S. municipalities and government supported entities feel they must hire foreign entities to conduct 2nd opinions or provide advisory services. It is time the U.S started to provide leadership in the fastest growing financial investment trend that is not going away.

² [State of New York Mortgage Agency \(bondlink-cdn.com\)](https://www.bondlink-cdn.com), Feb 17, 2022

³ [Microsoft Word - DC Water case study - final.docx \(climatebonds.net\)](https://climatebonds.net)

(1) Do you consider ESG-related information material to your investment decisions? If so, in what way? Is ESG-related information important to your evaluation of a municipal issuer's creditworthiness? If so, what ESG-related information do you consider most relevant to a municipal issuer's creditworthiness and why?

MacKay Municipal Managers™ (MMM) is a fundamental relative-value bond portfolio manager, applying both top-down analysis and bottom-up credit research in the construction of municipal portfolios. Our investment philosophy is centered on the belief that strong long-term performance can be achieved with a relative value, research-driven approach. As we focus on bottom-up security selection, we perform extensive security-specific risk analysis on the bonds we purchase. MMM believes that Environmental, Social and Governance (ESG) investing can be material to the risk/reward profile of every municipal bond credit. As such, in line with our fiduciary duty to act in the best financial interest of our clients, these factors are a meaningful part of our credit analysis.

Because ESG concepts are complex and dynamic, with little standardization in the municipal market, MMM has developed an internal process to assign an ESG risk ranking to each municipal issuer under consideration. The process created a matrix to assign ESG scores to new potential investments. Each security score is subjective, based on a rubric of criteria, and is assigned as part of each security specific credit analysis. We believe the consideration of ESG factors in assessing both risk and return at the security and portfolio levels should be an integrated and dynamic part of the research, portfolio construction and risk management processes.

We acknowledge that certain ESG risks (including climate risks) and opportunities may be more material for certain issuers and geographies, and may present themselves over the short-, medium- and longer-term. The weight of an ESG factor vs a more traditional factor will depend on our assessment of the potential financial materiality of that particular factor as compared to other considerations. In addition, many of the factors have traditionally always been a part of and integrated into our overall credit analysis.

For the full MMM ESG Policy, please click [here](#).

(2) Do you generally have access to all the ESG-related information you need to make an informed investment decision? If so, can you identify the source(s) of the information you use (e.g., municipal issuer disclosures on the EMMA® website, other municipal issuer communications, time-of-trade disclosures, third-party data vendors or proprietary analyses)? If not, please identify the gaps in information and market transparency.

Recently there has been a growing interest in the impact of ESG factors in the municipal market in the investment process yet little research focusing on the municipal market is available from outside sources. At the start of 2021, MMM engaged an outside data provider, risQ, for their online tool that overlays physical climate risk with governmental census data to project potential impacts on US municipalities from climate-related events. While this tool is helpful in giving the team an understanding of impact of physical climate risks, it's limited in usefulness due inability to matriculate the data into our traditional analytical tools (via datafeed, for example). Additionally, we continue to work with other 3rd party vendors to develop towards more standard reporting and disclosure in the municipal market. We note the Green or Social Bond designation on Bloomberg, however,

this data is typically self-reported or scrubbed through Bloomberg AI, and can not translate to standardized reporting across issuers.

Additionally, we feel a gap still remains in the market to define the standard of ESG-risk versus -impact information and assessment in municipal bonds. MMM is not new to the consideration of impact. The nature of municipal bonds is such that the structure of the investments themselves often beg the question of the impact based on the use of proceeds, on a population of individuals, or sometimes even questions around the generation of such proceeds. Understanding how to consider these elements within the context of our investment strategy has been something the team is continuing to develop and build expertise on, as these issues of ESG and Sustainability continue to evolve and grow in prominence within the investing world. As the world moves increasingly towards a focus on “double materiality,” we often find ourselves debating whether there could or even should be a singular point of reference for ESG within the muni market, or if it would be more accurate to assess risk and impact separately, despite how intricately tied the two are for this asset class.

(3) Does your expectation as to the availability and sufficiency of ESG-related information change depending on whether the purchase of municipal securities is made in the primary market or the secondary market? If so, how?

Due to the nature of a rapidly evolving space, expectations for the availability of ESG-related information would naturally be higher for new issues as we see the market trend towards more transparency and greater disclosure. Therefore, , that does not necessarily mean there is not sufficient information in the secondary market. Anecdotally, we could envision a situation where there is some sort of supplemental information provided at the issuer level that allows for comparison or shared reporting across a portfolio that has both types of holdings.

(4) In light of the potential availability of ESG-related information from other sources, how can municipal issuers best present and disseminate their ESG-related information to investors? What topic areas do you believe are most relevant for municipal issuers to include when providing ESG-Related Disclosures? In your view, is it sufficient for ESG-Related Disclosures to just describe material ESG-related risk factors? Is there a benefit to municipal issuers further describing the initiatives and other projects they are pursuing to address such risks?

Following the response articulated in the answer for Question 2, the topic areas that would be most relevant for municipal issuers to include would be their understanding of material risks to, as well as impact of, the funded project and/or issuer. Understanding the key performance indicators of municipal projects on local constituencies is essential to an investor’s ability to measure effectiveness of a stated impact. Issuers should continue to disclose capital projects supporting ESG-related initiatives as well as provide updated disclosure on progress of the projects as well updates on material, reportable results from these projects.

At MMM, we believe that the inclusion of ESG-related factors within the context of material risks that could affect the financial performance of a particular instrument to be an essential component of our fiduciary duty to our clients. As the market evolves and

client demands become more focused on the ways the financial sector can play a role in the development of a more sustainable and just society, having information that helps us analyze the impact investments have on the world will become increasingly important. In recognition of the natural connection between many of the processes and investment objectives already underway in our municipal bond investments and the Sustainable Development Goals, MacKay Municipal Managers is starting to explore ways in which we can more systematically map our investing efforts to those 17 governmental goals. Because our view of municipal investment so inherently lends itself to that lens of impact, providing investors with a clearer understanding of what broader sustainability goals are being worked towards through our investment decisions is a level of transparency we would like to see disclosed. However, as with ESG-related risks, lack of standardization in the municipal space makes it challenging to assess the authenticity of such claims without a considerable amount of additional investigation and analysis.

(5) Certain market participants have expressed concerns that, while analysts and investors have expressed their desire for more standardized ESG-Related Disclosures, there is no consensus on which data and metrics are important or essential. Do you believe such disclosures should be standardized? Do you believe there is a consensus on which data and metrics are important or essential? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus?

At MMM, we do believe ESG-related disclosures should be standardized, even if at the most basic level. Unfortunately, the scope and number of different issuers in the municipal market presents a challenge for standardization. Requiring standardization on reporting and disclosure could present sizable investments and potentially prohibitive costs for issuers. In addition, we expect that the data and metrics would vary across the multiple sectors and issuer-types in the municipal market.

- o From a risk perspective, understanding the potential physical climate risks inherent in investing in particular jurisdictions (i.e. increased frequency and severity of wildfires in the west, hurricanes in the southeast, etc.) is crucial.
- Within impact, the UN SDGs appear to be the most common frame of reference for achieving stated impact. Typically speaking, the GRI reporting framework tends to be the most commonly used framework for a double-materiality type perspective on business operations.

(6) When purchasing municipal securities for ESG-Designated Funds, what ESG-related information is most useful for the investment decision? How do fund managers screen securities to ensure that they meet a fund's criteria? Once purchased, what information is most relevant in assessing that a security continues to meet the ESG criteria established for an ESG-Designated Fund?

At MMM, we do not purchase bonds for specific ESG-Designated Funds and we do not screen or exclude securities based on ESG-fund criteria. In assigning our internal ESG scoring through our process (discussed above) we have identified criteria for each of the the Environmental, Social and Governance sectors. W In regards to purchased positions, it remains difficult to report on impact criteria as reporting is not available and/ or continues to be limited in the municipal market. In the future, as ESG issuance continues to grow in the municipal market, we expect issuers to provide updates from 3rd party verifiers and through continuing disclosure to report the impact and the financial materiality of the specific project or social program

that the bonds are financing through the increased use of SASB and/ or SDG alignments, or something similar.

(7) When purchasing ESG-Labeled Bonds, do you evaluate municipal securities with an independent certification differently from bonds that do not have such a certification? If so, how? If not, why not? In your view, what are the benefits to an investor of purchasing a bond with an independent certification?

We will take note if there has been external verification of an ESG-labelled bond, as that will provide us with some understanding of the authenticity of any stated claims by the issuer. However, because there are still no market standards, it's not always clear what exactly the label is certifying and therefore, we would still need to do a considerable amount of our own analysis to understand the true risk and impact of an ESG-labelled bond. We continue to note the increase in the use of independent certification which we believe will promote the growth of disclosure and reporting standardization among issuers and in the market, in general.

Municipal Securities Rulemaking Board,
1300 I Street NW, Suite 1000,
Washington, DC 20005

Re: Request for Information on Environmental, Social and Governance (ESG)
Practices in the Municipal Securities Market (2021-17)

March 8, 2021

To Whom May Concern:

Thank you for the opportunity to respond to the Municipal Securities Rulemaking Board's ("MSRB" or the "Board") Request for Information (RFI) to solicit public input on environmental, social and governance (ESG) practices in the municipal securities market. As the purpose of the RFI is to obtain input from market participants and the general public in furtherance of the MSRB's mandate of protecting investors, municipal issuers and the public interest by promoting a fair and efficient municipal securities market, it is with great honor that I deliver my response.

ESG in municipal finance is essential, and not just because it implies that different and more sustainable projects are getting funded, but rather because it means the introduction of frameworks into the muni market, which inherently encourages best practices and more sustainable finance.

ESG practices are some of the most important factors in protecting municipal investors as they are inexorably linked to transparency, issuer performance, community outcomes, and most importantly, credit. And while the thinking around "E" is most developed, with the "S" rapidly evolving, perhaps it is the "G" that ultimately has the greatest intersectionality with the goals of the MSRB in protecting municipal market participants. The MSRB must be part of the "G" solution.

Without the participation of the issuers, and those there to assist issuers, there is no ESG market. Therefore, the development of the ESG municipal market has largely been left to motivated issuers, and market participants, like broker-dealers, bond counsel, and advisors, educating and in some cases advising issuers on the benefits and requirements to enter the market. However, as mentioned, I believe the MSRB should play a more central role in organizing the ESG market. This can be accomplished through, for example, things like development of best practices and accredited frameworks, creation of sector specific disclosure working groups, or the expansion of EMMA to meet the market's needs.

All these things, in the spirit of ESG, will make the muni market stronger.

Below are various responses to questions listed in the RFI. In addition, while I am currently part of the general public, having been an issuer, and having worked at a broker-dealer and with a wide-variety of advisors and counsel on ESG, I do provide comments on additional sections as well.

Issuer (Former)

Question 1 - During my time as an issuer at New York State Homes and Community Renewal (“HCR”), we made a concerted effort to maximize ESG disclosures for four main reasons 1) it meant that the Agency was better describing and reporting to the investing public HCR’s program, financing, and use of proceeds 2) some of ESG data was already required by existing investors 3) HCR already had publicly available ESG data that was not directly disclosed that was requested by new investors 4) it was, in and of itself, good governance (“G”).

As background, HCR is an issuer of sustainability bonds for multifamily affordable housing, where the Agency uses the Climate Bond Initiative (“CBI”) to formally certify the green characteristics as a “Green Bond,” which sits inside a self-certified “Sustainability Bond” ESG framework utilizing the International Capital Markets Association’s (“ICMA”) Sustainable Bond Guidelines. On single-family (first time home buyer, low and moderate income), HCR self-certifies to the ICMA’s “Social Bond ” guidelines. In both cases of self-certification, the Agency uses extensive data and reporting, including new data and tables, reorganized disclosure and voluntary filings, including on EMMA, to meet the requirements of the programs as determined by the Agency and its counsel.

Data and transparency are likely the two most important factors in ESG. In the case of HCR, as it designed its program, it was entirely about redesigning its existing offering statement through this lens of better describing the program. As mentioned previously, HCR uses CBI for “G” certification, but built out an entirely new table in the Official Statement showing new details on project cost, use of proceeds, impacted community, source of funds, units, affordability requirements, etc. HCR formally put in one place, a simple table for investors to see, all the “E” and “S” characteristics of the projects that it was financing with the bond proceeds, or any new information that was requested by investors. For example, after a proactive conversation with a major institutional investor, HCR began adding factors like floodplain (and mitigation steps, if necessary) and the State’s environmental review process (additional “E” and “G”) to the offering document.

Overall, much of the “G” was updating the disclosure itself, incorporating better and more complete information around program design and the Agency, as well as making HCR’s financings more transparent. Essentially, HCR took ICMA’s frameworks and built their disclosure document around it. And there is no reason that every municipal bond could not be put into the ICMA’s frameworks (Green, Social, Sustainable) which asks for simple factors.

1. Use of Proceeds
2. Process for Project Evaluation and Selection
3. Management of Proceeds
4. Reporting

Of course, there would need to be other sections, like security, background on the issuer, other financial information related to credit included in the offering statement, but having muni issuers who issue ESG bonds have a standardized framework, would make sense. And using the ICMA as this basic framework, would allow issuers to then fill in for themselves, how green, or how socially beneficial, or how sustainable a project is through various disclosed metrics. But at least investors would know what and where to look. At HCR, the Agency used the ICMA’s linkage to the United Nations’ Sustainable

Development Goals, as again, a way to standardize the Agency's methodology around an existing ESG framework that would link the Agency's issuance to the larger global issuance community.

Question 2 - The long and short answer is yes. However, standardization can best occur in the development of adhered to frameworks and/or framework documents. Every muni sector or issuer type is different, and those will require specific sector level (housing, water & sewer, GO, etc.) disclosure archetypes to be developed, but at a high level, it can be done. Very similar to how the corporate bond market has taken a more standardized approach.

But, as discussed above, the MSRB could help provide the industry with vetted frameworks, agreed upon required disclosure by sector, formatting and layout consensus, perhaps even an auto document builder and autofiling of standardized continuing ESG disclosure. All detailed language around an issuer or issuance would have to be vetted by counsel, but model documents and formats could be adopted. For example, with collaboration, affordable housing bond documents could be nearly standardized across all HFA bond issuers, accounting for different credits (MBS, whole-loan, loan performance, etc), call structures, local laws, along with program description / policies and procedures, etc, but much else could be standardized, including the layout, making it easier for issuers and lawyers to prepare and verify documents and for investors to use them.

Question 3 - See above. HCR adopted ICMA's framework for its single-family (social) and multifamily (sustainable) bond programs. Both ICMA frameworks are self-certified, but the Agency developed new and reformatted disclosure documents with an ESG framework. It is possible to have these self-certification programs certified easily and efficiently, by firms such as Sustainalytics. Additionally, on multifamily, the green aspects of HCR's building were looked at by Sustainalytics and certified by CBI.

At the end of the day, the most important thing is data and the actual disclosure. A green bond is a result of a green project, so until there are more green and sustainable projects, there will not be more green and sustainable bonds. However, that said, there are many governments that are doing really great projects that are not describing them very well, and could qualify under some of these standards. And certification can be extremely low cost, especially when compared to any basis point of savings on an issuance or the long-term benefit of broadening an issuer's investor book.

When it comes to certification it is both a framework to adhere to, as well as an easier way for investors to identify certain bonds. Though most large investors or those with ESG areas of expertise usually do independent evaluation.

I believe making sure there are standards is an important component of ESG itself. For example, even though HCR's framework was designed around the idea that deeply subsidized affordable housing is inherently social and that the Agency's building requirements are green, HCR thought it was important for others to agree with them. Especially when the cost is de minimis as an issuer of multimillion (or billion) dollars worth of municipal bonds.

Question 4 - As an issuer, HCR committed, under the ICMA's guidelines, to do reporting on their projects. For HCR, they tied the continuing disclosure into the final construction milestone where everyone certifies that they built the building they said they were going to build and the Agency spent the proceeds as they said they were going to. It is a minimal effort and HCR thought it was important for investors. It was voluntary, and not in the CDA. However, many issuers have milestones in their CDA which likely

would meet the needs of ESG investors already. This is how HCR approached it, just creating one additional filing on an annual and project level, but lifting up information that was already being tracked and in some cases, already reported on separately.

However, HCR was not providing ongoing impact reporting or other ESG data outside of its agreed upon continuing disclosure after project conversion to permanent or expending of bond proceeds. That said, under the use of proceeds, the Agency covenants to investors that under the IRS rules for use of tax-exempt bonds and low-income housing tax-credits there are programmatic restrictions around income and affordability that would remain in place for up to 15 years, and in some cases, the Agency restricted affordability for much longer, often coterminous with the final maturity of the bonds. Again here, the Agency could easily report on ongoing metrics based on data it is already collecting. Like HCR, many issuers already covenant to report on data that would be considered part of ESG reporting already.

Question 5 - At the time of departure, information provided to the rating agencies was consistent with information provided to the public around ESG.

All Municipal Market Participants Questions

Question 1 - The lack of long term ESG disclosure and data reporting frameworks must be developed and provided to the marketplace. The risk is that there is no standardization and risks are actually not disclosed, or unable to be disclosed in a manner that can be understood, as a result, risks are missed.

Additionally, rating agencies not appropriately factoring in ESG factors is a systemic threat to the viability and credibility of the US muni market.

Question 2 - Labeling and frameworks are good for market organization. Investor preference will likely determine long-term ESG labeling requirements, but as discussed above, more transparent and better data and disclosure is likely more important in the long run than labels. But, the market has evolved since the ICMA and CBI frameworks and standards were first developed, with new entrants, who are looking at alternative methodologies, data and metrics to measure transactions.

Voluntary standards are good when people adhere to them and there is market policing around adherence, as a label is only as good as its credibility. That said, the real answer lies in issuer disclosure and the more and better data, organized in a more efficient manner, could eliminate the need for labeling because the ESG characteristics become self evident.

Question 3 - No additional comment

Question 4 - Yes, there needs to be a centralized methodology to source ESG data. It is creating unequal access, and much data sits behind the paywall. The practice should be made that all municipal data is public and should be made publicly available, perhaps through EMMA.

For example, if there was a framework for ESG disclosure that was developed, issuers could use EMMA to report directly to the market on the platform, with integration into various other programs used by issuers for tracking deals and transactions. Again, the EMMA website could be used for auto document and notice generation, creating standardization wherever feasible. An open-source tool for standardizing

market disclosure could be included as part of the MSRB's own long-term sustainability and ESG planning.

Question 5 - Yes, I believe that generally, the US muni finance industry is a laggard in ESG disclosure, however, this is largely because it has not been motivated (or regulated) into adopting already available "best" practices. For example, many muni projects would already qualify for a green, social, or sustainability bond label, or fit under the ICMA's guidelines, however, issuers likely do not have the necessary information to make informed decisions as the required next steps or they believe that there are too many steps to adoption and adherence. These can be made more simple.

There are many global ESG capital markets practices that the muni market could easily and broadly adopt, including things like the EU taxonomy, the ICMA guidelines, among others that would aid creating a more ESG friendly market, especially in the taxable space, where these international standards may be important in both educating the market and attracting foreign investors. But there are other steps toward embracing ESG, around transparency, including changing reporting, creating machine readable documents, digitizing and making public real time budgets, are already available steps that municipal governments can and are taking to improve their disclosure. The muni market should just hold itself to a higher standard, which, again, is in and of itself, a function of "G."

Sustainability and ESG is good for investors, good for communities, good for projects, and good for municipalities' bottom line, especially in light of a more connected, ever changing, and complex world around us.

Question 6 - A forward calendar, and an accurate and detailed forward calendar is a very important part of increasing investor participation in ESG bonds, but generally a very important part of providing investors with expectations around timing and details of a bond sale. I personally believe publishing a forward calendar should be considered mandatory for purposes of best execution, as soon as it has been authorized for issuance or is made public.

As the market currently behaves, especially in cases of competitive sales or some negotiated sales with a very brief order period, access to muni bonds can be very difficult. And investors must really work to try and access bonds that they care about. By providing markers on forward calendars is a good way to attract investors, and giving an issuance an ESG label is an easy way to distinguish the issuance for investors.

It would also be good if there was a "pre-order" information button on the MSRB website for example, to be notified about a sale by the lead broker-dealer when the transaction was coming to market.

Question 7 - As discussed above, the MSRB should have information on select and vetted frameworks, standardized docs to the extent possible, development of reporting requirements for various ESG sectors, and the ability to auto report built into EMMA.

In fact, in the spirit of ESG, it would be in the best interest of the MSRB and its own "G" to invest as many resources as possible into the development of EMMA as a tool for the market to improve better governance. The more and better resources that the MSRB can make available to issuers, the stronger the industry becomes and the more effective the MSRB can be at servicing members of the municipal finance community.

Question 8 - No additional information.

Dealer

Question 1 - Dealers are one of the main links between issuers and investors around ESG, in fact, many of the ESG investors that helped HCR in the development of its ESG criteria were introduced to the Agency by dealers. The Agency worked with its broker-dealer partners on doing extensive listening sessions with investors trying to discern “data pain points” that would improve HCR’s disclosure.

Dealers must prioritize expanding the investor market for issuers, including ESG. A true market is where all issuers meet all investors, and the more dealers can work to expand investors the better for both the primary and secondary markets.

Muni Advisor

Question 1 - As a fiduciary, municipal advisors should 110% be advising their issuer clients to seek out and implement the best ESG and disclosure practices as possible. There are absolutely additional buyers that can be added to an order book through creating a well designed ESG bond program and that can make a positive difference in pricing. Municipal advisors should already be advocating for ESG labeled bonds given the demonstrated pricing results.

For example, while at HCR, over 50 new institutional accounts participated in transactions, most of which were a result of improved disclosure document development of a new sustainability program. The concerted effort to listen to investors (see Dealer section) strengthened HCR’s relationship with investors, and informed our decisions on disclosure.

These new investors, while providing some market benefits in terms of pricing (5-10 basis points in some cases), did backstop the HFA bonds, especially on the long end of the yield curve where there tends to be more volatility and fewer investors. ESG investors, in some cases, tend to exhibit longer duration purchases, many times because they themselves can afford to look at the long term sustainability of the projects, issuers, and assets they are investing in.

Again, thank you for the opportunity to submit.

Best,

James McIntyre



March 8, 2022

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Re: Perspectives on ESG-Related Disclosure and ESG-Labeled Bond Market Practices in the Municipal Securities Market

Dear Mr. Brett, Dr. Kim, Mr. Smith, and Members of the MSRB:

We, the undersigned members of the Milken Institute Center for Financial Markets' [Program for Excellence and Equity in Public Finance](#),¹ welcome the opportunity to respond to the Municipal Securities Rulemaking Board's recent request for comments.²

The Milken Institute is a nonprofit, nonpartisan think tank that promotes evidence-based research that serves as a platform for policymakers, industry practitioners, and community members to come together in catalyzing practical solutions to challenges we face both here in the U.S. and globally. The Center for Financial Markets conducts research and constructs programs designed to facilitate the smooth and efficient operation of financial markets—to help ensure that they are fair and available to those who need them when they need them.

We commend the MSRB for exerting market leadership and seeking timely input on ESG-related disclosure. As a diverse collection of market participants, we are writing to offer cross-sectoral perspectives on the issues raised by the MSRB's request for public perspectives on environmental, social,

¹ The Milken Institute Center for Financial Markets' Program for Excellence and Equity in Public Finance is a solutions and innovation resource for policymakers, market-makers, issuers, innovators, and academics committed to building best practices in public finance, addressing the challenges of diverse market structure, and creating strong, equitable, and resilient results for all stakeholders in public finance. The program is guided by our Advisory Council.

² See <https://msrb.org/News-and-Events/Press-Releases/2021/ESG-RFI>.

and governance (ESG) practices in the municipal securities market. We do so in full appreciation for the regulatory limits the MSRB has on this matter and over market participants, in the hopes that its inquiry opens the door for deeper collaboration among market participants.

I. Municipal Bond Market and ESG: Some General Perspectives

The \$4 trillion municipal bond market plays a central role in providing an array of essential services and infrastructure needs. As such, the municipal bond market offers a unique opportunity for investors looking to align their investment goals with their consideration of ESG factors from both a risk and impact perspective. For those focused on the more formally labeled markets, the issuance of green, social, and sustainable municipal bonds has increased from a total of \$2.3 billion in 2013 to over \$52 billion in 2021.

II. The ESG Imperative Is Here

The need to define, frame, and report on ESG is here. The question is how this important imperative can be addressed effectively and uniformly given multiple stakeholder perspectives and interests. ESG disclosure demands come from large and small investors who want to understand how various ESG factors contribute to the risk analysis of municipal bonds and bond return. Issuers are eager to communicate their efforts to mitigate risks and improve and measure ESG impact and outcomes in the delivery of public services and infrastructure but have limited resources to engage in ad hoc inquiries. Lastly, a host of other public finance stakeholders, such as policymakers, taxpayers, and advocacy groups, are interested in whether and how climate risk or social factors affect their communities.

III. Meeting the ESG Imperative: Acceleration Recommendations

We recognize that the municipal market structure is complex and fragmented, and there are differing goals for various ESG stakeholders. Uniform perspectives may be difficult to achieve. The question is how to accelerate clear, efficient, equitable, market-savvy, and data-supported ESG information that all stakeholders can use effectively. We believe the key acceleration factors involve:

A. Clarity in Language and Meaning:

The current ESG dialogue needs to be clearer and more disciplined about what ESG is and is not to all key stakeholders.

- Sustainability, ESG risks, and positive community impact are complex and often conflated topics. The ESG data needed to assess these separate topics are also complex and difficult to collect.
- ESG is not an asset class. It refers instead to environmental, social, and governance factors that are used for two distinct purposes, which are often conflated and confused with each other: (1) to identify risks associated with a prospective or existing investment, and (2) to disclose and measure the impact of activities and programs that are funded with bond proceeds.
- Without a common language, market participants often talk past each other. Some investors care primarily about what ESG factors say about risks and their influence on returns, while others focus on how those factors can measure impact. Unfortunately, the same set of data and reporting doesn't necessarily assist both risk analysis and impact measurement. When it comes to what "ESG" means for the municipal bond market, defining "ESG risk variables" versus "impact variables" can create confusion while attempting to measure each.
- Issuers are equally diverse in their approach to the topic thanks to a range of understanding, resources, and incentives. For some, reporting is seen as a purely economic tradeoff, where the absence of regulatory clarity makes inconsistent investor requests an additional, if not optional,

request with more risk than reward. For others, the priority of highlighting policy leads to a narrow focus on specific outcomes rather than a holistic view.

Recommendations: ESG should not be confused as a label. We propose using the term ESG to refer to relevant and material data pertaining to potential investment risks. To reduce confusion, we would recommend avoiding the term ESG when referring to the labeled bond market, instead using terms such as Green Bonds, Social Bonds, Community Equity Bonds, Sustainability Bonds, and Better Governance Bonds to refer to bonds designated for certain environmental, social, sustainable projects, and governance improvements. Most importantly, along with clarity about what ESG is and is not, both investors and issuers need to focus more on the specific information investors need and what issuers can do to provide these data. ESG integration and sustainable investing are growing globally, but many market participants are not aware of all the opportunities municipal bonds provide to evaluate these investment factors.

B. Data and Reporting:

Key stakeholders currently crave better data, metrics, and standardization on reporting. This effort will require patience and transparency in all cases and coordinated guidance and intentional alignment on a case-by-case basis.

- All market stakeholders need to understand which ESG factors are material to evaluating risk within a community and its assets, and share information about those factors in a format that minimizes information asymmetry. In some cases, where data are not fully available now, issuers could still provide qualitative assessments and disclosures until such data are more fully available.
- Analyzing ESG risks is not new to municipal bond investors. Information culled from readily available issuer disclosures is used now by investors to evaluate flood, earthquake, wildfire, hurricane, pollution, education, health-care, crime, and other social risks. Investors need better tools (technology) to measure impact and change. But investors do need to be more disciplined/precise/clear about data they need, not just what they think they want.

Recommendation: Disclosure and reporting frameworks must be designed to withstand evolving domestic and international regulatory environments while providing flexibility to market participants to adapt to new and complex factors. Guiding principles already established by organizations like the Task Force on Climate-Related Financial Disclosures, the Principles for Responsible Investment, or those developed in the future on racial equity concerns could be utilized to assist in this effort. These efforts could also help market participants key in on what factors are material and needed by investors versus what is simply desired by a sub-set of investors.

C. Issuer Capacity:

Issuers have a capacity challenge to meet the diverse demands of investors for ESG-related information. In the absence of clear, universal metrics, issuers should identify how bond proceeds are being used in a way that tells their ESG story in the description of a project, even if the threshold of “materiality” is in question. For example, constructing and equipping a new school may increase energy efficiency, improve student and teacher safety, and expand access to modern technology. Renovation of an underutilized school may increase space for adult education, workforce training opportunities, and community engagement while mitigating the displacement of students from their neighborhoods and addressing educational disparities.

Recommendations: To help issuers meet the capacity challenge, we support convenings, possibly initiated through MSRB leadership or cross-sectoral partners, that bring together private-sector experts, government associations, and not-for-profit organizations to broaden understanding of material risks. Through these dialogues, communities could identify early warning signals to improve the financial creditworthiness and ESG awareness of communities through enterprise risk management and other

emerging best practices. These dialogues could also help assess what capacities and skills need to be supported and strengthened by federal, state, or other forms of investments that reduce life cycle risk to investors, issuers, and taxpayers. Standardized questionnaires created by trade groups, where issuers could further highlight data and capacity challenges, might also be a good step to explore.

D. The Role of MSRB and Other Market Stakeholders:

We commend the MSRB for exerting market leadership and using its market presence to convene and solicit thoughtful input. While we present our views on considerations for practices, we support evolving to a cost-effective disclosure framework for ESG that works for issuers, investors, and their advisors. We view the MSRB's primary role as facilitating "democratizing" access to disclosures through its EMMA website, which makes material information equally available to professional and retail investors alike. As such, changes to the MSRB's EMMA system and voluntary guidelines will need to be embraced by the market. And while the standard for disclosure in the municipal market is "materiality" of risk, we believe that fulsome ESG disclosures will go a long way to satisfy the demands of investors and the citizenry alike, allow issuers to tell their risk mitigation success stories, open the market to additional investor classes, and demonstrate the commitment of our market to equity, transparency, and good government.

Sincerely,

Olivia Albrecht, Managing Director, Global Head of ESG, TCW Group*

Dan Carol, Senior Director, Milken Institute Center for Financial Markets

Natalie Cohen, President, National Municipal Research*

Gary Hall, Partner, Siebert Williams Shank & Co., LLC*

Caitlin MacLean, Senior Director, Innovative Finance, Milken Institute

David Narefsky, Partner, Mayer Brown*

Hector Negroni, Partner, Foundation | Credit*

Lois Scott, Epoch Advisors and Advisory Council Chair*

Courtney Shea, Retired Managing Member, Columbia Capital Management*

Daniel S. Solender, Partner & Director of Tax-Free Fixed Income, Lord Abbett*

*Denotes members of the Milken Institute Public Finance Advisory Council.
Organization names for affiliation purposes only.



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March 7, 2022

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Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board (MSRB)
1300 I Street, Suite 1000
Washington, D.C. 20005

**RE: COMMENTS OF THE NATIONAL ASSOCIATION OF BOND
LAWYERS REGARDING MSRB REQUEST FOR INFORMATION
2021-17**

Dear Mr. Smith:

The following comments are submitted to the Municipal Securities Rulemaking Board (the “MSRB”) on behalf of the National Association of Bond Lawyers (“NABL”) relating to MSRB Request for Information 2021-17 (the “Request”) requesting information on environmental, social and governance (“ESG”) practices in the municipal securities market, published December 8, 2021. The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors. NABL appreciates the opportunity to respond to the request for public input by the MSRB.

At the outset, we note the unprecedented nature of this Request by the MSRB. Although the MSRB has been granted a general charge to “protect investors, municipal entities, obligated persons and the public interest” under Section 15B of the Securities Exchange Act of 1934, as amended (the “1934 Act”), the 1934 Act grants the MSRB authority to regulate only broker-dealers of municipal securities and municipal advisors. The MSRB has no authority to directly regulate issuers of municipal securities, and Section 15B(d) expressly limits the MSRB’s ability to require information of municipal issuers. We understand that the Request is intended to solicit information from municipal market participants on a voluntary basis but asking questions directly of issuers as the MSRB does in the Request – and the implication that the MSRB has jurisdiction to issue rules based on the responses to those questions – is inconsistent with the limited charge granted to the MSRB in the 1934 Act.

The Request asks questions directed at trends and the advisability of standardization in the municipal securities market in relation to: (1) the disclosure of information regarding ESG-related risk factors and ESG-related practices (“ESG-Related Disclosures”) and (2) the labeling and marketing of municipal

securities with ESG designations (“ESG-Labeled Bonds”). We appreciate the framing of these issues as two discrete concepts and encourage the MSRB and the municipal market at large to continue to evaluate ESG-Related Disclosures and ESG-Labeled Bonds separately. We will address each of these concepts in turn.

ESG-Related Disclosures and Materiality

As we noted in our recent comment letter to the Securities and Exchange Commission (“SEC”) regarding climate change disclosure,¹ municipal issuers are subject to the antifraud provisions of the federal securities laws, which (1) require disclosure of material information about securities to allow investors to make informed decisions, and (2) prohibit misrepresentation or other fraudulent conduct in connection with the purchase and sale of securities. Under the principles-based approach of the antifraud provisions, municipal issuers are already required to disclose information relating to the material risks applicable to municipal offerings. As demonstrated by numerous municipal offering documents published in the past several years, many municipal market participants have already determined that ESG-Related Disclosures are material to their securities and have included such disclosure in their primary offering documents. NABL and other public finance industry organizations continue to work with their respective members on best practices for ESG-Related Disclosures and such efforts are expected to continue.²

The Request asks municipal market participants whether ESG-Related Disclosures should be a distinct category of required disclosures and/or whether such disclosures should be standardized. Although significant attention is currently being paid to ESG concerns, ESG-Related Disclosures in municipal securities do not warrant a separate category of disclosure, should not be given greater importance than other disclosures. In addition, the need for and adequacy of such disclosures should continue to be evaluated under the well-established concept of materiality, rather than some special set of considerations relating to ESG. Each offering of municipal securities necessitates a careful analysis of all factors affecting the offering, including ESG factors, and disclosure of the same. This principles-based approach has allowed the municipal market to quickly adapt to a wide-range of emergent and nascent threats, such as the increased threat of cyber-attacks, the social and financial impact of the COVID-19 pandemic, or the varied ways by which climate change impacts a particular issuer. The current antifraud regime allows federal securities law to flexibly and fairly take into account the tremendous variety of municipal issuers, transaction structures, uses of proceeds, and repayment sources.

¹ National Association of Bond Lawyers to SEC Chair Gary Gensler regarding Climate Change Disclosures (Sept. 9, 2021), available at <https://www.sec.gov/comments/climate-disclosure/cll12-9218139-250189.pdf>.

² For instance, see Government Finance Officers Association materials on ESG available at <https://www.gfoa.org/esg>.

Standardization of ESG-Related Disclosures in the context of the antifraud rules would be inconsistent with the long history of federal court precedents and SEC guidance. This guidance has long directed municipal issuers to disclose the specific and material risk factors applicable to a particular offering in a tailored and meaningful way. Indeed, although Regulation S-K is not applicable to municipal securities, the 2020 amendments to Regulation S-K, Item 105, were expressly driven by a desire to shift reporting companies away from disclosure of “most significant” factors that make a particular investment speculative or risky through lengthy, generic statements of risk to a “principles-based” approach rooted in disclosure of “material” risks.³ Such a framework already requires a municipal issuer to critically assess whether ESG matters constitute a material risk necessitating ESG-Related Disclosures, and standardization of such disclosures would not aid issuers in this endeavor.

Continuing with a principles-based approach in the municipal securities market remains consistent with the May 4, 2020, Public Statement, “The Importance of Disclosure for our Municipal Markets,” which encouraged disclosure on the impact of the COVID-19 pandemic on issuers’ current and expected future operations and finances. We recognize the efforts in the May 4, 2020 Public Statement to balance the unforeseeable and unpredictable nature of the COVID-19 pandemic against investors’ desire for current information regarding the pandemic’s impact on a particular municipal security. While the COVID-19 pandemic was unforeseeable and unpredictable, predicting impacts associated with certain ESG concerns and their future remediation and adaptation costs may involve even more uncertainty and complexity. Any guidance for ESG-Related Disclosure should be drafted with a full appreciation of the inability of existing models to accurately predict certain future events and consequent costs. Forward-looking ESG-Related Disclosure requires a myriad of assumptions, inputs, and modeling choices. If guidance is issued for the municipal market, NABL encourages guidance similar to the guidance provided in connection with the COVID-19 pandemic, including limiting civil liability and SEC enforcement for good faith forward-looking projections, including third-party data and projections, which are accompanied by meaningful cautionary language.

ESG-Labeled Bonds Are Not Ripe for Regulation

ESG disclosure in primary offering documents for ESG-Labeled Bonds largely centers around a robust discussion of the use of proceeds, focusing on the nature of the project and the problem the project is seeking to mitigate. In offering ESG-Labeled Bonds to the market, the issuer is making a conscious decision to market the bonds to a particular class of investors and generally will include additional details about the project being financed, any methodology or rationale used for attaching the ESG label, and the ESG problem the project seeks to mitigate. As part of financings involving ESG-Labeled Bonds, issuers may commit to

³ See Modernization of Regulation S-K Items 101, 103, and 105, Release Nos. 33-10825; 34-89670 (Aug. 26, 2020).

comply with certain requirements in order to earn a specific bond designation and/or may agree to certain ongoing reporting obligations. Under the current antifraud rules, descriptions of the project, any ESG methodology or rationale, third-party certifications, and reporting requirements in the disclosure must be free of any material misstatements or omissions. ESG disclosure in primary offering documents for ESG-Labeled Bonds is fundamentally different than risk-driven ESG-Related Disclosure discussed above, as the “success” of an ESG project may have little bearing on the issuer’s ability to repay the bonds.⁴ Issuers should be able to decide whether to label or market their bonds to environmentally- or socially-driven investors, but should not be required to otherwise satisfy labeled bond requirements, barring materiality concerns.

The Request asks whether there is a need for standardization or regulation of ESG-Labeled Bonds. We remind the MRSB that the ESG-Labeled Bond market remains a relatively young market. In the past decade, the municipal market has seen a steady increase in labeled bonds, and labeled bond offerings continue to attract new classes of investors and funds. However, the standards for labeling bonds – including what attributes of the offering merit a particular label, what information should be required in the offering document, and what should be the issuer’s ongoing reporting commitments – continue to evolve. Regulation or standardization is premature, may be cost-prohibitive for small issuers, and could hamper the market’s ability to address emerging ESG concerns.

We appreciate the opportunity to comment on this Request. I have asked our Director of Governmental Affairs, Brian Egan, to facilitate any follow up or answer questions you may have regarding our comments. You can reach Brian via email at began@nabl.org or via phone at 202-503-3290.

Sincerely,



Ann D. Fillingham
President
National Association of Bond Lawyers

⁴ For example, a state issuer could issue a series of “green” labeled general obligation bonds to provide financing for a variety of projects focused on mitigating climate change. Whether or not the identified projects actually mitigate or have any impact on climate change will have limited influence on the state’s ability to repay the debt through a general tax levied against all property under its jurisdiction.

Exhibit I

Ann D. Fillingham, NABL President

Joseph (Jodie) E. Smith, NABL President-Elect

Deanna Gregory, NABL Board Member

Brandon C. Pond

Chair, Securities Law and Disclosure Committee

Drew Slone

Co-Vice Chair, Securities Law and Disclosure Committee

Rebecca Lawrence

Co-Vice Chair, Securities Law and Disclosure Committee



March 8, 2022

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. Suite 1000
Washington, D.C. 20005

RE: MSRB Notice 2021-17 Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Dear Mr. Smith,

The National Association of College and University Business Officers (NACUBO) is writing to respond to the Municipal Securities Rulemaking Board (MSRB) Notice 2021-17 Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market. NACUBO represents college and university business officers at more than 1,700 public and private nonprofit colleges and universities. We are dedicated to sound fiscal and administrative practices at institutions of higher education.

NACUBO appreciates MSRB's interest in soliciting comments from municipal issuers and we recognize evidence of emerging practices and increasing interest in sustainability or climate-related goals and practices in higher education bond resolutions. It is no surprise as college and universities are often at the forefront of incubating innovative ideas and approaches to environmental improvement.

In addition to designing education, research, and public service to align with their charitable missions, colleges and universities have long been aligning business office practices with social good. Our concerns do not rest with demonstrating the sector's commitment to or engagement with ESG concerns.

For colleges and universities, debt represents a long-term commitment of serious financial resources and risk and has implications for future financial flexibility. The ability to issue debt is seen as a strategic resource. Whether a green bond or otherwise, debt is pursued judiciously and guided by an institutional debt policy.

We believe it is premature for MSRB to establish standardized disclosures for ESG practices. We urge MSRB to stay mission-focused: Any regulatory efforts taken up by MSRB should be in support of materiality to investor decisions.

NACUBO shares the concerns submitted in greater detail by the Disclosure Industry Workgroup:

- A bright line exists in practice between (i) the ESG risk-based disclosures that relate to and have a nexus to all credits and obligations, (ii) the process of issuing designated/labeled bonds, and (iii) the disclosures that relate to and are requested by investors for such designated/labeled bonds. It is important not to confuse or actively conflate these topics because each is different.
- MSRB should continue and expand its work on improving the overall EMMA system and should consider the enhancements to EMMA that promote the preparation and organized filing and access of all voluntary disclosures made by issuers, including relevant ESG factors.
- We are unaware of any critical market pressures or disruptions related to either of these topics that would currently warrant regulatory concern.

Please do not hesitate to contact NACUBO's policy team at advocacy@nacubo.org for further discussion.

Sincerely,



Elizabeth L. Clark
Vice President, Policy and Research





March 7, 2022

VIA ELECTRONIC SUBMISSION

Ronald W. Smith
Corporate Secretary Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000 Washington, DC 20005
Re: MSRB Notice 2021 – 17 – Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Dear Mr. Smith,

The National Association of Health and Educational Facilities Finance Authorities (NAHEFFA) appreciates the opportunity to respond to the notice regarding ESG practices in the municipal securities market. NAHEFFA represents issuers of nonprofit bonds for charitable health, education and other nonprofit and charitable activities. We support access to readily available, low-cost capital financing options for not-for-profit and governmental health and educational institutions--our borrowers. NAHEFFA seeks to enhance the effectiveness of all such organizations and their programs and focuses its efforts on issues which directly influence the availability of, and access to, financing options for health and educational institutions. NAHEFFA gladly participates in the Disclosure Industry Group (DIG) in order to ensure we are current on developing practices as well as to present the nonprofit borrower perspective.

Disclosures in financings relevant to ESG are for good reasons increasing and subject to attention and debate. Our members' borrowers always have and will make disclosures relevant to the various characteristics of ESG, whether or not so denominated. Separately, and not to be conflated, there are an increasing number of tax exempt financings by nonprofits where green bonds or similar rubrics are used. In these comments, we primarily are referring to ESG type disclosures in conventional, nonprofit financing rather than the separate issues denominated or labeled as green bonds or similar.

It is not surprising that governments at all levels, among other parties, are subjecting to closer scrutiny ESG related disclosure practices for financings of all types, corporate and noncorporate, taxable and tax exempt. Climate, social justice and corporate governance issues are important and increasingly visible. But, we caution that regulatory or even semi-regulatory actions in the municipal securities space, such as best practices, are premature, will be harmful and will create confusion and unproductively burden bond issuances. The situation may be different in a few years.

Further, whatever the regulatory interests, we do not believe that it is an appropriate mission of the MSRB to be involved in this space. MSRB has not established a roadmap for what it intends to do with the information gathered in this exercise or even the possible options- -perhaps because it has no legitimate role. The MSRB's considerable resources should be focused on regulatory issues relating to the regulated entities it oversees -- not issuers/borrowers -- and making enhancements and improvements to EMMA which all sectors of the public finance community have been imploring be undertaken for many years. Adding more, mostly nonmaterial ESG or other characteristics to EMMA is at best a peripheral activity. This is clear even from the investor community--the purported beneficiaries of these enhancements-- much less from issuers and borrowers. Simply, it is wise advice for MSRB to stay in its critically important lanes.

Beyond the threshold issue of whether MSRB should be involved in the ESG space is the broader, more fundamental point that it is premature for even an appropriate regulator or legislator to set requirements or best practices/guidance which could become de facto requirements. Issuers and borrowers in the nonprofit space need time and experience to develop new ESG disclosure approaches and metrics in response to marketplace requirements and demands. Premature government action will create uncertainty and add new burdens and costs to issuance at exactly a time when the municipal market is under challenge from the alternative, less regulated taxable bond market. Rather, regulators should offer space for practices to develop over time before promoting uniformity or specificity in disclosures. This is particularly necessary because the breadth, even the basic definitions of the elements of environmental, social issues and governance are both very broad and specific to particular financings and borrowing institutions. The marketplace needs no action from MSRB but would benefit greatly from SEC extending its COVID -19 related safe harbor guidance to ESG disclosures so that good faith efforts to provide information are not punished until more understanding and sophistication is gained in the myriad nonprofit sectors and institutions.

Regulators and others should appreciate that by their very nature nonprofit institutions, as well as governments, are created and provide the critical functions to offer and enhance virtually all possible characteristics of ESG. The very rationale for IRS 501(c) (3) status and recognition under state nonprofit and charity laws are activities that enhance the public welfare. This is obvious but yet is frequently forgotten since some promoters of ESG activity believe that they have invented the space. They have not.

Our hospitals exist to heal and protect the lives of Americans and develop through research new treatments, remedies and cures. Our schools and universities at all levels have as their primary mission to develop individuals who can function productively in society, live comfortable and fulfilled lives, overcome what otherwise would be debilitating social restrictions and serve as



citizens in a democracy. Where individual and societal problems exist, these institutions and tens of thousands of other nonprofits and charities-- boys and girls clubs, sheltered workshops, treatment centers, vocational education and a multitude of other institutions-- serve to protect, raise and enhance the lives of every American.

It is not an exaggeration or hyperbole to state that the nonprofit sector is at its core the exemplar of ESG. That does not mean that sectors and individual institutions and facilities should not be subject to improvement or do not have in particular circumstances adverse impacts on the environment, for example, requiring mitigation. But, we should start off with a deep appreciation that nonprofits and governments are in fact the primary institutions to deliver ESG benefits not as an add-on to their mission as in the corporate sector.

Further, even in the specific context of bond financing there have been tens of thousands of issuances in the nonprofit sector which squarely fit within the definition of ESG or separately green bonds by any reasonable definition. Just a few examples are financings for pollution control, energy efficiency and renewable energy, improvements in facility health, safety and indoor air quality, and improving the workplace environment for employees of and users of the institutions, whether they be patients or students.

It is also important to recognize that ESG disclosure efforts are to a large extent simply a repackaging of issues that nonprofits have been considering and reporting for decades although not specifically under that rubric. Issues relating to potential threats from floods, fires or other natural phenomena have been part of many disclosures. The question is how environmental risk factors and other considerations affect a borrower's creditworthiness or its ability to repay its debt. Governance issues are often discussed in great detail in disclosures. And although the undefined breadth of social issues is potentially unlimited, it includes many topics which have been the subject of disclosures. Even if the disclosure documents do not categorize all these discussions as ESG, many of them have been present. There is a movement toward disclosures in special sections entitled ESG or similar. And there are topics that will increasingly be addressed or addressed in more depth than they were in the past based on their relevance to the financing and the interests of investors for more information.

For conventional non-green/ ESG labeled financings there are differences in disclosures in reaction to investor interests and requirements and the capability of institutions to generate relevant information. But the key, particularly for any future requirements, must be materiality to an investor decision, not the predilections of advocacy groups who totally separate from the financing wish to promote their environmental, social or governance agendas. These may be worthy causes but should not be the basis for regulatory action which should be solely aimed at protecting investors in the marketplace. Longstanding disclosure principles apply equally to ESG disclosure.

Ultimately and over time there undoubtedly will be movements toward standardization of disclosures and recognized metrics. But it is premature to consider those until we have had more



experience with disclosures and the reaction of the marketplace. There are very significant efforts to which issuers and borrowers are paying attention such as the GFOA Best Practices for environmental, social and governance issues and overall voluntary best practices for disclosure. But the GFOA documents are not even a year old. These tee up considerations for issuers and borrowers but without being so specific and directory that they stifle creativity, the need for marketplace responsiveness as well as consideration of the feasibility and resources available to many sizes of institutions to calculate and measure ESG characteristics.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Dennis Reilly", is positioned above the typed name.

Dennis Reilly
NAHEFFA President
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262-792-0466

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Of Counsel
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March 8, 2022

Mr. Ronald Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW Suite 1000
Washington, DC. 20005

RE: MSRB Notice 2021-17: Request for Information for Environmental, Social and Governance (ESG) Practices in the Municipal Market

Dear Mr. Smith:

Thank you for the opportunity to provide input on the MSRB's Request for Information on ESG factors. The National Association of Municipal Advisors (NAMA) is dedicated to educating and representing independent Municipal Advisory firms and individual Municipal Advisors (MA) from across the country. Our members are interested in the emerging and dynamic ESG topics and have appreciated working with our colleagues in the market to better understand and guide participant education.

We are concerned that the MSRB's formal inquiry is premature. We would prefer that the MSRB engage with industry organizations individually, and collectively through collaborative industry participant efforts like the Disclosure Industry Group (DIG), in order to foster and guide a more robust and insightful conversation on these issues.

As an industry we are just beginning to address the application of ESG in our market as we consider credit implications of ESG factors, labeling of ESG bonds and third-party verification of ESG factors. The appropriate point for intersection of ESG considerations with the regulatory framework is not clear. This is especially true since ESG matters are of a larger and global scope, and do not stem from any specific municipal securities trait. We suggest that we take some time to learn as the broader capital markets, the SEC and other global regulators wrestle with these issues. Learning from those conversations would be an important first step before being able to thoroughly review and form positions on its extension and application in the municipal market.

As is noted in the letter that NAMA signed along with other industry groups in response to this Notice (DIG letter), there are key issues that we believe should be stated up front about the MSRB's RFI:

1. It is important not to comingle the matters related to the issuance of labeled bonds and risk-based ESG disclosures related to the issuer and the issue itself.
2. EMMA is an important and valuable tool for all market participants and should be improved generally before taking on additional components such as ESG factors.
3. Market-based solutions and working groups should be given the time to find the right answers to ESG factors and needs, as has been done in the past with critical issues – COVID, bank loans, pension obligations, etc.
4. The MSRB should focus on areas where it has direct purview – rules already established that fall within the MSRB's direct scope of protecting issuers and investors.

As ESG issues germinate, we would welcome and encourage the opportunity to discuss ESG factors generally with the MSRB as they relate to MAs and the market. We would be happy to hold listening groups of different types of MA firms to engage in dialogue with the MSRB about how MAs are beginning to think about and approach ESG factors in their practice. We sincerely hope that the MSRB will consider this and engage with NAMA (and all market participants) to facilitate better understanding - for all of us - on these matters.

Below are responses to specific questions in the RFI.

Municipal Advisors

1. Does the formulation and delivery of advice regarding ESG-Labeled Bonds raise any novel compliance issues for firms, such as challenges related to recommendations, pricing, suitability or other related legal obligations?

Municipal advisors have responsibilities under MSRB Rules, especially Rule G-42, regarding any type of advice and recommendations they provide clients about a municipal securities transaction. This would include recommendations and advice related to ESG-labeled bonds. Firms that may provide this advice should develop their own policies and procedures, and, if warranted, mention in their WSPs about how to document and supervise these activities. There should be no additional MSRB compliance or rulemaking directives related to labeled bonds at this time. Anecdotally we are not aware of any widespread MA engagement in advising clients to issue labeled bonds, but rather MAs are working with issuers and borrowers when the topic is approached by others on the financing team or when the financing may have obvious factors that lend themselves to discuss whether the issuance should be labeled.

We strongly believe that there should be no regulatory obligations or responsibilities for MAs related to conduct diligence with respect to the data used when an issuer determines it will issue labeled bonds (either through third party or self-certification) or ongoing verification that “green” or “social” standards are being met.

2. Does the formulation and delivery of advice regarding ESG- Related Disclosures raise any novel compliance issues for firms, such as challenges related to recommendations, pricing, suitability or other related legal obligations?

MAs do not serve as legal counsel to determine what material information should be provided to investors and the public on a voluntary or mandatory basis. As with any work that MAs conduct that is not MA work, including that which may be related to issuer disclosures for municipal securities transactions, the MA should clearly state that within the scope of services and have reasonable supervisory procedures in place for this type of work. We have and continue to emphasize to MA firms, that ensuring their services – including how to represent non-MA work with clients – is well reflected in their policies and procedures.

All Participants

- 1. Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?**

As the MSRB regulates municipal advisors and broker-dealers, there does not appear to be any systemic risk posed by ESG related factors to these parties, much less the entire municipal securities market. There is an open question, however, if and how parties who certify labeled bonds, and sell that service and product to issuers are regulated, but that would be outside of the MSRB's jurisdiction.

Regarding ESG disclosures, again, this would be an area where the SEC, and not the MSRB would have jurisdiction. The MSRB, however, can continue to be helpful by allowing easier input and access to information on EMMA and create better identification of information posted.

Further we do not see any "non-regulatory approaches" that the MSRB should take in this area and do not believe this would be a good use of MSRB resources since most of the activity is outside of the MSRB's jurisdiction.

- 2. There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI.¹⁷ Does the availability of these voluntary, market-based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?**

While an interesting line of inquiry, we do not believe that this is an area of inquiry consistent with the MSRB's statutory responsibilities.

- 3. There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?**

We support GFOA's and other industry participants' initiatives related to voluntary ESG disclosures, including disclosures necessary for labeled bonds. Any regulatory discussion on this matter would need to come from the SEC and not the MSRB, who does not have jurisdiction over issuer disclosure practices or mandates. This is an area to monitor to see if investor demand further entices issuers to provide more voluntary disclosures or if other means are needed to present material information to investors.

- 4. There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?**

There is confusion regarding ESG information for labeled bonds and ESG issuer disclosures, and retail investors are the least likely market participant to have the information and knowledge to differentiate among the different types of information presented. We do not believe that the EMMA website should document this information for a number of reasons: 1) there is no standard for ESG labeling, 2) ESG disclosures are not of the nature as those required in a Continuing Disclosure Agreement and 3) this area in general is outside the MSRB's jurisdiction. It would not be useful or proper for the MSRB to expend resources seeking out and disseminating unofficial ESG-labeling information. It should be up to the issuer to determine if and how they present ESG information. The issuer can determine whether it is a labeled bond, whether there are ESG factors about their credits that need to be disclosed, or if labeled bonds need special disclosure.

If in fact the MSRB wants to display this information, it should be done through issuer submissions or through Form G-32. NAMA does not advocate for additional fields for underwriters to complete on Form G-32, we are only making the point to note what would be a proper process for detailing this information vs ad-hoc information being posted.

- 5. Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG-related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?**

While an interesting line of inquiry, we do not believe that this is an area of inquiry consistent with the MSRB's statutory responsibilities. The market needs to determine what type of ESG information it needs from issuers, and whether there are different types of credits that demand more information to interest investors. The SEC can step in and provide additional guidance, if needed.

- 6. The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website.¹⁸ This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?**

Issuers should control voluntary information presented about their issuance, not the MSRB.

- 7. What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?**

ESG disclosures on existing credits should also be able to be readily identified within the voluntary disclosure segment of the EMMA site. Preliminary Offering Statements are already available on the EMMA site and provide ESG-related information, including the labeling of bonds.

8. Is there any additional information that you would like to share with the MSRB regarding any other ESG-related activities or trends in the municipal securities market?

While there is much to say on these topics, there is not a great deal to express that intersects with the MSRB's authority to regulate municipal advisors and broker-dealers.

However, some other issues to raise include:

Credit Ratings and ESG Factors

The SEC has authority over the rating agencies and therefore any discussion of using ESG factors within their methodology would come under their jurisdiction.

Further it is unclear how a rating specifically designed for ESG criteria and is layered on top of a traditional credit rating, works in practice (e.g., issuer paying for a separate rating), again an issue that falls under the SEC related to the analytical and business practices of rating agencies. Additionally, if there is an upgrade or downgrade in that ESG-only rating, the community needs to understand if that falls under a material event under SEC Rule 15c2-12. For MSRB's purposes, how this additional rating is noted in the EMMA system is also a question.

Securitization

We recently became aware of a securitization that was labeled as a "social bond" by a third-party verifier. This securitization pooled several multifamily mortgage revenue bonds issued by a variety of conduit issuers. The underlying bonds financed construction, acquisition and/or rehabilitation of affordable rental housing. The underlying bonds were not labeled as "social bonds". The labeling of the securitization was done without the knowledge or consent of the issuers of the underlying bonds. We question whether there should be a regulatory construct to address labeling after issuance.

Thank you again for the opportunity to comment on this Notice. We look forward to having further conversations with MSRB staff on the numerous issues surrounding ESG matters in the municipal market.

Sincerely,



Susan Gaffney
Executive Director



March 8, 2022

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

RE: Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market, 2021-17 (RFI 2021-17)

Dear Mr. Smith:

The National Federation of Municipal Analysts (NFMA) appreciates the opportunity to respond to the Municipal Securities Rulemaking Board's (MSRB) request for information on Environmental, Social, and Governance (ESG) Practices in the Municipal Securities Market, Publication 2021-17 dated December 8, 2021.

The NFMA is composed of nearly 1,200 members, primarily research analysts, who evaluate credit risks and other attributes of municipal securities. These individuals represent mutual funds, insurance companies, separately managed accounts, broker/dealers, bond insurers, advisors, rating agencies, and other municipal bond industry stakeholders. A key focus of the NFMA is to support timely and material disclosure to all market participants by issuers of municipal bonds, which is necessary for analysts to effectively assess credit and other attributes of municipal bonds.

The MSRB's mandate of "protecting investors, municipal issuers, and the public interest by promoting a fair, efficient and transparent municipal market" is clearly aligned with the NFMA's interests. Since its inception in 1983, the NFMA has been a strong advocate of improved disclosure, a critical building block of fair, efficient and transparent markets. The NFMA also issues comment letters and position statements on relevant topics in the municipal market. The NFMA's extensive library of Best Practices in Disclosure and White Papers is available at www.nfma.org.

Given the alignment in the MSRB's request for information on ESG practices of the municipal market and the NFMA's interests in supporting effective disclosures in municipal bond offerings, we have endeavored to provide information on ESG disclosure from today's perspectives of municipal analysts. However, as industry practices, bond products, costs, regulatory expectations, social norms, international standards, and technology in this inherently complex and often personal and subjective ESG finance market are rapidly evolving, we believe this topic will involve further analysis, study, and dialogue. In addition, other industry groups have also provided alternative opinions on the topic. To reconcile differing opinions, legislative and regulatory actions may be appropriate in the future. Yet, at this juncture, we view such actions as extreme and often not optimal, as such directives tend to be inflexible, set bare-minimum standards instead of best practices, and introduce unnecessary



compliance costs throughout the system.

We will address the MSRB’s questions within the following four sections focusing on the importance of material, timely, and accurate disclosure in municipal securities regarding ESG-related risk factors, ESG-related practices, and associated data:

- Section 1. ESG-related information¹ to assess credit quality for all municipal bonds
- Section 2. Evaluation of “ESG-Labeled Bonds” for investors with Impact/Sustainable mandates
- Section 3. Equitable access to relevant, comparable, and forward-looking ESG-related information
- Section 4. Specific recommendations and suggestions to enhance a fair, efficient and transparent municipal market

Clarity on Multi-Faceted Needs for ESG-Related Information is Required to Make Progress on ESG Disclosure

The NFMA notes the common conflation of three separate ESG-related disclosure needs that are driven by three distinct analytical intentions for the use of ESG-related information. We identify these three separate and sometimes overlapping analytical perspectives that are driving increased requests for enhanced ESG-related information as: 1) ESG-related information that is necessary to evaluate credit quality; 2) ESG-related positive impact metrics that are requested for ESG-labeled bonds and by impact-driven investors; and 3) ESG-related information that allows asset managers, not necessarily just impact investors, to employ screens for specific ESG-factors, score bonds with internal ESG rating scores, or comply with fund or company-level ESG mandates and targets. Related to this third perspective, the investor community is increasingly taking a more deliberate approach to deploying capital consistent with various standards and commitments to sustainable financing initiatives without necessarily identifying themselves as proactive impact investors.

The ESG-related disclosure needs for each perspective differs. In our responses, we have carved out Section 1 to delve more deeply into ESG-related information needed for credit analysis, and Section 2 to discuss disclosure needs of ESG-labeled bonds (and impact-driven investors). The NFMA recognizes that the third perspective, while important, is quite broad and enhanced ESG disclosures will largely depend on management’s views of the ESG-related matters that are most relevant to their entity.

SECTION 1. ESG-RELATED INFORMATION TO ASSESS CREDIT QUALITY FOR ALL MUNICIPAL BONDS

The NFMA believes that ESG-related information that contributes to the evaluation of creditworthiness

¹ As defined by the MSRB in the RFI, ESG-related risk factors, ESG-related practices, and associated data are collectively referred to as “ESG-related information”.



of bond issuers is material to investment decisions for municipal securities. In fact, some ESG-related information has always been embedded in municipal credit and risk analysis and investment decisions, even it was not necessarily divided into the "E", "S" and "G" categories. The movement toward this demarcation reflects the increased impact that certain ESG-related risks may have on an issuer's creditworthiness. For example, wildfires, storms, employee discrimination suits, investment portfolio oversight practices, and other ESG-related risks have impacted the credit profiles of several municipal bonds in the recent past.

There is strong investor demand for information on how a municipal issuer interacts with and is impacted by: "E" – climate change and other environmental factors; "S" – its customers, resident population, and labor force; and "G" – how these factors are influenced and determined by its governance structure as well as its management oversight and operating and capital strategies. A key point is that municipal analysts are looking to the issuer community to provide information that explains how management addresses ESG risks. Investors generally do not need to know of every imaginable ESG risk facing issuers, but increased consistency and insight into how management is prepared to respond to ESG-related risk is important.

Materiality of ESG-related information

On the topic of materiality, the NFMA acknowledges that specific ESG factors and their relevance and materiality vary significantly depending on the municipal sector and geographical location – a water/sewer system's ESG exposures and risks in the West will differ greatly from those of a transportation system in the Northeast, a local or state government in the South, an energy supplier outside of the mainland U.S., or public university in the Midwest. While specific ESG factors will differ, the concept of materiality does not. Material ESG-related risks are those that may impact an issuer's short-, medium-, or long-term financial viability and thus, its ability to repay its debt obligations.

The NFMA believes that some level of standardization regarding material ESG risks can be attained with continued industry collaboration. We believe there would be numerous benefits to investors and issuers to standardize basic expectations, while leaving flexibility for sector-specific matters. Small and large issuers alike would benefit from avoiding one-off, potentially disparate investor demands if standard disclosure met most investors' needs. Further, more robust, standardized disclosure would support transparency in the markets and reduce opportunity for asymmetric information, given that some issuers may currently refrain from disclosing information that a prudent person would deem material due to misunderstanding of the importance of certain ESG-related information.

While the NFMA acknowledges that some smaller issuers may have capacity constraints that limit their ability to deal with appropriate ESG risk disclosures, they remain responsible for timely, robust disclosures. Even for these issuers, it is critically important for material ESG risks to be thoughtfully considered and disclosed, as in many instances these same issuers more operationally and financially vulnerable to ESG risks. There are various products and services, several from not-for-profit entities, to assist them with such disclosures.



E – The ESG factor that may be the best first target for more consistent, robust, and standardized disclosure

The ESG factor that we believe already transcends sectors in terms of materiality with some degree of consistency is environmental risk. Environmental risk comes in two forms: the physical exposures to Mother Nature in the form of hurricanes, floods, drought, wildfires, and the like; and transition risk, which applies to an entity's costs, requirements, and even relevance (e.g., a coal mining facility), as the world transitions to a lower carbon society.

The NFMA believes that climate risk can impact property values and insurance premiums, income levels, operating and tax revenues, migratory patterns and operating and capital expenditures; all of which can affect the creditworthiness of borrowers and pose a systemic risk to the municipal bond market more broadly.

Yet, despite the acknowledged broad risk of climate change to the municipal market, to date, issuers have not been directed to transparently share the material, historic impacts of climate-related events such as hurricanes, flooding, water availability and management, or wildfire risk on their economic bases, population, and financial and debt profiles. We recommend, at a minimum, that such historical impacts be disclosed in municipal bond offering statements.

Regarding transition risks, while there is disagreement over the outputs of climate modeling tools, there is concurrence that we have entered a time of climate transition as the globe strives to fulfill sovereign net zero targets. As such, the material nature of this transition will have a significant impact on a broad swath of the municipal market; yet, like physical climate risks, there is no requisite guidance on how issuers should identify and disclose the material nature of these risks. We recommend that management discussion of how their entity is addressing transition risk is noted in bond offering statements.

Certain S&G risks also apply to all municipal issuers, and should be addressed

While environmental risks stand out as the most widespread ESG factor with pervasive credit implications, other ESG-related issues are well-recognized regarding the potential for broad material financial impact, including cybersecurity risks and labor force issues. However, transparent and accessible issuer disclosure is lacking.

On cybersecurity risk alone, in our *White Paper on Best Practices in Cybersecurity Risk Disclosure for State & Local Governments in Municipal Offerings (November 2020)*, the NFMA noted the ad hoc and incomplete nature of issuer disclosure, along with the lack of SEC guidance on this systemic issue to municipal issuers in comparison to public companies. For the NFMA, the widespread nature of cyberattacks, potential for broad public harm, significant issuer financial repercussions and the recognized need for strong management strategies to address this risk, clearly call for issuer disclosure guidance. We affirm that sentiment for other ESG-related issues.



Convergence with existing standards and collaboration to develop needed guidance

Given the need for both sector-specific guidance, as well as unified framework for assessing climate risk more broadly, we recommend taking a similar approach to establishing frameworks for disclosures to what we have seen in the corporate market with the Sustainability Accounting Standards Board (SASB)² and the Task Force on Climate Related Financial Disclosures (TCFD)³. SASB provides industry-specific guidance on identifying and reporting on ESG factors that are most material to specific industries. TCFD is a complement to SASB and provides a framework for assessing and reporting on climate-related risks and opportunities, understanding that the materiality of climate risk transcends sectors and should be a key consideration for virtually all issuers. Organizations such as CDP (formerly the ‘Carbon Disclosure Project’)⁴ and the Government Finance Officers Association (GFOA)⁵ have already started to think through what a TCFD-like framework could look like for municipal issuers, working closely with investors and issuers alike, which we suggest as a useful starting point to establishing consensus.

Format of ESG disclosures

The NFMA endorses the inclusion of material ESG risks in offering documents for all municipal bonds to assess creditworthiness of issuers and in post-issuance disclosures. The NFMA is agnostic as to where in the offering documents it is included (e.g., risk disclosures, appendices), as long as it is included. Analysts prefer acceptable ESG-related information and disclosure to be common practice in the offering documents and in post-issuance disclosures.

SECTION 2. EVALUATION OF “ESG-LABELED BONDS” FOR INVESTORS WITH IMPACT/SUSTAINABLE MANDATES

In this section, the NFMA is responding to the MSRB’s request for information related to “ESG-Labeled Bonds,” or bonds for which proceeds are dedicated towards specific environmental and/or social impact goals. Such bonds are marketed as Green, Social and Sustainability/Sustainability-Linked Bonds (rather than the term ESG-Labeled Bonds), and collectively, we will refer to them in this letter as “Impact Bonds” or “Labeled Bonds”.⁶

Types of additional information for Impact Bonds

In addition to ESG-related information that is used to assess credit quality, there is an expectation of another layer of disclosures for Impact Bonds, regardless of the bonds being self-designated or designated by a second-party verifier. This information focuses on the specific environmental and/or social benefits that are targeted by bond proceeds and is of particular importance for fund managers

² <https://www.sasb.org/>

³ [Task Force on Climate-Related Financial Disclosures | TCFD\) \(fsb-tcfd.org\)](https://www.taskforceclimatechange.org/)

⁴ <https://www.cdp.net/en/info/about-us>

⁵ <https://www.gfoa.org/materials/marketing--bonds-esg>

⁶ Impact Bonds are a growing subset of the U.S. municipal bond market. In 2021 alone labeled bonds constituted more than \$47 billion, nearly 10% of total municipal bond issuance, according to data extracted from Bloomberg.



who are investing on behalf of environmental or social funds or mandates. Additional information most useful to investors of Impact Bonds include:

- In the Preliminary/Final Offering Statement:
 - Qualitative information related to a municipal entity’s environmental and/or social governance practices, policies, planning, and procedures is critical, and is at least as important as quantitative data. This information will include how the project financed by the labeled bond was evaluated and approved. Specific to the municipal market, investors cite a need for disclosure regarding municipal entities’ environmental/social strategies and policies, including what zoning, tax incentives, user-based fees, or regulations a municipality implements to protect or improve the environment or meet social goals.
 - Quantitative information including specific, measurable impact goals above the baseline status. For Impact Bonds that finance individual projects, these metrics should focus on impacts of the individual projects but may also note the entity-level goals and impacts. For Impact Bonds financing broader social or entity-level goals, entity-level data may suffice.
- Post-issuance (and for secondary market trading):
 - Project/construction status disclosures: While we expect most construction projects to provide updates related to progress and completion, for Impact Bonds it is highly important to disclose deviations from the project plan if the environmental or social impact will be delayed or altered from the original plan.
 - Use of proceeds certifications: Certification that proceeds were used to fund the stated project(s). Issuers likely track this already, either for IRS arbitrage rules for tax-exempt bonds or for taxable bond issuances (based on crossover investor expectations).
 - Actual impact achieved vs. goals, annually or as described in offering documents
 - All post-issuance project and impact reports should be posted in clearly designated documents on EMMA.

Convergence with existing standards

The NFMA supports some level of convergence and harmonization of standards while addressing the unique and varied attributes of U.S. municipal issuers. One global set of standards frequently cited is The International Capital Market Association’s (ICMA) Green Bond Principles, Social Bond Principles, Sustainability Bond Guidelines and Sustainability-Linked Bond Principles⁷. Further, several funds and issuers worldwide align to the United Nations’ Sustainable Development Goals (SDGs)⁸, so addressing how bond proceeds also align to the SDGs is helpful. There is growing emphasis on targeting improvements to one or more of the SDGs while doing “No Significant Harm” to any of the other SDGs. For example, investors may consider the positive impact of an affordable housing development under SDG 11, “Sustainable Cities and Communities”, but not necessarily if the development negatively impacts biodiversity, a goal of SDG 15, “Life on Land”. For the subset of

⁷ [Sustainable Finance | ICMA » ICMA - International Capital Market Association \(icmagroup.org\)](https://www.icmagroup.org/sustainable-finance/)

⁸ <https://sdgs.un.org/goals>



Labeled Bonds identified as Green Bonds, the Climate Bonds Initiative (CBI)⁹ outlines a set of standards that are used by several second party verifiers to certify several municipal bonds under CBI's consistent protocols.

The global standards cited above are good starting points to frame issuers' disclosures. However, specific metrics most useful to U.S. municipal Impact Bond investors will vary somewhat according to the type of municipal project financed, the type of Impact Bond (Green, Social, Sustainability), and specific investor mandates.

Role of second-party opinions

Second-party opinions and external certifications on Impact Bonds are useful, but not entirely sufficient, to meet the needs of impact-focused investors. Some investment firms, particularly those without in-house ESG-impact evaluation teams, recognize some (but not all) certifications as sufficient criteria for their impact mandates. Like credit rating agencies, second-party opinions from firms that employ consistent, transparent methodologies with detailed evaluation reports consistent with these methodologies are most credible to investors. Second party opinions that deem, for example, any water utility bond as a Green Bond, are less useful.

Some investors required direct disclosure of underlying impact goals and achievements to consider these bonds in their environmental-impact portfolios. Therefore, to achieve maximum marketability for issuers' Impact Bonds, the NFMA strongly endorses the direct disclosure, in Preliminary/Final Offering Statements and on EMMA, of underlying qualitative and quantitative information described above, *even for bonds with second-party ESG opinions.*

Compared to Green Bonds, investment mandates and goals for Social Bonds are quite varied and often more subjective. For this reason, the NFMA also recommends direct disclosure to investors regarding underlying goals and achievements of Social Bonds, even for those bonds with second-party opinions.

Additional benefits to issuers of direct disclosure of impact information to investors on EMMA

In addition to providing direct information to investors to allow them to validate a bond as meeting their investment mandates, direct disclosures to investors are particularly useful for issuers in sectors that may seem counter to having a designation as Green or Social (e.g., airports and certain power/energy providers). A clean-energy project financed by bonds issued by a more traditional fossil-fuel dependent entity, for example, would garner greater inclusion in Green Bond portfolios with the types of disclosures suggested herein.

There are considerable differences in opinion, even among NFMA members, whether refunding bonds that are labeled should be included in impact portfolios. Again, for maximum marketability for an issuer's refunding bonds in impact portfolios, disclosure regarding original use of proceeds, construction/project status, ongoing impacts achieved are important considerations.

⁹<https://www.climatebonds.net/>



Further, investors are increasingly assigning impact scores (e.g., 1-10) for bonds in their impact portfolios, rather than strictly identifying a bond with an on/off switch as green/not green or social/not social. For these internal impact scores, direct disclosure to investors is necessary.

Finally, investment firms themselves are often subject to fund-level or mandate-level impact reports across all the bonds in their impact portfolios. Fund managers must select bonds with clear, accessible, comparable, and timely disclosure on actual impact achieved to aggregate impact information for fund-level reporting. Again, clear disclosure directly to investors on EMMA would provide maximum benefits for issuers that desire their bonds to be included in impact portfolios.

SECTION 3. EQUITABLE ACCESS TO RELEVANT, TIMELY, COMPARABLE, AND FORWARD-LOOKING ESG-RELATED INFORMATION

The NFMA posits that market transparency is hindered by inefficiencies in locating material, comparable ESG-related information, even event-driven and material ESG information, when such events occur. Locating pertinent ESG information on municipal issuers – if it exists at all – is a major challenge, complicated by a myriad of free and fee-based ESG data subscriptions, many of which do not address the qualitative information municipal analysts need to assess credit risk or evaluate impact for designated portfolios. As discussed in Section 1 for all municipal bonds and in Section 2 for Impact Bonds, access to this information is paramount to making informed investment decisions.

The NFMA strongly endorses robust, material disclosures, including ESG-related disclosures, to be made initially at the point of sale of the security – as aggregated within the offering statement – and on a post-issuance basis, on EMMA. Despite the clear needs of the investor community for, and the increasing materiality of, ESG-related information that directly impacts the credit quality of municipal bonds, Preliminary/Final Offering Statements and Continuing Disclosure Agreements (CDAs) have yet to integrate ESG disclosures (and for Impact Bonds, progress against issuers’ stated ESG goals). As stated earlier, we do not believe regulatory action is warranted at this time, however, it is incumbent on the issuer community to keep the investor community apprised of ESG-related events. We think this can be accomplished through voluntary disclosure on an interim basis. We also support considering amendments or modernization to outdated CDAs to include ESG-related disclosures.

We firmly believe ESG-related factors or events have the potential to pose systemic risk to the municipal securities market. Rather than listing possible events, impossible to foresee, we note that the approach taken by a joint statement issued by then Chair of the Securities & Exchange Commission (SEC) Jay Clayton and then Director of the SEC’s Office of Municipal Securities Rebecca Olsen. The statement, entitled *The Importance of Disclosure for Our Municipal Market* (Joint Statement), was published May 4, 2020 in response to the coronavirus pandemic, and was highly effective in helping the usually opaque municipal bond market function during this time of high uncertainty. Many issuers presented ad-hoc, unscheduled updates to operational and financial performance, including *projected* performance, to all market participants. These disclosures were essential to the fair and effective functioning of the municipal markets. The NFMA believes such guidance is applicable to ESG-related risk disclosures. Interim disclosures on EMMA provide an opportunity for nearly real-time disclosures. Further, interim disclosures provide important operational and financial updates in advance of



disclosure commitments that can lag the close of a fiscal year by as much as 270 days. This transparency, in turn, increases confidence in the municipal markets, particularly during times of crisis, allowing investors to trade municipal securities. Interim, voluntary disclosures are effective at closing information gaps between filing statements.

In another example of interim disclosures related to climate events that helped to provide timely, relevant, and material credit information to the market, many senior housing providers provided interim disclosures when they were forced to evacuate their entire resident bases and staff during a recent Florida hurricane.

The NFMA endorses the use of EMMA to post all voluntary ESG-related disclosures and related impact reports for Green, Social, and Sustainability bonds issued in the municipal market. While fee-based systems are available to some investors, EMMA's accessibility for both individual and sophisticated investors allows for the level playing field for information. We note some suggestions to make EMMA easier to search and use in Section 4. Currently, investors are seeking ESG-related information from a cumbersome variety of issuer websites, and often cannot find what they need. Further, these informational sources may not be specifically related to each issuer's unique situation, a nuance that only the issuer can accurately relay to the market.

SECTION 4. SPECIFIC RECOMMENDATIONS AND SUGGESTIONS REGARDING ESG-RELATED INFORMATION TO ENHANCE A FAIR, EFFICIENT AND TRANSPARENT MUNICIPAL MARKET

The NFMA acknowledges recent improvements to municipal bond disclosure practices from the amendments effective in 2019 to the SEC Rule 15c-2-12 material event notices and through enhancements to EMMA. At this juncture, the NFMA would like to encourage the MSRB to consider the following additional enhancements to EMMA, or to note the following recommendations:

- The NFMA believes that a “safe harbor” proclamation for ESG-related information, much like the SEC’s Joint Statement, could be vastly helpful in facilitating ESG-related disclosures both in primary market offering statements and in interim, post-issuance disclosure.
- The NFMA believes that EMMA is capable of housing disclosure beyond that specifically required by Rule 15c2-12. With forthcoming additional disclosures associated with ESG-related securities, the NFMA looks forward to proposed enhancements to EMMA which will address the EMMA system’s accuracy, functionality, and usability. Such enhancements would increase the flow of information and improve market efficiency.
- Posting of Preliminary Offering Statements on EMMA, prior to pricing, would ensure that all market participants, including holders of parity bonds, have equal access to the latest disclosure document of an issuer. Whether the bond issue is competitive or negotiated, this would enable all investors interested in bidding/purchasing the bonds who might otherwise have been excluded from participation. This would also provide the most current disclosures for an issuer in advance of their CDA filing date and could be linked to parity and related obligor securities.
- The NFMA encourages the development of enhancements to the input dashboard used by



issuers or their advisors whereby voluntary, interim disclosures and ESG risk disclosures can be appropriately labeled, categorized accurately and easily searched for on the obligor, issue, and project level. An ESG tab for all separate ESG disclosure would be useful.

- We encourage development of procedures to reduce errors and enhance consistency, as well as correction of document filing errors and mislabeling.
- All information should be posted according to the obligor and/or 8-9-digit CUSIP, not the issuer.
- The NFMA requests that the sources of any data or information from an independent third-party provider that the MSRB includes on EMMA is clearly identified, reliable, and verified for accuracy. Providing access to this kind of often expensive, comprehensive, third-party data on EMMA is supportive of creating a level playing field of information for investors. However, the NFMA would like to request that any third-party data also includes transparency regarding any methodologies employed to interpret data, and for this to be clearly noted on the relevant EMMA page(s). The NFMA supports the MSRB's safeguards to prevent and identify technical glitches in integrating third-party data, as unreliable or inconsistent data is worse than no data at all.
- While the NFMA does not discourage additional data or information on EMMA that is related to sustainable investing, such as the new ESG indicator on EMMA's New Issue Calendar Page, other versions of this feature would be vastly more useful to municipal analysts:
 - Rather than have an ESG indicator on bonds in EMMA's New Issue Calendar Page, an indicator for bonds that are labeled as Green, Social, or Sustainability bonds would be most useful in the search function of EMMA. Ideally, the search could be conducted for bonds of a particular second-party opinion verifier or to find/screen-out bonds that are self-designated, as well.
 - Any indicator of a bond's ESG label status can provide the data about how a bond is being marketed, but the important information that is necessary for municipal analysts evaluating Impact Bonds is the underlying data, reports, strategies, second party opinion reports, and management governance practices surrounding the impact in question. A separate EMMA page related to ESG-related information could house these reports. There are paid databases that currently house this kind of information for labeled municipal bonds, but as paid databases are not accessible to all municipal investors.
 - An ESG-related page for each municipal obligor on EMMA could also incorporate embedded links to other web sites/organizations that provide ESG-related information. This includes obligor-specific data from the U.S. Environmental Protection Agency, Federal Emergency Management Association, ICMA and Climate Bonds Initiative.
- The NFMA recommends formation of an industry working group to collaborate on ESG-related disclosure.

The NFMA acknowledges that disclosures and metrics are expected to evolve and be refined over time. Nevertheless, investors need to be able assess issuer ESG risks and impacts, year-over-year, and be able to compare issuers against others with similar ESG-related risks. This is another reason why a dedicated tab on EMMA would be ideal.



To reiterate, the NFMA supports the development of a functional data base for all investors. This is important to smaller investors, particularly retail investors, who do not have access to private technology systems available to some institutional investors. The NFMA believes by addressing the above-mentioned items, the EMMA system's accuracy, functionality, and usability would be greatly improved, increasing the flow of information, and improving market efficiency.

Thank you for your consideration of our comments. The NFMA looks forward to continuing to work with the MSRB on ESG-related topics to promote an efficient and transparent municipal market.

Sincerely,

/s/ Lisa S. Good

Lisa S. Good





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Elizabeth Maher Muoio, **State Treasurer**
Shawn LaTourette, **DEP Commissioner**
Diane Gutierrez-Scaccetti, **DOT Commissioner**
Lt. Governor, Sheila Y. Oliver, **DCA Commissioner**
David E. Zimmer, **Executive Director**

March 8, 2022

Municipal Securities Rulemaking Board (“MSRB”)

Re: Response to MSRB Notice 2021-17 Request for Information

This letter serves as the New Jersey Infrastructure Bank’s (“I-Bank”) response to the Municipal Securities Rulemaking Board (“MSRB”) Notice 2021-17, published December 8, 2021, which requested comments to specific questions for municipal issuers and municipal market participants. The I-Bank provides its responses as a municipal issuer as follows:

(A) Municipal Issuers

- (1) Are you currently providing ESG-Related Disclosures or ESG-related information beyond the legally required disclosures in your offering documents, continuing disclosures, or other investor communications? If so, please consider providing examples. If not, please consider describing how you address ESG-Related Disclosures in your offering documents, continuing disclosures, or other investor communications. In your view, should municipal issuers include a separate section in their official statements and other offering documents expressly devoted to ESG-Related Disclosures?

The I-Bank issues ESG-Labeled Bonds. Specifically, the I-Bank typically issues Green Bonds twice a year as part of its Water Bank program ascribing to guidance from the International Capital Market Association. The Introduction of Official Statements connected with any Green Bond issuance clearly state that the bond proceeds are being used to fund the improvement of the quality of wastewater treatment systems and drinking water supply systems throughout New Jersey. Additionally, an appendix to the Official Statement includes a list of borrowers and full descriptions of the projects funded. All projects are construction complete to mitigate any uncertainty of future use. Finally, the I-Bank publishes Green Bond Reports which are posted on its website detailing the use of bond proceeds towards green projects.

Suggestion: Municipal issuers could include a separate section in their Official Statement and other offering documents expressly devoted to ESG-Related Disclosures. Guidance from MSRB for content would be helpful to establish guidelines about what should be reported.

- (2) Do you believe the information included in ESG-Related Disclosures should be standardized? If so, how? If not, why not? In your view, is there a consensus on what information and which metrics are important? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are relevant and should be included in ESG-Related Disclosures?

Yes, information included in the ESG-Related Disclosures should be standardized and include metrics for distinct types of assets (e.g., Alternative energy, Transportation projects that reduce the carbon footprint, environmental impact, etc.). Underlying asset categories, and possibly subcategories based on the level of ESG impact, should be included in any ESG-Related Disclosure.

- (3) Have you issued ESG-Labeled Bonds? If so, please consider providing an example and describing what criteria were used to make the ESG designation. Did you utilize an independent party to validate or otherwise attest to the use of the ESG designation? Please consider explaining why or why not.

Yes, the I-Bank has issued Green Bonds (see answer to question 1). The I-Bank has not used an independent party in the past to validate or attest to the Green Bonds designation because the underlying assets supporting the repayment of the I-Bank bonds are environmental infrastructure projects. The bonds clearly could be classified as Green Bonds.

- (4) If you issued ESG-Labeled Bonds, did you commit to providing any ongoing or continuing disclosure related to the ESG designation? If so, was that disclosure commitment incorporated into the continuing disclosure agreement or similar contractual obligation related to the Securities Exchange Act Rule 15c2-12 (collectively, the “CDA”)? If so, please consider providing an example of the CDA. If the disclosure commitment was not incorporated into the CDA, how is information made available to an investor on an ongoing basis and at what frequency?

Yes. The information is made available on an annual basis as an attachment on the I-Bank’s Financial Plan submitted to the NJ Legislature and published each May, and it is also posted on BondLink and the I-Bank’s website.

- (5) Are you providing information to the credit rating agencies regarding ESG-related risk factors and ESG-related practices? If so, what type? In your view, how does this information generally compare to the information provided in your offering documents and continuing disclosures? Are the credit rating agencies requesting any new types of ESG-related information? Has the credit rating process changed in any significant ways in relation to ESG-related information?

As a conduit issuer with a large revolving debt reserve program that supports the I-Bank’s environmental bond issues, the I-Bank provides information to the Rating Agencies that is specific to the State Revolving (“SRF”) Fund program. The I-Bank does present that it is issuing green bonds to the credit agencies with descriptions of each project being financed. To date however, the credit agencies have not requested ESG-related risk factors when they rate our pooled bond issues, nor have they asked for information beyond what we present.

(E) All Municipal Market Participants

- (1) Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?

Sea level rise is one potential ESG-related risk factor that could pose a systemic risk to the municipal securities market for coastal communities and communities on related tributaries. MSRB regulations could require periodic disclosures from a municipal bond issuer (e.g. every five years) while bonds are outstanding regarding the percentage of ad valorem properties or properties that are associated with

bond revenues which are under water at high tide during that period (pursuant to the then current NOAA maps) and the corresponding impact to the issuer's tax revenues.

- (2) There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. Does the availability of these voluntary, market-based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?

On the 20 Green Bonds it has issued to date, the I-Bank voluntarily complies with the ICMA Green Bond Principles. Reporting should be standardized with specific metrics to increase clarity for those asset classes where ESG labeling could be questioned. This requirement is less important for those asset categories in which ESG measurements are clear. Whether the availability of voluntary, market-based standards provide adequate guidance and transparency depends on the type of asset. A suggested approach could be to establish categories within which guidance can be developed depending on how strong the project fits into ESG related activities. Regardless of the development of concrete standards, due to the nature of the variety of types of assets that could be considered ESG, there will be a need to include voluntary disclosures to capture the breadth and types of projects.

- (3) There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?

Accurate information is always useful information. However, definitions and categories of what is being reported should be standardized to enable investors to make direct comparisons between the data.

- (4) There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?

There should be equity regarding availability of information, but not aggregation. Having such raw information publicly available equally to all market participants will ensure the free market functions properly. How companies may decide to analyze, aggregate, and present such data is a market value product.

- (5) Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG-related information for a municipal issuer as for a corporate issuer? And how might classes of investors (e.g., foreign versus domestic; retail versus institutional; tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?

N/A.

The I-Bank only issues municipal bonds which are, almost exclusively, tax-exempt. As an issuer of tax-exempt municipal securities our experience and knowledge with corporate or taxable investors is not deep enough to comment competently.

- (6) The MSRB has recently incorporated an ESG indicator from an independent data vendor, HIS Markit, into the New Issue Calendar shown on the EMMA website. This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making the ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers, or other market participants?

Yes, we believe an ESG indicator is valuable to municipal issuers as it can assist in drawing non-traditional investors to this bond sector. Allowing issuers to denote ESG and identify the method used to procure the ESG indication (e.g. voluntary standards, third party validation agent) minimizes the tracking costs for the MSRB and places the responsibility fairly on the issuer. Having a denotation is a good start. One suggestion to create a more flexible tool for investors would be to create a search tool on EMMA or standardized reporting for these issues to enable investors to better compare investment opportunities in this sector.

- (7) What improvements could the MSRB make to the EMMA website regarding ESG-Related Documents, ESG-Labeled Bonds, and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

A search filter directing investors to ESG Bonds on the EMMA website would enhance access to information and efficiency.

- (8) Is there any additional information that you would like to share with the MSRB regarding any other ESG-related activities or trends in the municipal securities market?

No, thank you.



Contact: Ellen K. Duffy
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Response to MSRB

**Request for Information on Environmental, Social and
Governance (ESG) Practices in the Municipal Securities Market**

(A) Municipal Issuers

- 1) The New York City Housing Development Corporation (“Corporation” or “HDC”) currently provides ESG related disclosures and information. Here is the link to one of HDC’s recent financings. (https://www.nychdc.com/sites/default/files/2022-01/Dec%202021%20Open%20Res%20OS_12162021.pdf) We include information for HDC’s **Sustainable Development Bonds** under the **Plan of Finance** section of the POS and OS (p. 8-10 of OS). In this section, the **Use of Proceeds, Project Evaluation and Selection, Management of Proceeds, and Post-Issuance Reporting** is described. Also, in the chart describing the mortgage loans being financed (p.13), the Sustainable Development Bonds description includes Subsidy Program, Expected EGC or LEED Certification and LIHTC status. It is helpful to the investors to have a section in the main body of the OS describing the ESG criteria as HDC currently does.

- 2) It is difficult to have all ESG-Related Disclosures standardized because different sectors have different criteria and objectives. As the Green and Social Bond market matures and develops standard consensus around certain social and environmental goals, the Corporation seeks to align itself accordingly. The Corporation does not plan to make any substantive changes to its social and green goals and programs. The Corporation’s Sustainable Development Bonds designation reflects the use of the proceeds of the Bonds in a manner that is substantially consistent with the “Social Bond Principles” and “Sustainability Bond Guidelines” as promulgated by the International Capital Market Association (“ICMA”). The Sustainable Development Bonds designation also reflects the use of the proceeds of the Bonds in a manner that is consistent with “Goal 1: No Poverty” and “Goal 11: Sustainable Cities and Communities” of the United Nations 17 Sustainable Development Goals (referred to as “UNSDGs” generally and “SDG 1” and “SDG 11” specifically). The UNSDGs were adopted by the United Nations General Assembly in September 2015 as part of its 2030 Agenda for Sustainable Development. SDG 1 is focused

on ending poverty in all its forms everywhere, and SDG 11 is focused on making cities and human settlements inclusive, safe, resilient, and sustainable.

These are the criteria that HDC is comfortable aligning to given the affordable housing programs that the Corporation finances. Other issuers will have different objectives and investors typically do their own analysis of the market. It is important to describe the Use of Proceeds, Project Evaluation and Selection, Management of Proceeds, and Post-Issuance Reporting.

- 3) NYCHDC issues Sustainable Development Bonds based on the reasons described in response to question 2. HDC does not use an independent party to validate the use of the ESG designation because it is not necessary to market HDC's bonds and the market is constantly evolving. We have had discussions with ESG investors, and they have indicated to us that they do their own analysis, and a third-party opinion is not needed at this time. Also, issuers do not see any pricing benefit of marketing ESG bonds to warrant this extra expense.
- 4) The Corporation will provide annual updates regarding the disbursement of the proceeds of the Sustainable Development Bonds for the financing of Mortgage Loans. The Corporation will cease to update such information with respect to a Development when the applicable Mortgage Loan has been fully funded. This reporting is separate from the Corporation's obligations described under its Continuing Disclosure Agreement ("CDA") and will be provided on the Corporation's website (www.nychdc.com/sustainable-development-bonds).
- 5) We do not provide any additional information to the rating agencies other than what is described in the Official Statement. The rating agencies are not requesting any new types of ESG-related information.

E) All Municipal Market Participants

- 1) None noted
- 2) These organizations provided adequate guidance to NYCHDC.
- 3) NYCHDC periodically reviews current initiatives and will make adjustments if these initiatives enhance the marketing of HDC's Sustainable Development Bond Program.
- 4) Not familiar with this data to answer question; not aware of any market confusion.
- 5) Not familiar with this data to answer question.
- 6) HDC has not been impacted by this or had any investor inquiries regarding this information.
- 7) NYCHDC would not want to be required to post additional information on the EMMA website.
- 8) Until there is greater demand for HDC's Sustainable Development Bonds by ESG investors and there is a significant pricing benefit, the Corporation is reluctant to commit to additional disclosure and reporting activities or to engage a Third party for an opinion on HDC's program.



March 7, 2022

Mr. Ronald Smith, Corporate Secretary
Municipal Securities Rulemaking Board (MSRB)
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2021-17: Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Dear Mr. Smith,

pfm

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215.567.6100

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PFM Financial Advisors, LLC (“PFM”) welcomes the opportunity to submit comments in response to the Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market (the “Request for Information”) issued by the Municipal Security Rulemaking Board (the MSRB). In 2021, PFM was the nation’s leading independent municipal advisor, having advised on 935 bond transactions with a total par amount over \$67 billion, according to Ipreo. Our municipal market presence gives us a broad, national perspective on the municipal market on behalf of our municipal advisory activities and the municipal entities and obligated persons we serve. We have a long-standing commitment to working in the public interest, as well as promoting environmental sustainability, and we are actively engaging in ESG considerations with our clients and other market participants.

While PFM understands and appreciates the MSRB’s desire for marketplace clarity and uniformity, PFM does not believe that action is required of the MSRB at this time for ESG-labeled bonds nor ESG-related disclosure considerations. PFM believes that a variety of market-based initiatives (e.g., voluntary standards, rating agencies, private vendor ESG certification services, GFOA) are appropriately guiding and directing the evolution of this market. In our observation, issuers are by-and-large responding, as appropriate, to these initiatives. And, PFM observes no widespread and material distinction in investor interest in bonds (or the pricing of bonds) due to ESG-related disclosure considerations. Municipal issuers already have a clear, existing obligation to disclose complete and accurate material information, including ESG factors, related to the security of any given series of bonds, and that obligation is being fulfilled.

For ESG-labeled bonds, internationally accepted standards (e.g. ICMA’s Green Bond Principles, Social Bond Principles, and Sustainability Bonds Guidelines and CBI’s Climate Bonds Standards) do exist and are increasingly used by municipal issuers. Municipal issuers are also increasingly using private vendor ESG certification services, with over \$17B of municipal issuance in 2021 receiving this verification.¹ Furthermore, we note an August 2021 report from S&P Global Ratings found that the fear of greenwashing may be greater than reality: “While there are increasing concerns that these potentially misleading practices [i.e., greenwashing, sustainability washing] are taking place, there seems to be little evidence that they have become widespread in reality.”²

¹Source: IHIS Markit.

² S&P Global Ratings “The Fear of Greenwashing May Be Greater Than the Reality Across the Global Financial Markets,” August 23, 2021.



For ESG-related disclosure, broadly recognized leaders in municipal finance (e.g., DC Water, the City and County of San Francisco, the Sacramento Municipal Utility District, and the New York Metropolitan Transportation Authority) are setting the stage with solid examples of voluntarily addressing ESG risks and reporting key metrics through primary market disclosure and through additional reporting.³ For some issuers, disclosure counsel has recommended including any voluntary ESG reporting information as part of the Continuing Disclosure Undertaking as a means to ensure that the issuer has a formal reporting framework.⁴ The rating agencies have also made significant efforts to increase the transparency of their assessment of ESG-related risks, as evidenced by new ESG scores and enhanced descriptions of ESG risks in their credit reports.⁵ It is important to note that these efforts have resulted in very limited rating changes. Finally, as a historical example of market-based initiatives guiding additional transparency and disclosure in the municipal market, please consider pension risk. In the past decade, pension risk was considered a top concern among municipal investors. The MSRB's website points to industry guidance on pension disclosure (i.e., GFOA, NASACT, NFMA, NABL, SEC)⁶ without imposing separate regulations. Accounting standards (e.g., GASB 67 and 68) also contributed to disclosure on pension risks⁷. Correspondingly, accounting organizations worldwide (e.g., SASB, International Sustainability Standards Board) are beginning to develop accounting standards for ESG risks⁸.

In addition to the rapidly developing market-based solutions, PFM fears that the potential for regulation of ESG-labeled bonds and/or ESG-related disclosure will result in the imposition of additional direct and indirect costs on issuers. We believe this cost would be unduly burdensome to issuers with no clear benefit to offset any regulation, particularly given the market-driven initiatives guiding additional transparency and disclosure currently underway. To date, we have observed no easily discernable or consistent pricing distinction, if any, for ESG-labeled bonds. Nor, as already mentioned, have we observed any widespread and material distinction in investor interest for bonds (or the pricing of bonds) due to ESG-related disclosure considerations.

³ See dcwater.com/investor-relations; sfcontroller.org/primary-market-disclosurefinal-official-statements-upcoming-sales; smud.org/en/Corporate/About-us/Company-Information/Investor-Relations; new.mta.info/investor-info

⁴ City of Gainesville, Florida Utilities System Revenue Bonds, 2021 Series A Official Statement; Appendix H: Form of Green Bonds Annual Impact Report.

⁵ S&P Global Ratings "S&P Global Ratings' ESG Roadmap and Reminders About Our Approach," October 5, 2021. Moody's Investors Service "ESG considerations have neutral to low credit impact on most large US counties," November 16, 2021. Moody's Investors Service "ESG considerations have neutral to low credit impact on most large US cities," November 16, 2021. Fitch Ratings "Public Finance & Global Infrastructure Interactive ESG Relevance Heatmap-3Q21," October 8, 2021.

⁶ <https://www.msrb.org/educationcenter/issuers/disclosing/preparing/resources-for-developing-disclosure.aspx>

⁷ Moody's Investors Service "State and Local Governments – US FAQ: Improved GASB Pension Disclosure Does Not Eliminate Need for Adjustments," April 18, 2016

⁸ sasb.org/about; ifrs.org/groups/international-sustainability-standards-board/



PFM is also concerned that any regulatory definition of ESG would not address the multiple perspectives that exist on this topic and, thus, would inadvertently create other ambiguities. Consider, as an example, a project that is designed to reduce sewer overflows into public bodies of water. While the project would clearly result in environmental benefits regarding cleaner public bodies of water, it would not reduce greenhouse gas emissions, which is one common measure of environmental risk. Comparably, for any disclosure of climate risk, we note that climate modeling is predicated upon a multitude of assumptions and inputs, with dedicated climate risk professionals differing in their assumption choices. Furthermore, as stated by Moody's Investors Service, "The definition of ESG issues is also dynamic because what society classifies as acceptable evolves over time, resulting from new information (e.g., the impact of carbon dioxide emissions) or changing perceptions (e.g., what constitutes privacy)."⁹ It is anticipated that as investors develop more concrete policies about what they invest in (i.e., "no coal"), this could drive the market toward more ESG reporting and standardization of the reporting. By being transparent and voluntary, the market-based initiatives that are becoming commonplace in the municipal securities market (for both ESG-labeled bonds and ESG-related disclosure) accommodate multiple perspectives on the definition of ESG.

While certain investors are outspoken with requests to regulate and increase standardization of ESG-labeled bonds, based on our observations, investors as a whole have not up to this point reflected that sentiment with any clear and consistent pricing distinction for municipal ESG-labeled bonds. If and when a pricing benefit materializes, we believe issuers will adjust their issuance approach, where applicable, to meet the market demand. Furthermore, we note that investors protect their own purchasing decisions by limiting clear and transparent reporting on their municipal investment decisions, including ESG-related decisions. Even when municipal issuers sell ESG-labeled bonds, it is difficult to discern which orders were placed as a direct result of such label.

Similarly, certain investors are requesting regulation and increased standardization of ESG-related disclosure. We understand that materiality is key to all municipal disclosure requirements and that the materiality of ESG risks varies significantly from credit to credit. We have observed that for a variety of municipal issuers that have expanded their ESG-related disclosure, there was limited feedback or questions from investors and other key stakeholders. As such, it is extremely challenging to discern any clear and consistent benefit of this disclosure that would be broadly applicable across all municipal issuers.

Below, we address a number of the questions set forth in the MSRB's Request for Information.

Questions for Municipal Advisors:

Does the formulation and delivery of advice regarding ESG-Labeled Bonds raise any novel compliance issues for firms, such as challenges related to recommendations, pricing, suitability or other related legal obligations?

⁹ Moody's Investors Service "General Principles for Assessing Environmental, Social and Governance Risks Methodology," October 19, 2021.



No. From PFM's perspective, ESG-labeled bonds raise no broad novel compliance issues under the current regulatory construct. Our approach to and documentation of advice on ESG-labeled bonds is the same approach and documentation we use to advise on a range of other topics. Given the existing, voluntary market standards for ESG-labeled bonds and the observable pricing of ESG-labeled bonds, we have sufficient information to discuss the advantages, disadvantages, nuances and complexities of ESG-labeled bonds with our clients.

Furthermore, we strongly believe that the MSRB should not require municipal advisors to distinctly address ESG-labeled bonds within its Written Supervisory Procedures (WSPs) but should, as intended under the current regulatory framework, require instead that a municipal advisor's WSPs be reasonably designed to ensure compliance with applicable SEC and MSRB rules and other applicable securities laws and regulations. Accordingly, municipal advisor's WSP's, as established, need to consider the particular facts or circumstances and the principles of fiduciary duty and suitability, including reasonable care, inquiry, and diligence. To require a municipal advisor's WSP's to specifically address ESG-labeled bonds would distinguish one specific aspect of a specific type of municipal bonds without the same treatment for others (types or attributes). For example, the MSRB does not require WSPs to specifically address unrated or low-rated bonds or pension obligation bonds, which arguably could carry greater risks than ESG-labeled bonds.

Does the formulation and delivery of advice regarding ESG-Related Disclosures raise any novel compliance issues for firms, such as challenges related to recommendations, pricing, suitability or other related legal obligations?

No. As a municipal advisor, our role in the development of ESG-related disclosures, if any at all, is typically educational in nature. For example, we assist issuers in understanding investor preferences and help issuers understand ways to effectively communicate their ESG narrative. As part of the education process, we also point to industry guidance such as GFOA's Best Practices on ESG Disclosure.¹⁰

As noted above in the previous question, we believe that the MSRB should not require municipal advisors to distinctly address ESG-related disclosure within our WSPs as the current regulatory framework sufficiently addresses an MA's responsibilities related to recommendations, pricing, suitability or other related legal obligations.

Questions for all Municipal Market Participants

Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?

¹⁰ GFOA " 'ESG' Best Practice - 'E' Environmental," March 8, 2021. GFOA " 'ESG' Best Practice - 'S' Social," October 1, 2021. GFOA " 'ESG' Best Practice - 'G' Governance," October 1, 2021.



While there are ESG-related factors that may pose systemic risks to the municipal market (e.g., social risks, governance risks, climate risks), they are rooted outside of the realm and control of municipal finance. Furthermore, while there is currently a heightened focus on these risks, they are long-standing risks – not new ones. We believe regulation of ESG-related factors is neither needed nor appropriate at this time. PFM is concerned that any regulation would result in additional costs placed upon issuers, with no clear benefit to them. We suggest that the MSRB allow industry-led initiatives to continue to drive the evolution of market participant response to these risks.

As noted later in our response, we believe MSRB can leverage the strength of its EMMA platform to make several technical adjustments to EMMA that would facilitate greater transparency and data-sharing on ESG-related risks.

There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. Does the availability of these voluntary, market-based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?

PFM believes that voluntary, market-based standards provide sufficient guidance for the market with respect to ESG-labeled bonds. The existing standards provide multiple quantitative and qualitative views of ESG risks, offering the market diverse perspectives. This diversity of perspectives, and optionality in their use, is critical in navigating what is a complex topic. When issuers choose to follow these standards, investors can understand the paradigm and definitions used to substantiate the ESG label.

We understand that certain market participants would like a singular, universal ESG language to guide the municipal market. We note that the two voluntary standards cited by the MSRB in this question (i.e., ICMA and CBI), along with the United Nations Sustainable Development Goals (UN SDGs), are increasingly followed by municipal issuers, broadly accessible to the market, transparent, and broadly understood.

There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?

We believe that market-based initiatives are naturally guiding and improving ESG-related disclosure in the municipal market.

In terms of disclosure, we note that reporting is one of the four core tenets of the ICMA Principles (i.e., Green Bond Principles, Social Bond Principles, and Sustainability Bond Guidelines), which in our observation has been the most widely adopted ESG framework globally. As such, we have observed that issuers have responded with increased reporting and disclosure on ESG specific considerations. In the municipal



market, many issuers closely follow the GFOA. GFOA's recently published best practices regarding ESG disclosure provide additional guidance to issuers on this subject.¹¹ We believe the GFOA guidance is flexible and can be adjusted to each issuer's distinct geographic location and unique demographics, while also providing concrete examples and suggestions.

Beyond ESG related disclosure that issuers are voluntarily providing, other market participants are offering increased transparency and communication in this area. For example, the rating agencies are focused on increasing transparency of ESG risk assessments, as evidenced by new ESG scores and disclosure in credit reports.¹² Additionally, for ESG-labeled bonds, private vendors offering ESG certification services provide additional insights and clarity through the information they attach to the bonds.

We anticipate that the adoption of current market-based initiatives will continue to grow and that new industry-led developments will emerge, all contributing to a natural and voluntary evolution of enhanced transparency in the municipal market.

There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?

PFM observes there is current inequity between issuers and investors in accessing quantitative ESG risk assessment data. In recent years, investors and rating agencies have purchased multiple data services (e.g., RisQ, Four Twenty Seven, Video Eiris)¹³ that focus on assessing certain environmental and social risks. We understand that this data is used to assign differential risks scores at the geographic, obligor, or even the CUSIP level. We observe that the firms producing this data are primarily focused on selling this data to investors and rating agencies, and justifiably so, as those parties are driven by comparative analysis across credits. As stated previously, we do not believe issuers have a clear and consistent cost benefit related to ESG-labeled bonds or ESG disclosure and as such, would be challenged to justify the cost of purchasing this type of ESG risk assessment data for their own credit(s). Issuers' access to this same or similar data could help them provide more informed and targeted disclosure, potentially addressing any areas of elevated risk or concern.

¹¹ GFOA " 'ESG' Best Practice - 'E' Environmental," March 8, 2021. GFOA " 'ESG' Best Practice - 'S' Social," October 1, 2021. GFOA " 'ESG' Best Practice - 'G' Governance," October 1, 2021.

¹² Moody's Investors Service "General Principles for Assessing Environmental, Social and Governance Risks Methodology," April 26, 2021. S&P Global Ratings "S&P Global Ratings to Enhance Transparency in U.S. Public Finance Credit Analysis with ESG Credit Indicators," February 16, 2022. Fitch Ratings "2021 ESG in Credit White Paper," July 2021.

¹³Any third-party's tradenames, product and service names used throughout are the intellectual property of their respective owners.

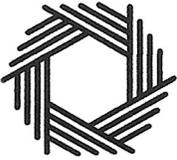


The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website.¹⁸ This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?

PFM commends the MSRB for this recent enhancement to EMMA which increases market transparency. We believe this feature could be increasingly beneficial if the ability to search for historical ESG-labeled bonds is expanded beyond just “recently sold” to include as much historical information as possible. This would provide an opportunity for all market participants to better understand the market for ESG-labeled bonds (e.g., who is issuing, how much is being issued, ESG label types) without the burden of paying for this data through other services.

What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?

PFM suggests the MSRB consider creating a dedicated tab / section for “ESG Disclosures,” similar to current “Financial Disclosures” and “Event-Based Disclosures.” Alternatively, MSRB might consider creating a way for issuers to flag voluntary disclosure as ESG-related. This enhancement could facilitate a clearer path of voluntary communication on this topic between issuers and other market participants.



March 7, 2022
Page 8

PFM greatly appreciates the continued outreach the MSRB provides for the opportunity to share our input with the Board and staff. As always, we would welcome the opportunity to discuss these comments further.

Respectfully submitted,

PFM FINANCIAL ADVISORS LLC

By: 
Cheryl Maddox
Chief Legal and Compliance Officer

By: 
Daniel Hartman
Chief Executive Officer

cc: Patrick Brett, Chair, MSRB
Mark Kim, Chief Executive Officer, MSRB
Gail Marshall, Chief Regulatory Officer, MSRB
Jacob Lesser, General Counsel, MSRB

PIMCO

Via Electronic Submission

March 4, 2022

Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2021-17: Request for Information on ESG Practices in the Municipal Securities Market

Dear Mr. Smith:

Thank you for soliciting market input on ESG practices in the municipal securities market. We write to you from the perspective of one of the largest active fixed income managers in the world, managing \$2.2 trillion as of December 31, 2021 across nearly all sectors of the fixed income market, on behalf of millions of individuals and thousands of institutions globally.¹ In all cases, we function in a fiduciary capacity, striving to maximize our clients' return objectives consistent with their investment guidelines, specific mandates, and risk tolerances.

We find the MSRB's interest in this topic a timely one, as attention to ESG-related issues has increased substantially in recent years. The number of Green, Social, and Sustainability (GSS)-labeled bonds continues to grow, equaling 9.7% of issuance in the municipal market in 2021, up from 5.5% in 2020.² Additionally, as we noted in our June 9, 2021 letter to the SEC on climate change disclosures,³ over the last decade we have observed a dramatic increase in the focus on climate issues from our clients. This increase in attention incorporates both an interest in dedicated sustainability mandates and a desire for a better understanding of how climate risks factor into our broader investment process.

In addition to significant concern for climate and other environmental mandates, investor interest in social issues has grown substantially since the onset of the COVID-19 pandemic and the global protests over issues of racial justice and equity.

Determining what disclosures on developing ESG risks and GSS-labeled bonds should look like, as well as which disclosures are material to investors, is important. We welcome efforts to increase the quality and availability of disclosure on these topics. At the same time, we recognize that the municipal market is distinct from other asset classes and fixed income sectors given the significant number and diversity of issuers, often-scarce resources available to issuers to produce such disclosure, and the public nature of most municipal issuers.

We do not seek to answer all the questions posed by the MSRB but, rather, we highlight what PIMCO views as the most important considerations from a large investor's perspective regarding ESG practices in the municipal market.

¹ <https://www.pimco.com/en-us/our-firm>

² S&P Global. U.S. Municipal Sustainable Debt Issuance Could Surpass \$60 Billion in 2022. February 10, 2022. <https://www.spglobal.com/ratings/en/research/articles/220210-u-s-municipal-sustainable-debt-issuance-could-surpass-60-billion-in-2022-12259605>

³ PIMCO's letter to SEC re: Public Input Welcomed on Climate Change Disclosures. June 9, 2021. <https://www.sec.gov/comments/climate-disclosure/cil12-8901049-242138.pdf>

They include:

- 1) **ESG is a broad umbrella term. Being more specific with language and focusing on specific factors would be most helpful.** E, S, and G cover a wide range of risk factors, some of which have historically been included in municipal credit analysis. Focusing on specific factors, such as climate risk or race/equity concerns, and assembling relevant guidance on those concerns, will be more useful than trying to regulate or provide guidance for all potential factors that fall under the broad umbrella of ESG. Additionally, it is important to clearly differentiate between ESG factors that relate to credit risk and those related to values-based or impact-oriented investing.
- 2) **Utilizing existing disclosure infrastructure will allow for the greatest participation by both issuers and investors.** The existing reporting structure – official statements and annual or event-driven continuing disclosure documents – can incorporate necessary ESG information. In this way, the need to focus on *how* issuers should disclose is eliminated, and instead resources can be devoted to providing guidelines on *what* should be included and how to support all issuers in generating the data for inclusion.
- 3) **A baseline of disclosure on climate risk should be established.** Recognizing the limited regulatory role of the MSRB and the SEC over municipal issuers, we acknowledge that mandatory disclosure of climate risk information may not be feasible. However, consistent with our belief that climate-related risks are largely material risks in most cases, we believe that guidelines establishing a minimum baseline of climate risk disclosure would be prudent. Additionally, we suggest the MSRB consider working with the SEC to amend Rule 15c2-12 to mandate the inclusion of material climate-related information in continuing disclosure.
- 4) **A federal repository for ESG data, in particular climate data, would be welcomed.** Given the breadth and diversity of the municipal market, one roadblock to issuers providing information about climate risks to investors is data availability. We welcome any efforts the MSRB could make to help issuers obtain and utilize relevant environmental and other ESG data, including potentially convening other federal agencies.
- 5) **Independent reviews for GSS-labeled bonds can increase transparency.** At PIMCO, we conduct our own internal analysis of GSS-labeled bonds to evaluate their suitability for our strategies, regardless of whether the bonds have an independent review or are self-labeled.⁴ While more municipal issuers continue to pursue independent certification/second opinions,⁵ a significant number of municipal issuers self-label bonds under GSS labels. Independent reviews can provide additional transparency.
- 6) **A direct link between bond use of proceeds and UN SDGs is helpful.** We encourage issuers to formally align their use of proceeds with the UN Sustainable Development Goals (SDGs) where suitable, even if not pursuing a specific label. Many municipal issuers are issuing bonds for purposes that could align with the SDGs and this can be a way to provide standardization across the industry.

⁴ PIMCO. December 2020. [PIMCO's Best Practice Guidance for Sustainable Bond Issuance](#).

⁵ S&P Global, *U.S. Municipal Sustainable Debt*.

We elaborate on each of these points below.

1) ESG is a broad umbrella term. Being more specific with language and focusing on specific factors would be more helpful.

Instead of attempting to find consensus over what constitutes all ESG risk factors, we would suggest beginning with those factors that are already well-established in the issuer and investor community – and yet are under-reported by issuers in disclosure. The most logical starting point would be to focus on climate risk given the SEC’s attention to the topic as well as existing well-developed infrastructure and established consensus on its potential impact on an issuer’s credit quality (see #3 for more on our climate risk recommendations).

Race/equity and other human capital and human rights concerns have also begun to receive significant focus and represent an area that could benefit from more attention and analysis.⁶ Consensus has not yet been reached on which metrics to focus on here, and we expect research and the availability of data in this area will evolve over time. At a minimum, encouraging issuers to report on the existence of race/equity-related settlements or judgment bonds or federal consent decrees would be helpful.

Many other ESG risks have historically been part of municipal credit analysis and disclosure frameworks and are already broadly disclosed by issuers or by third-party sources, such as the U.S. Census Bureau. Examples of these include demographic information such as population trends, auditor concerns about management, or funding of pensions and other post-employment benefits.

Additionally, it is important to clearly differentiate between ESG factors that relate to credit risk and those related to values-based or impact-oriented investing, which could include GSS-labeled bonds. While frequently grouped together in the same conversation, they involve different metrics which may have differing levels of materiality. Therefore, ESG risks and GSS-labeled bonds should be treated as separate topics for regulation and for investigation by the MSRB. As we move forward, the MSRB can help advance the conversation around ESG risk factors and GSS-labeled bonds by being very clear in distinguishing between the two.

2) Utilizing existing disclosure infrastructure will allow for the greatest participation by both issuers and investors.

Given the size and diversity of the municipal market, we believe that utilizing the existing disclosure infrastructure – with issuers providing disclosure to investors primarily through official statements and continuing disclosure uploaded to EMMA – is the most efficient way to reach the largest number of investors and obtain the greatest participation from issuers. Issuers are already accustomed to providing financial and other material information to investors in this way. Incorporating ESG disclosure into these existing documents maintains consistency with current practice.

Where issuers may have specific ESG disclosure to share (e.g., a climate action plan), adding an additional ESG Data section on the EMMA Disclosure Documents page is one enhancement the MSRB could make to allow for ease in finding these documents and differentiating them from other disclosure documents.

3) A baseline of disclosure on climate risk should be established.

Like many others, we believe climate risks often pose a material financial risk, and as such can have a discernible impact on the overall credit quality of an issuer and should be disclosed. We recognize that the MSRB cannot mandate that municipal issuers disclose these risks. We believe, however, that creating guidelines for what issuers

⁶ One example is through efforts by the Public Finance Initiative, with funding from the [Robert Wood Johnson Foundation](#), to develop an equity framework for inclusion of racial equity in municipal credit analysis.

should disclose and guidance on the materiality of these risks will help establish an expectation that these items be incorporated into disclosure. Additionally, we would suggest that the MSRB consider working with the SEC to explore an amendment to Rule 15c2-12 to mandate the inclusion of climate-related risks in continuing disclosure.

Within the municipal market, we currently view physical climate risk as being more impactful than fossil fuel transition risk, though we note transition risk could have a material impact on specific issuers, such as a community with tax base or employment concentration in a large fossil fuel provider. For physical climate risk, useful information to receive in issuer disclosures would include items such as the following:

- The types of climate/environmental hazards an issuer is exposed to
- The significance of this exposure, such as estimated property values at risk or specific assets/areas at risk
- The issuer's planned response to identified climate hazards, including mitigation or adaptation work being contemplated
- Whether and how future climate risk is incorporated into capital planning, zoning, and other planning initiatives, where applicable
- Financial, consultative, and internal resources to draw on to perform the work, including intergovernmental support and staff resources devoted to climate/sustainability concerns
- Expected costs of adaptation and potential funding sources

We expect transition risk to become a larger concern over time everywhere, though more rapidly in specific states with stronger renewable portfolio standards or net zero targets. While it is less common currently for public sector issuers to disclose greenhouse gas (GHG) emissions,⁷ we believe that these disclosures will only grow in importance and should be encouraged, in particular by municipal issuers who are more enterprise-like and/or relatively large emitters, such as public power, airports, ports, and nonprofit healthcare facilities. For municipal sectors that are more enterprise-like, disclosure can more easily conform to existing frameworks, such as the Task Force on Climate-related Financial Disclosures (TCFD). We also believe that an accompanying explanation and discussion about the issuer's GHG reduction objectives, including specific targets, plans, and progress towards meeting objectives, would be helpful for investors, particularly in cities or states where affirmative commitments to reduce GHGs by a certain date have been made.

Partnerships with organizations, such as CDP (formerly called the Carbon Disclosure Project) or the TCFD could be useful in helping to develop guidelines on what to include. Additionally, we believe that the nature of such disclosure should be routinely reassessed to ensure that the scope of the disclosure evolves as the capability of issuers to produce disclosures improves and as the municipal market's understanding of climate risk and potential regulatory changes evolves.

4) A federal repository for ESG data, in particular climate risk data, would be welcomed.

We recognize that not all issuers have the same ability to assess their exposure to climate risks, nor to develop a comprehensive mitigation and adaptation plan to respond to those risks. A comprehensive repository of environmental risk data could help even the playing field among investors who have the means to buy such data, with those that do not, as well as issuers that have the means to purchase or produce data and consulting work versus those that do not.

Currently, the largest, most robust, and thorough repository of data for ESG purposes is the U.S. Census Bureau, which provides a wealth of data for understanding a variety of, though not all, social risks. Similar data infrastructure on the environmental side is lacking despite federal agencies, such as NOAA, FEMA, the U.S. Forest Service, and Drought.gov, being sources of data that are widely utilized by third-party private climate data

⁷ EPA, Center for Corporate Climate Leadership, *Scope 1 and Scope 2 Inventory Guidance* (last updated Dec. 14, 2020), <https://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance>.

providers. We would welcome the MSRB's aid in making climate and other material environmental data more accessible, available, and centralized, similar to what the U.S. Census Bureau provides.

5) Independent reviews for GSS-labeled bonds can increase transparency.

We have found that labeled bonds that have independent reviews typically provide the most GSS information for investors, often following International Capital Markets Association (ICMA) principles and guidelines⁸ or other frameworks, such as the Climate Bonds Initiative's Climate Bond Standard and Certification Scheme.⁹ GSS-labeled bonds with independent reviews tend to offer the most transparency, information about use of proceeds, and post-issuance reporting to investors, and we see independent reviews as a best practice.

At the same time, we acknowledge that many municipal issuers self-label their bonds as Green, Social, or Sustainability, and we consider them for our ESG strategies as well, depending on their framework, potential impact, alignment with overall targets, and overall transparency. We conduct our own internal analysis of both self-labeled GSS bonds and those with external reviews to determine suitability for our strategies.

The amount of information provided with self-labeling can vary substantially, with some containing no more than a few paragraphs, and some presenting more robust frameworks akin to what might be seen with an independent review. In terms of benefits to issuers in pursuing an independent review, we have observed that self-labeled bonds typically trade similarly to bonds without any GSS label. In contrast, taxable bonds with independent reviews have seen a slight trading premium in some cases.

6) A direct link between bond use of proceeds and UN SDGs is helpful.

We also encourage issuers to formally align their use of proceeds with the UN Sustainable Development Goals where suitable, even if not pursuing a specific label. Many municipal issuers are issuing bonds for purposes that could align with the Sustainable Development Goals, and this can be a way to provide standardization across the industry.

Conclusion

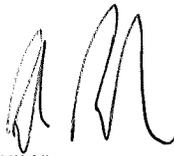
We welcome the MSRB's input in pursuing guidance and standards around ESG practices for the municipal market and look forward to an ongoing dialogue with the MSRB on these issues. We would encourage the MSRB to make sure everyone continues to have a seat at the table, as it has done by seeking input from a variety of stakeholders with this recent request for information. Issuers, underwriters, financial advisors, bond counsels, rating agencies, and investors all have a role to play in furthering the development of more robust disclosure on these issues. Given the wide variability of size and function within the municipal market's issuer community, we would encourage continued outreach to a broad spectrum of issuer participants to ensure that any movement towards guidelines is practical and flexible enough for all issuers to be able to successfully comply.

One idea to formalize stakeholder engagement would be to form a stakeholder advisory council, which would provide a forum for representatives of all market participants to help develop guidelines for these important topics. Regardless, we appreciate the MSRB's focus on these issues and look forward to continued engagement.

⁸ International Capital Markets Association. *The Principles, Guidelines, and Handbooks*. Last accessed March 1, 2022. <https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/>

⁹ Climate Bonds Initiative. *Climate Bonds Standard and Certification Scheme*. Last accessed March 1, 2022. <https://www.climatebonds.net/standard>

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'D' followed by a large, sweeping 'H'.

David Hammer
Managing Director
Head of Municipal Bond Portfolio Management
PIMCO

cc: Mark Kim, Chief Executive Officer, MSRB
Patrick Brett, Chairman, MSRB

CONSULTATION RESPONSE

US MUNICIPAL SECURITIES RULEMAKING BOARD: REQUEST FOR INFORMATION ON ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) PRACTICES IN THE MUNICIPAL SECURITIES MARKET

8 March 2022

INTRODUCTION

The Principles for Responsible Investment (PRI) is the world's leading initiative on responsible investment. The PRI has now over 4,800 signatories (pension funds, insurers, investment managers and service providers) to the PRI's six principles with approximately US\$120 trillion in assets under management.

The PRI supports its international network of signatories in implementing the Principles. As long-term investors acting in the best interests of their beneficiaries and clients, our signatories work to understand the contribution that environmental, social and governance (ESG) factors make to investment performance, the role that investment plays in broader financial markets and the impact that those investments have on the environment and society as a whole.

The PRI works to achieve this sustainable global financial system by encouraging adoption of the Principles and collaboration on their implementation; by fostering good governance, integrity and accountability; and by addressing obstacles to a sustainable financial system that lie within market practices, structures and regulation.

The PRI welcomes the opportunity to respond to the MSRB's call for feedback on environmental, social and governance practices in the municipal securities market.

ABOUT THIS CONSULTATION

This document responds to the Municipal Securities Rulemaking Board's ("MSRB" or "the Board") request for information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market.¹ In its request, MSRB welcomes input on (1) the disclosure of information regarding ESG-related risk factors and ESG-related practices and (2) the labeling and marketing of municipal securities with ESG designations.

For more information, contact

Greg Hershman

Head of US Policy

gregory.hershman@unpri.org

¹ MSRB Notice: <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2021-17.ashx??n=1>

KEY RECOMMENDATIONS

The PRI is encouraged by MSRB's request for information as it considers how best to incorporate ESG-related information in its regulatory and oversight duties. Municipal bond issuers are often bound to infrastructure that cannot be relocated in order to mitigate or avoid the effects of climate change and consideration of ESG-related factors is an important step for MSRB to address this growing concern. PRI's recent report, "ESG Integration in Sub-Sovereign Debt: The US Municipal Bond Market" highlights some ongoing challenges facing the US municipal securities market as explicit ESG incorporation in investment decisions increases.² At the same time, because of their key role in providing public services and local infrastructure, municipalities can play a leading role in limiting environmental risks and promoting equitable social welfare.

Rather than being a separate type of consideration, or a practice only considered by "impact investors", ESG factors are relevant to all issuers and investors, and are increasingly integrated in standard investment processes and considered alongside other decision-useful data such as annual financial statements. It is increasingly important that investors have access to consistent, comparable ESG information across all securities offerings to enhance their analysis and engagement with issuers to convey their expectations. The PRI stands ready to assist the Board as it continues efforts to support market participants in further considering ESG factors.³

The PRI recommends the Board:

- **Encourage reporting on ESG information in standard disclosure documents.** While municipal securities vary, significant work has been done across the finance industry to develop a number of disclosure regimes fit for various markets. The Board should recommend best practice that fits the diverse set of issuers operating in the municipal securities market and encourage disclosure of relevant ESG factors for all issuers, not just those with "ESG" labelled products.
- **Continue to adapt the Electronic Municipal Market Access (EMMA) database to provide for standardized and comparable information on ESG-related factors across offerings.** Recent updates to the EMMA database to incorporate ESG provide opportunity for issuers to promote their efforts at incorporation. However, the current criteria for ESG labelling and disclosure can allow for issuer and investor confusion. MSRB should continue to expand and formalize the information presented about ESG factors on the EMMA database in an effort to promote consistency and comparability.
- **Encourage best practice standards to accompany any classification or labelling of offerings.** Whether labelled (e.g. green) offerings follow leading market standards or not, issuers should provide transparency over the bond's use of proceeds before and after issuance.
- **Support industry alignment on any disclosure and labelling efforts with other markets around the world to find common language for ESG considerations.** The Board should continuously look to efforts in similar markets in order to avoid market fragmentation.

² https://www.unpri.org/fixed-income/esg-integration-in-sub-sovereign-debt-the-us-municipal-bond-market/8079_article

³ <https://www.unpri.org/investment-tools/fixed-income>

DETAILED RESPONSE

CONSISTENT, COMPARABLE ESG DISCLOSURE

The PRI recommends the Board encourage best practice for reporting on ESG-related information for all issuers. The diversity of municipal issuers can lead to different exposure to ESG risks, as well as opportunities, such as those related to the transition to a net zero carbon economy. However, significant variability among issuers should not be a barrier to substantive ESG disclosure.

PRI signatories report that a lack of consistent, comparable data is the largest barrier to incorporation of climate and other ESG factors in investment practices.⁴ Given MSRB's role in market regulation, the Board establishing a recommended baseline of information for all issuers to disclose in a standardized way would help investors better compare risks between issuers.

For climate disclosure specifically, MSRB cites the recommendations of the Government Finance Officers Association (GFOA) which identify the main concerns and considerations on climate disclosure and includes a checklist of disclosures to consider for issuers.⁵ The PRI has endorsed the recommendations of the Taskforce on Climate Related Financial Disclosure (TCFD).⁶ TCFD can guide the Board on how issuers should structure disclosures in order to meet the information needs detailed by the GFOA's analysis. The foundation of TCFD remains flexible in a way that provides issuers a principles-based framework to address the most important climate-related information in a standard format. This could allow issuers to provide "TCFD-aligned disclosures", which signals to the market that they have assessed climate-related risks.

INCORPORATION OF ESG INTO EMMA DATABASE

MSRB should continue to build out ESG information availability across the EMMA database to ensure information is presented in a consistent and comparable manner.

The PRI commends the Board's recent update to the EMMA database to incorporate an optional ESG category in the description of offerings. However, the inclusion of an optional "ESG Type" classification could be interpreted as requiring issuers only to consider and/or disclose ESG factors for labelled securities. MSRB should clarify that all issuers should be considering and disclosing relevant ESG factors for all securities, not just those seeking to be classified as labelled products. The Board should further consider how to make relevant ESG information accessible in issuers' regular disclosures via the EMMA database.

⁴ <https://www.unpri.org/pri-blog/us-pri-signatories-support-mandatory-climate-and-esg-disclosure/7849.article>

⁵ <https://www.gfoa.org/materials/esg-disclosure>

⁶ <https://www.fsb-tcfid.org/>

CLARIFICATION OF LABELLED PRODUCTS

MSRB should issue guidance regarding “best practices” to accompany any classification or labelling of products in order to promote consistent, reliable and more comparable assessments of financial instruments.

Adding a green, social or other sustainable label to a financial product, such as a municipal debt security, may help attract investors and lead to positive environmental or social outcomes. However, the Board should be cautious of the potential for such labels to potentially mislead investors and other market participants, as financial products are often self-labelled using non-public, inconsistent, or unreliable criteria. This may even give rise to greenwashing.

The Board should consider ways to promote standardization for labelled bonds and disclosure of relevant information when issuers make claims related to ESG considerations. The Board could suggest that issuers fully explain the qualifications of their offering – including use of proceeds – to classify as an “ESG” labelled security. A separate disclosure would allow for easy comparability of those making claims of alignment with specific labels.

The Board should also consider the risks to investors from bonds that are “self labeled” without an external review. Self-labeled bonds could lack significant information necessary to protect investors from misrepresentation, whereas an external review opining that a bond aligns with accepted frameworks provides some security for investors. Relatedly, the Board should be careful that its “ESG Type” label is not seen as a tacit endorsement or verification of the product claims.

While the Climate Bonds Initiative (CBI) and International Capital Market Association (ICMA) have both developed usable guidance for issuers, MSRB has a role to play in monitoring additional standards and labelling criteria established by the market for inclusion in the EMMA database, adapting its system in lock step with market practice.

Further work should be done to educate users of the database as to what “ESG Type” classification means, and for issuers on how this feature is meant to be used. Providing clarification of any criteria would likely also increase the usage of the “ESG Type” categorization.

SUPPORT ALIGNMENT AND INTEROPERABILITY

Globally, incorporation of ESG factors continues to accelerate across securities markets. Investor demand continues to push markets to more quickly and fully incorporate environmental, social and governance considerations. The Board should look to other markets for best practice on ESG incorporation, disclosure and labelling, taking on board lessons learned but also seeking to coordinate efforts. Global alignment on ESG incorporation provides market efficiencies, and reduces risks for investors. Further, MSRB leading global practice can make the US an even more desirable market for global investors increasingly requiring standardized ESG information.

The PRI has experience of public policy on sustainable finance policies and responsible investment across multiple markets and stands ready to further support the work of the MSRB to consider environmental, social and governance practices in the municipal securities market in the US.

Any question or comments can be sent to policy@unpri.org.

March 8, 2022

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I St NW Ste 1000
Washington DC 20005

Re: Municipal Securities Rulemaking Board (MSRB) Notice 2021-17

Dear Mr. Smith,

The Public Finance Initiative (PFI) is pleased to provide comments on MSRB [Notice 2021-17](#), “Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market” (hereafter, the “Notice”). Briefly, PFI is a fiscally sponsored organization of Third Sector New England, Inc., a non-profit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. PFI designs public finance programs for leading foundations, governments, and other partners focused on best practices for integrating ESG aligned values, such as equity, sustainability, and inclusive growth, in fiscal decision making.

Most recently, PFI has undertaken original research to review issuer disclosures for self-designated ESG issuances using the MSRB’s new EMMA Labs platform and has uncovered noteworthy trends that have the potential to inform and educate the MSRB and other stakeholders in the ESG market. These findings will aid PFI in the development of new resources that will better support market stakeholders focused on ESG practices, particularly those whose central concern is racial equity in the context of social bond issuances.

To that end, below is a summary of noteworthy trends found in our preliminary research that address questions posed by the MSRB in Section E of the Notice. In addition, we propose innovative solutions that can support the MSRB in its mission to advance issuer and investor protection, as well as improve the overall fairness and efficiency of the market.

Responses to Questions in Section E of the Notice

Regarding Question 1. Using the EMMA Labs platform to identify and analyze data and information in official statements for self-designated ESG-Labeled Bonds longitudinally, PFI research has identified two important phenomena:

- At present the municipal bond market is experiencing rapid growth in investments by issuers that explicitly state the use of bond proceeds for funding projects with positive environmental, social, and governance (ESG) benefits. Moreover, there is greater attention by issuers to articulating their management of risks across several ESG domains which has enormous positive potential; and

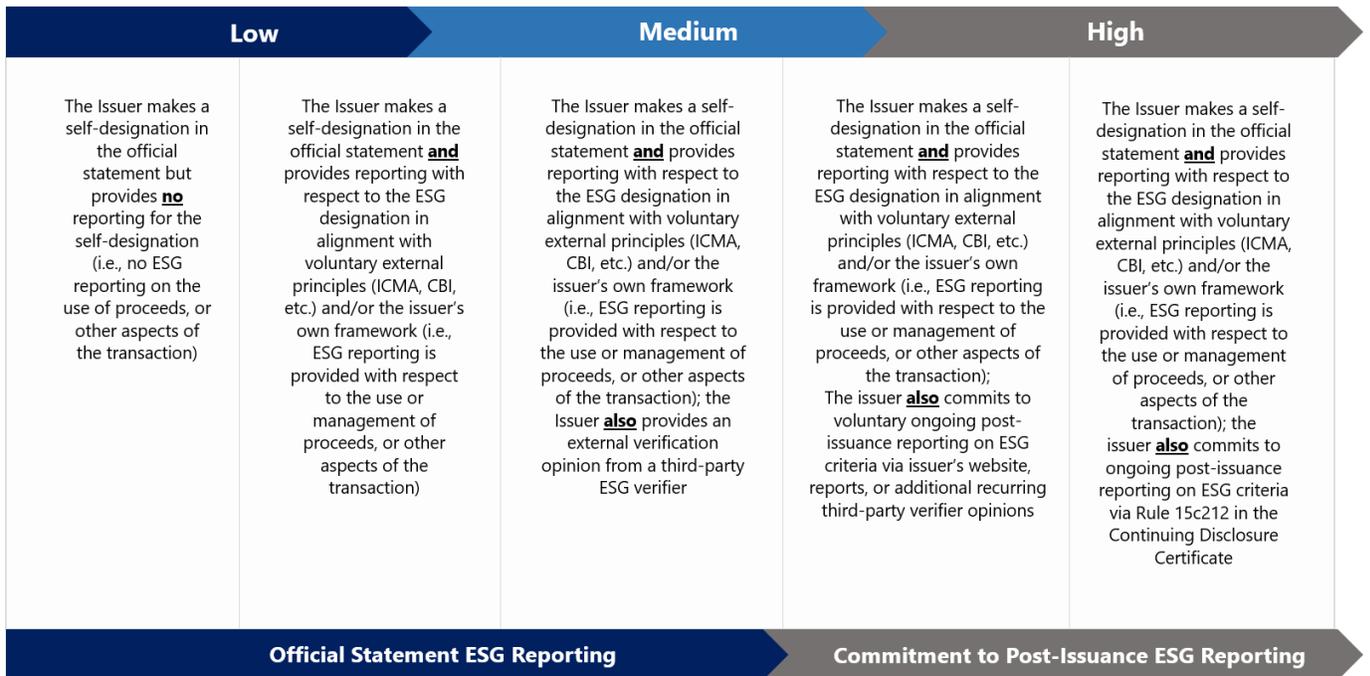
- A proliferation of highly varied and inconsistent disclosure practices for ESG-Labeled Bonds is emerging that risks worsening historic information irregularities and market fragmentation, which have long impeded the transparency, structure, and functioning of the municipal market.

We have observed these phenomena via our research of issuer official statements in EMMA Labs to examine questions that include, but are not limited to: (1) issuer practices citing voluntary principles, frameworks, and taxonomies created by issuer and non-issuer stakeholders in the context of ESG-Labeled Bonds; (2) trends in the use of bond proceeds for ESG-Labeled Bonds; (3) the quality and character of issuer disclosures for ESG-Labeled Bonds (including the use of metrics or indicators to report on risks or the social benefits of projects) at two levels – in the official statement at the time of sale and commitments to ongoing voluntary or other reporting via the S.E.C. Exchange Act Rule 15c212 (“Rule 15c212”) of ESG criteria.

Our research in progress is revealing the following three noteworthy trends from our review of official statements and other disclosures for ESG-Labeled Bonds:

- **Use of Voluntary Frameworks, Taxonomies, Principles:** Over 98% of the issuers of ESG-Labeled bonds cite voluntary principles, taxonomies, and frameworks developed by the leading organizations that include the International Capital Markets Association (ICMA), the Climate Bonds Initiative (CBI), among others. Despite the prevalence of ICMA and CBI, there are a growing number of issuers who are also developing and integrating their own ESG frameworks in their official statement disclosures.
- **Use of Proceeds:** The majority of ESG-Labeled bonds (over 50%) appear to be arising in what is traditionally known as “new-money” issuances where bond proceeds fund new projects, described in the official statement across four sectors: education, housing, water/sewer, and general obligation bonds. However, we are also observing a growing number of ESG-Labeled Refunding Bond issuances, where an issuer refinances outstanding bonds by issuing new bonds. In many refunding issuances we are examining, the underlying bonds being refunded were not ESG-Labeled bonds but carried a use of proceeds that is considered by the issuer to have a natural overlap with ESG purposes.
- **Disclosure Patterns and Practices:** There is a high degree of variation in issuer disclosure patterns across ESG-Labeled Bonds with patterns that are evolving over time as different types of ESG-Labeled Bonds (green bonds, social bonds, and sustainability bonds) face different stages of maturity, growth, issuer engagement, and use of verification agents. Our initial research reveals a wide spectrum of disclosure practices in issuer official statements which we present in [Figure 1](#) to begin to classify the different issuer disclosure practices with respect to ESG designations:

Figure 1: Issuer ESG-Labeled Bonds Disclosure Practices Spectrum



The degree of market variation and fragmentation resulting from the factors observed over the course of our research, and other dynamics, poses several risks to municipal market stakeholders. Investors and holders of bonds, for example, may encounter information asymmetries when engaging in a risk or impact analysis of complex ESG factors. In addition, there are inconsistencies in the level of data and information that is available not just across primary market disclosures, but also with respect to secondary market longitudinal reporting for complex environmental, social, and other ESG issues arising in the post-issuance compliance period. We explore these issues in response to various questions below.

Addressing the range of complex dynamics of ESG issues as that segment of the municipal market grows so rapidly is incredibly complex and will require a body of careful regulatory and non-regulatory solutions that manifest over time. When developing regulatory solutions, it may be important to consider potential changes that can encourage issuers to voluntarily report clear and consistent voluntary disclosures in official statements and subsequent disclosure undertakings for ESG labeled issuances. Enhancements to Rule 15c212 may serve as an important point of departure.

Briefly, it is well documented in several SEC reports and law that in the absence of a direct statutory framework for municipal securities registration and reporting that governs issuers, the SEC's investor protection efforts in the municipal securities market have been accomplished primarily via the regulation of broker-dealers and municipal securities dealers pursuant to Rule 15c212, SEC interpretations, the enforcement of the antifraud provisions of federal securities laws, and SEC oversight of the MSRB. Rule 15c212 was also designed to assist underwriters in meeting their responsibilities under the antifraud provisions of the federal securities laws by requiring them to review issuer disclosure documents before

beginning sales to investors. Accordingly, Rule 15c212 created a limited framework for municipal market data to be disclosed by issuers who only engage in the sale of bonds via a public underwriting. All other municipal securities issuers are not subject to the rule – most notably private placements.

Under Rule 15c212, underwriters are required to reasonably determine that either the issuer of municipal securities or an obligated person (obligated to pay all, or some, portion of the principal and interest on the municipal securities) has undertaken in a written agreement or contract (commonly referred to as “continuing disclosure agreement”) to provide specified annual information and “material event” notices to certain information repositories. Since its adoption, Rule 15c212 has undergone several meaningful amendments, including most recently amendments in 2018 which provided investors not only with access to important information relating to obligated persons, but were also intended to enhance transparency in the municipal securities market by increasing the amount of information that is publicly disclosed regarding material financial obligations incurred by obligated persons.

The SEC and the MSRB can consider amendments to Rule 15c212 that include ongoing reporting of ESG data in support of the self-designated issuances, including any reports, statistics, indicators, or other metrics described at the time of sale, which the issuer introduces in the official statement in support of the ESG designation of the bond issue. Such amendments could be developed by the SEC and MSRB by examining existing issuer official statements that are currently voluntarily committing to ongoing reporting of ESG criteria in their continuing disclosure certificates and which we classify with the “High Disclosure” classification presented in [Figure 1](#). The amendment could also be developed by examining patterns and trends in how issuers are incorporating elements of voluntary ESG principles and frameworks, including the predominance for ESG use of proceeds and other patterns we are observing.

In developing regulatory solutions, it will be important to remain attentive to the fact that when issuers of municipal securities address complex issues that arise under ESG (i.e. matters of race, equity, equality, climate change, etc.), they often may make statements about the future outcomes or impact they hope to achieve, particularly where leading voluntary frameworks (mentioned earlier) place disproportionate emphasis on the use of proceeds to achieve a social, environmental, or sustainability benefit.

Providing such disclosure under the current anti-fraud standards pursuant to Rule 10(b)(5) of the Securities Exchange Act of 1934 (which apply to the preparation of the preliminary official statement, official statement, and S.E.C. Rule 15c212 ongoing disclosure) may pose challenges to issuers by creating the risk of liability if speculative statements of ESG outcomes or impact resulting from the bonds ultimately do not materialize or are incorrect. The SEC and MSRB should examine the development of safe harbors from private liability for such statements by municipal issuers focused on ESG non-financial data.

As background, a safe harbor is a legal provision that grants general protection from liability or penalty if certain conditions are met. A safe harbor provision may be included in statutes or regulations to give peace of mind to good-faith actors who might otherwise violate the law on technicalities beyond their reasonable control.

The safe harbors could be limited to issuers who are current in their ongoing disclosure obligations, restricted to only those issuers that satisfy certain conditions (including appropriate risk disclosure) or perhaps could be limited to issuers that provide information regarding the significant assumptions underlying their projections. The noted approach could enable issuers to undertake expanded structured

disclosure of important forward-looking statements in a consistent way that impact focused investors can rely on and minimize the legal risk posed to issuers drafting disclosures on complex social, environmental, and governance issues.

At present, municipal issuers can rely on the well-established “bespeaks caution” doctrine which holds that, when adequate cautionary language accompanies projections in a disclosure document, such forward-looking disclosures may not be actionable as securities fraud. The SEC has documented the importance of this doctrine in various reports to the market. This issue notwithstanding, there are novel questions with respect to the provision of forward-looking information in the ESG segment of the municipal securities market and it presents an opportunity for the MSRB and SEC to consider reforms that enable the provision of more clearly defined and calculated forward-looking information, while also preserving the application of the antifraud provisions of the federal securities laws to disclosures.

There are also non-regulatory solutions, particularly focused on the use of technology, that I believe should be considered. To that end, PFI presents possible enhancements to the EMMA Platform and EMMA Labs platform in response to Question 7 that are relevant to the issues addressed in this question.

Regarding Question 2. Organizations like ICMA and CBI have introduced important and valuable voluntary standards for issuing ESG-Labeled Bonds, and PFI research presented earlier in this letter suggests that such standards are being embraced by issuers, at unprecedented levels. The noted voluntary standards generally underscore the issuer’s use of proceeds to achieve a social benefit and encourage annual reporting centered on the bond-funded projects. However, voluntary reporting does not set mandatory performance standards nor require that issuers adhere to tracking, measuring, and reporting any metrics regarding the ESG-Labeled Bonds.

The flexibility afforded by such voluntary frameworks with respect to ESG criteria is appropriately aligned with the general broad autonomy and authority that issuers traditionally have with respect to the entire issuance process under state, local, or federal securities and tax law. However, this phenomenon has the potential to create risks for investors if an ESG-Labeled Bond reflects inadequate or insufficient attention to the measurement and reporting of performance indicators aligned with the ESG designation.

If a bond issuance results in de minimis social or environmental outcomes but reflects procedural alignment to the core components of the noted voluntary ESG framework, it would likely retain its ESG designation for the duration of the issuance. This can give rise to concerns around “social washing,” “green-washing” or “sustainability washing,” for investors who hold the bonds, if they come to believe that the results, outcomes, or impact of the projects funded with the proceeds of the ESG-Labeled Bonds is not truly materializing. In such instances, if an investor wishes to sell the bond it is unclear whether bond issuances perceived by investors to have weak ESG outcomes, characteristics, or disclosure are bearing a quantifiable pricing difference when traded in the secondary market.

Addressing the noted issues is incredibly complex and may require regulatory and non-regulatory solutions that manifest over time. The MSRB can, and should, consider playing an expanded role in how it enhances the collection, transparency, and reporting of voluntary data and information related to ESG-Labeled Bonds. To that end, we present concrete suggested enhancements to the EMMA Platform and EMMA Labs platform in response to Question 7.

Regarding Question 5. There is a myriad of stakeholders, including PFI, who are making important contributions to provide issuers with guidance, frameworks, taxonomies and principles as the ESG

market grows. This provides issuers with much needed guidance and support. However, we recognize that if such efforts are not undertaken carefully and thoughtfully, the proliferation of inconsistent approaches and frameworks can further exacerbate market fragmentation and lead to systemic risks that threaten market structure, potentially creating disruptions that impact bond pricing in the secondary and primary market – impacting the economic return and costs of capital expectations issuers and investors rely on in transactions.

At this stage, where different segments of the ESG markets have reached varying stages of maturity, the MSRB can play an important role by perhaps inviting stakeholders with promising research, views and contributions who offered responses to the Notice to form an MSRB working group comprised of issuers and other market participants to present and share information on the various taxonomies, frameworks, and principles that are both in existence and in development. These conversations can enable the MSRB to understand the current state of resources being developed in the ESG market to a deeper degree, helping it to examine and refine its short and long-term strategy in response, and consider how and whether it should explore the creation of centralized voluntary or mandatory standards to govern ESG labeled issuances and a potential centralized repository for ESG information that is in harmony with the evolution of the EMMA and EMMA Labs platforms. With respect to the latter, PFI offers concrete recommendations on improvements to the EMMA Platform and EMMA Labs platform in response to Question 7 which are relevant to the issues addressed in this question.

Regarding Question 6. The inclusion on the MSRB’s EMMA platform of IHS Markit ESG indicators data is an important enhancement that has the potential to make visible important ESG information in self-designated issuances, particularly when deals have been certified by one of several verifiers that assess the issuance for adherence to ESG criteria. Prior to this, market participants would have had to independently research this information at the issuer level, or on a myriad of independent platforms, or other sources. To further enhance how IHS Markit data can serve market participants and the MSRB’s mandate of transparency, the MSRB should consider two changes.

First, where the “ESG Type” title appears on the EMMA Platform’s New Issue Calendar, the MSRB should revise the definition to more clearly state that the field endeavors to report IHS Markit data, rather than generic ESG data. The current definition does not clearly communicate that. Second, the MSRB should include IHS Markit data anywhere across the EMMA Platform and EMMA Labs in which issuer data appears. In this way, clear and consistent information on the presence of ESG designations and verifiers will be accessible as market participants look for pre- and post-issuance information.

Regarding Question 7. We suggest that the MSRB consider the creation of a New EMMA Lab dedicated to ESG Disclosures & Taxonomies. As the MSRB’s “innovation sandbox”, the EMMA Labs data and technology platform is uniquely positioned to host a new lab that serves as the first voluntary repository with which to collate and disseminate existing ESG frameworks, principles, reports, and taxonomies. The lab could be designed to automatically filter and show industry stakeholders every ESG-Labeled Bond and its related continuing disclosure filings, coupled with trade data. This would enhance the capacity of market participants to answer important macro-level questions that have, to date, remained opaque.

In addition, the lab could enable issuers interested in self-reporting additional ESG information the capacity and platform with which to do so, providing an additional resource for issuers, financial advisors, and underwriters that are preparing new offerings and wish to learn from others in the field, thereby encouraging the discourse surrounding future ESG best practices. It can also accommodate reporting for bond issuances that have ESG-focused use of proceeds but do not carry an ESG label,

particularly refunded bonds and others. Furthermore, the lab could also provide ESG information to investors on a level playing field, serving as an important first step to address the unequal and irregular access to information. Additionally, the SEC, MSRB, and other stakeholders that are working to define future market standards, could use the lab as a resource to observe the evolution of the ESG landscape over time, as new regulatory or non-regulatory long-term solutions take form.

Regarding Question 8. The current environment for federal aid to fund infrastructure has undergone dramatic shifts via the passage of the \$1.85 trillion American Rescue Plan Act (ARP) and \$1.2 trillion Infrastructure Investment and Jobs Act (IIJA). The IIJA and ARP are changing the intergovernmental resource base available for infrastructure (and other) investment in many issuer jurisdictions, with funding streams that in many instances explicitly encourage equitable investment across many functional areas such as broadband, water, sewer, and others aligned with ESG values.

It is important for the MSRB to be attentive to such trends where federal aid is blended with municipal bond proceeds as joint co-investment avenues for infrastructure projects. If bond issuers rely on municipal bonds as part of the wider capital funding strategy for a jurisdiction that leverages the noted aid packages, such issuers may engage in reporting of non-financial factors (particularly social and other equity-focused and ESG criteria) for a project when meeting reporting requirements for the U.S. Treasury and other federal or state agencies and departments charged with the administration of grant funds.

With respect to ARP, for example, certain issuer jurisdictions who are recipients of State and Local Fiscal Recovery Funds are required to submit Recovery Plan Performance Reports to the U.S. Treasury documenting the federal aid expenditures and how funds are being used to promote a strong and equitable recovery. Such reports often include important information about recipients' forward-looking strategy for how they plan to use funds between 2021 and the 2026 deadline for State and Local Fiscal Recovery Funds expenditures. Recovery Plan Performance Reports, and other reporting occurring under the IIJA and ARP, could contain important information that is highly relevant to market participants where forward-looking statements are made for bond funded projects that will also receive federal aid. The MSRB should consider collaborations with the US Treasury to examine the data and information arising from reporting that will occur for the IIJA and ARP that may have a relevant nexus to bond funded projects and consider whether including access to any such disclosures on EMMA Labs or the EMMA platform could enhance and inform our understanding of ESG criteria in the context of certain bond funded projects that also include federal aid funding.

Closing

PFI appreciates the continued outreach that the MSRB and this opportunity to engage with the MSRB to share our input with the Board and staff at this important stage of growth of the market activity in ESG self-designated issuances. All the areas we describe above are active areas where PFI is conducting research and developing programs. We would be delighted to share our research and work with the MSRB and welcome the opportunity to discuss our comments and provide additional assistance.

Sincerely,



Lourdes Germán
Executive Director

Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market
(2021-17)

Municipal issuers

1. Are you currently providing ESG-Related Disclosures or ESG-related information beyond the legally required disclosures in your offering documents, continuing disclosures or other investor communications? If so, please consider providing examples. If not, please consider describing how you address ESG-Related Disclosures in your offering documents, continuing disclosures or other investor communications. In your view, should municipal issuers include a separate section in their official statements and other offering documents expressly devoted to ESG Related Disclosures?
 - a. Since issuing its first green bonds in 2015, the San Francisco Public Utilities Commission (SFPUC) has published green bond reports annually (see reports for [Water](#), [Wastewater](#), and [Power](#)). The reports initially included the spend-down of bond proceeds and, beginning in 2019, the SFPUC substantially improved the reports to also include descriptions of project impacts with metrics where available, links to California Environmental Quality Act (CEQA) reports as well as alignment with UN Sustainable Development Goals. The enhanced reporting came largely in response to investor requests for additional impact data.

Regarding adding a separate section in offering documents, given the ESG focus by investors and rating agencies, and the critical nature of climate risk, the SFPUC would like to explore this question further with market participants. It would be helpful to understand what investors and rating agencies would like to see from issuers.

2. Do you believe the information included in ESG-Related Disclosures should be standardized? If so, how? If not, why not? In your view, is there a consensus on what information and which metrics are important? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are relevant and should be included in ESG-Related Disclosures?
 - a. Best practices may be preferable over standardization, ie GFOA. Some guidance to consider: esg disclosure to be based on 1) investor impact reporting needs (so responsive to the market), 2) ensuring capital investments are aligned with issuer's climate goals and mechanism to collect and report impact data, and 3) conforming to European / global reporting standards to broaden investor base.

On point 2 above, the SFPUC is piloting a climate-aligned project screening tool with Professor Jan Whittington at the University of Washington. The tool, developed by Professor Whittington and implemented widely outside of the US, will screen projects against the SFPUC's climate and social impact goals to ensure the department's \$1B/yr in capital investments are aligned with the city's long-term climate goals, ie carbon neutral by 2045, adapt to forecasted physical hazards such as sea level rise, extreme precipitation. Project impact data is collected throughout the capital planning process so impact data can easily flow into reports and an interactive dashboard.

On point 3 above, in 2020 the SFPUC listed its taxable green bond issuance on the London Stock Exchange with the goal of reaching European institutional investors with portfolios that require bonds be listed on an exchange. European green bond investors offer an important opportunity to drive more demand for US green muni bonds. While listing was an important first step, the actual listing occurs at closing so the benefit really accrues to the secondary market. Therefore, the SFPUC sees ESG reporting and direct investor engagement as a more efficient method to attract global investors. Moreover, to better attract European investors additional work needs to be done related to bond structure and marketing.

3. Have you issued ESG-Labeled Bonds? If so, please consider providing an example and describing what criteria were used to make the ESG designation. Did you utilize an independent party to validate or otherwise attest to the use of the ESG designation? Please consider explaining why or why not.
 - a. Yes, the SFPUC has issued approximately \$3B in green bonds since 2015. The Water and Wastewater enterprises received programmatic verification for the department's Water System Improvement Program and Sewer System Improvement Program, respectively. These bonds were issued under the Water criteria of the Climate Bonds Initiative and verified by Sustayanalytics. The SFPUC's power program has issued two green bonds and both were self-certified.

On taxable bond issuances, the SFPUC has observed an estimated 3-5 basis points of savings for its green bonds versus non-green bonds. Additionally, the SFPUC has received multiple awards for its ESG leadership generating reputational benefits. Rating agencies and investors increasingly view our investments in resilient infrastructure and also in our community's resilience as a credit strength. Lastly, green bonds have enabled the SFPUC to broaden its investor base and enable deeper engagement with bondholders.

4. If you issued ESG-Labeled Bonds, did you commit to providing any ongoing or continuing disclosure related to the ESG designation? If so, was that disclosure commitment incorporated into the continuing disclosure agreement or similar contractual obligation related to Securities Exchange Act Rule 15c2-12 (collectively, "CDA")? If so, please consider providing an example of the CDA. If the disclosure commitment was not incorporated into the CDA, how is the information made available to an investor on an ongoing basis and at what frequency?
 - a. Yes, the SFPUC commits to providing green bond reports on an annual voluntary basis and not as a CDA obligation. The SFPUC's annual green report is made available to investors through publication on its website (see reports for [Water](#), [Wastewater](#), and [Power](#)) and the website of CBI and Bondlink.
5. Are you providing information to the credit rating agencies regarding ESG-related risk factors and ESG-related practices? If so, what type? In your view, how does this information generally compare to the information provided in your offering documents and continuing disclosures? Are the credit rating agencies requesting any new types of ESG-related information? Has the credit rating process changed in any significant ways in relation to ESG-related information?
 - a. Rating agencies are increasingly focused on environmental risks, e.g. water supply reliability and wildfire risk mitigation.



March 8, 2022

VIA ELECTRONIC SUBMISSION

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2021-17 – Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Dear Mr. Smith,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to comment on Municipal Securities Rulemaking Board (“MSRB”) Notice 2021-17 (the “Notice”)² requesting public input on environmental, social and governance (“ESG”) practices in the municipal securities market. We understand that the request does not correspond with any rule making and only seeks to further the MSRB’s mandate of enhancing issuer and investor protection and furthering the overall fairness and efficiency of the municipal securities market. SIFMA appreciates this type of request by the MSRB, which allows for preliminary discussion of items of interest to the MSRB before any rulemaking has commenced and initial viewpoints are potentially set. We acknowledge the attention these issues have been receiving from other regulators and market participants, as well as society at large.

In light of the preliminary nature of the request, SIFMA’s comments are high-level and represent SIFMA’s initial thinking on the delineated topics. SIFMA urges that if the MSRB desires to take action on ESG disclosures, a formal rulemaking process should be followed, allowing for appropriate public notice and comment periods for any proposals. SIFMA remains available to assist the MSRB and will provide additional comments in response to any specific regulatory proposals. SIFMA does, however, have some initial concerns about the issues in the Notice, as set forth below.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). SIFMA’s members underwrite over 90% of new issues of municipal securities by volume.

² MSRB Notice 2021-17 (Dec. 8, 2021).

I. MSRB Is Not the Appropriate Regulatory Authority

First and foremost, SIFMA believes that the Securities and Exchange Commission (“SEC”), not the MSRB, is the appropriate regulatory authority to promulgate rulemaking regarding the content of issuer or obligor disclosures. To the extent the SEC has authority over issuer and obligor disclosures, any substantive regulation of issuer disclosure content should be left to the SEC in its pursuit of investor protection.³ Similarly, the MSRB is not the appropriate regulatory authority to determine materiality; that authority lies squarely with the SEC. With that being said, we acknowledge it may be helpful for the MSRB to examine ESG issues in the municipal securities market and determine if there are any unique factors in this market that should be kept in mind for future discussions with the SEC and other regulators.

II. Encouraging the Developing ESG Sector with Caution

SIFMA members acknowledge that there are societal benefits to encouraging investment in ESG projects. They also recognize that ESG investing is a nascent, yet rapidly developing sector. As ESG products are evolving, the standards for what constitutes an ESG asset, ESG investment directive, or a preferred form of ESG disclosure are also evolving. If the SEC does proceed with regulation of the ESG sector, factors relevant for this purpose include, allowing time for innovation and development of market practices, collaborating with stakeholders on the development of this new market, and proceeding with care and caution.⁴ In the long-term, rule sets should be as uniform and standard as possible across all domestic and international markets and products. Premature regulatory action in markets still in their infancy, such as the ESG market, may unintentionally impede their growth.

Issuers should consider what information, including disclosure on how the proceeds will be, or were, spent may be material to an ESG investor. SIFMA believes that, when possible, ESG disclosures should focus on measurable and objective metrics. These disclosures can focus on specific metrics relevant to a given project, including green buildings, carbon emissions, water conservation, recycling initiatives, jobs created, affordable housing, etc. Alternatively, ESG disclosures may focus more on the ESG nature of an organization, including goals for sustainability, diversity and community engagement. There are a wide range of ESG-friendly projects and issuers in the municipal market.

³ SIFMA has responded to the SEC request for comment on ESG issues. *See* Letter from Melissa MacGregor (SIFMA) to SEC, June 10, 2021; and Letter from Timothy W. Cameron, Esq. (SIFMA AMG) to SEC, June 10, 2021.

⁴ In the recent SEC Office of Credit Ratings Staff Report on Nationally Recognized Statistical Rating Organizations, the SEC acknowledges the rapid development in ESG products has led staff to identify some areas of potential risk. *See*: <https://www.sec.gov/news/press-release/2022-15>.

Investor confidence is critical in the development and operation of markets. Care should be taken by the issuer to avoid the appearance of overstating any ESG benefits, which would create reputational risk not just for the issuer, but also for the underwriter and municipal advisor.⁵ Investors should perform their own diligence on any ESG investments to determine whether or not the product meets their own definition of ESG. The application of ESG principles to municipal securities can be challenging, however as all tax-exempt municipal securities are issued for a public purpose, some of the designations are relatively obvious.

III. ESG-Labeled Bonds and Issuer Self-Designations

The most critical issuer information is full disclosure of the facts about the project and use of proceeds, from which an investor could determine whether a particular security meets their investment criteria. Neither the issuer nor the underwriter is in a position to determine whether the issuer's ESG-related factual disclosures are sufficient for the bonds to be ESG-labeled bonds under any specific investor's criteria.

While best practices for an issuer could include the external review of an ESG designation by a credible party, such designations can be financially burdensome, time consuming, and potentially unnecessary in certain instances. External review of designations typically carries a fixed cost which is not dependent on the overall size of the issuance, thus disadvantaging smaller issuers. The cost of any licensing fees related to ESG designations that market participants may be required to bear should also be considered. Municipal securities issuers are very price sensitive, and many are not likely to pay for a costly external review without the certainty that it will add significant value to the transaction.

While external review of a designation may be beneficial, self-designation should still be viewed as credible for ESG consideration as long as the issuer discloses a detailed rationale for their self-designation that is consistent with a widely accepted framework, including a clear breakdown of the planned use of proceeds. A fulsome description of the relevant criteria and metrics used are vital to an investor's analysis. In these early days, self-designations should not be viewed as inferior. Standardization can be beneficial and best practices from outside organizations could potentially be considered as a long-term industry goal, but there should be no singular labeling standard or requirement at this time.⁶ To encourage growth and development in ESG products, SIFMA members feel it is important to permit issuers to self-designate as to their bonds' ESG

⁵ See, [World's biggest firms seen exaggerating their climate actions \(cnbc.com\)](https://www.cnbc.com/2022/02/07/study-worlds-biggest-firms-seen-exaggerating-their-climate-actions.html) available at: <https://www.cnbc.com/2022/02/07/study-worlds-biggest-firms-seen-exaggerating-their-climate-actions.html>.

⁶ As noted in the Notice, there are multiple independent parties, including the International Capital Market Association (ICMA), that supply standards by which bonds could be judged. "The [ICMA] Green Bond Principles (GBP), the Social Bond Principles (SBP), the Sustainability Bond Guidelines (SBG) and the Sustainability-Linked Bond Principles (SLBP) referred to as the "Principles" have become the leading framework globally for the issuance of sustainable bonds." See: <https://www.icmagroup.org/sustainable-finance/>.

status. Not permitting issuer self-designation as to the ESG status of bonds would impede growth in this sector.

Issuers should make clear that any issuer designation is neither a promise nor a guarantee, and any self-designations should have a safe harbor similar to that of forward-looking statements. Any designation or recitation of facts about the project and use of proceeds should be meaningful and not misleading.

IV. ESG Risk Disclosures and Labeling Should Be Distinct

The MSRB's Notice recognizes the disclosure of information regarding ESG-related risk factors as distinct from the labeling and marketing of municipal securities with ESG designations or labels. Addressing both issues in the Notice, however, may potentially cause confusion among some market participants. SIFMA believes that the categories of ESG risk disclosures and ESG labeling should be dealt with exclusive of one another by the SEC. The issues presented by each category are unique and implicate the need for differing expert input or review. We believe that both categories are important and deserve independent development and thought.

As the SEC reviews potential regulation in this market, we note that while standardized disclosure of every ESG-related risk factor is not feasible, more specific risk ESG disclosures on ESG products would be helpful. State and local governments and obligors can and should have bespoke material risk disclosures for ESG-related matters. Any such material risks should already be disclosed under current law. Examples of such material risks could include the identification of material assets in a flood zone or in areas prone to wildfire. The material risk of other natural disasters should be considered, as well as the known material risks of infrastructure adaptation to a changing climate. Issuers and obligors should also already be considering if climate change is or is reasonably expected to materially affect its revenue. Any steps taken to mitigate such risks may also be material.

V. Issuers Prioritizing ESG Investors in New Issues of Municipal Securities

Pursuant to MSRB Rule G-11, underwriters must honor an issuer's priority of orders in a new issuance of municipal securities.⁷ The underwriter's obligation is to conduct an orderly distribution of securities. Issuers are free to structure the priority of orders in any manner that they see fit in light of their goals and objectives, including potentially prioritizing ESG or other types of investors. To ensure an issuer's goals and objectives are met, any necessary definitions and criteria used in their priority of orders should be clearly set forth. Classifying investors and altering any priority of orders to give an order preference to certain investors based on their investment strategies could potentially increase an underwriter's compliance risks. However, if an issuer has prioritized ESG investors, an underwriter should be able to rely upon a

⁷ MSRB Rule G-11; *See also*, <https://www.msrb.org/msrb1/pdfs/Establishing-Priority-of-Orders.pdf>

representation from the investor related to the investor’s eligibility or characterization as an ESG investor. The ability of an underwriter to rely on an investor’s statements, without further examination and review, would be necessary to mitigate compliance risks.

VI. EMMA Improvements and Clarity of Information

We recognize that the MSRB recently incorporated an ESG indicator from IHS Markit into the new issue calendar shown on the EMMA website. SIFMA and its members believe that this indicator is potentially problematic and confusing, as there is no clear definition of what this ESG indicator substantively means for each specific issuance. We do not believe that this ESG indicator on the EMMA website enhances accurate market transparency regarding these ESG-designated bonds.⁸ At this time, we do not believe it is of value to investors, who need to make their own determination about whether any particular bonds fit within their investment criteria.

Any such designation does not necessarily add value or mean that such bond fits within any particular investment criteria. Diligence on any such designated bond issue would not be practicable for determining or validating the issuer’s subjective designation.

Improvements to the EMMA website could include clarifying any issuer self-designations, adding in specifics regarding any external review, removing any confusing labels, and focusing on objective and standardized ESG-labels. Again, any such designations should include risk disclosures regarding differing investor criteria to avoid underwriter liability regarding a bond’s classification at initial offering or throughout the time it is outstanding.

* * *

Thank you for considering SIFMA’s comments. Overall, SIFMA appreciates the MSRB’s review of these timely issues and the opportunity to comment about its concerns regarding this request for information. As stated above, our largest concerns relate to the need for investor protection, prevention of investor confusion, increased burdens on issuers, and increased risks and liability to underwriters. We look forward to working with the SEC and the MSRB on these

⁸ In a press release from October 25, 2021, the MSRB itself conceded that “. . . *there is no universally accepted ESG standard or definition on labeling an ESG security in the municipal market . . .*” (emphasis added)

issues as the ESG market develops. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, light-colored background.

Leslie M. Norwood
Managing Director
and Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Gail Marshall, Chief Regulatory Officer

Securities Exchange Commission
Ernesto Lanza, Acting Director, Office of Municipal Securities



Municipal Securities Rulemaking Board (MSRB)

**REQUEST FOR INFORMATION ON ENVIRONMENTAL, SOCIAL
AND GOVERNANCE (ESG) PRACTICES IN THE MUNICIPAL
SECURITIES MARKET**

CONTACT: **Bryant Jenkins** | EMAIL: bjenkins@sperrycapital.com | PHONE: 650-996-5075
SPERRY CAPITAL INC. | THREE HARBOR DRIVE, SUITE 101, SAUSALITO, CA 94965

Sperry Capital Inc.

March 8, 2022

MSRB

Via online submission: [MSRB Comment Form](#)

To Whom It May Concern:

On behalf of Sperry Capital Inc. (Sperry), we appreciate the opportunity to submit to the Municipal Securities Rulemaking Board (MSRB) in response to the Request for Information (RFI) on environmental, social and governance (ESG) practices in the municipal market. If you have any questions, please contact me.

Sincerely,



Bryant Jenkins, Principal



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Municipal Advisor Specific Question Reponses

- 1) *Does the formulation and delivery of advice regarding ESG-Labeled Bonds raise any novel compliance issues for firms, such as challenges related to recommendations, pricing, suitability or other related legal obligations?*

No. To the extent that a municipal advisor makes a recommendation on a specific method of ESG-Labeled Bonds, it is tantamount to all other marketing and informational recommendations that are made to clients within the same compliance regime.

- 2) *Does the formulation and delivery of advice regarding ESG-Related Disclosures raise any novel compliance issues for firms, such as challenges related to recommendations, pricing, suitability or other related legal obligations?* Yes. There is a question of materiality for certain ESG-Related Disclosures. For example, a wastewater issuer that does not have an appropriate governance structure to deal with equity issues in prior remediation events. Should that disclosure be provided? If so, how detailed would the risk disclosure be? We think that there is significant uncertainty on dealing with ESG-Related Disclosures (e.g., Climate Change and its Effects Globally, US, and/or Locally) and providing appropriate level of disclosure.

All Municipal Market Participants Question Responses

- 1) *Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?*

There are several ESG-related factors from global warming, societal unrest, income inequality to name a few that may pose systemic risk to the United States and by extension, the U.S. municipal securities market. As a regulatory entity, MSRB should focus more on localized ESG-related factors that have historical basis such as wildfire risk in the Western United States and how those risks are disclosed. It is almost impossible and somewhat nebulous for the MSRB to review every issue for appropriate systemic risk disclosure. From a non-regulatory perspective, MSRB may consider either providing general language to be considered for those systemic risks or at least general guidance on how risk disclosure should be characterized.

- 2) *There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI. 17 Does the availability of these voluntary, market based standards provide adequate guidance for issuers and transparency for investors in the municipal securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?*

These standards provide some comfort to investors, but the market will be better once we have coalesced to a universal standard as opposed to the current spectrum of self-identified green, sustainability and social bonds, third party verified to ICMA or CBI standards or whatever new marketing term gets invented next week.

- 3) *There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?*

The U.S. municipal securities market is at the early stages of using ESG related information. The information currently available is an improvement for investors from the past. Nonetheless, it is more helpful for near term unification, if ESG information and disclosure has a baseline standard for ESG information available (e.g., greenhouse gas emission reduction per product) along with identified best practices such as comparative ESG statistics for the project/issuer going back through several years. At the current stage, investors understand if projects have ESG-features. However, investors do not know the extent of the ESG in the project (i.e., how green is it compared to other projects in the sector, compared to other sectors).

- 4) *There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? See note 10 above for links to ICMA and CBI's websites. [msrb.org](https://www.msrb.org) | emma.msrb.org 9 MSRB Notice 2021-17 confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?*

As indicated in our response to question 3, there is a variety of nonstandard ESG data for market participants to utilize. We cannot say for certain that unequal access to ESG data leads to disparate impacts to investors because municipal market investors have a variety of preferences and a variety of ESG preferences as well as host of data providers. It would be helpful for the MSRB to link to appropriate ESG data such as ICE data or CBI post issuance verifications.

- 5) *Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?*

Yes. ESG investors based in foreign markets are used to obtaining more robust ESG data in Europe and Asia than in the U.S. municipal securities market. It does not necessarily mean that they are less likely to participate in the U.S. municipal securities market, but it does make it more difficult to have enough buyers to generate a compelling greenium/premium to issuers which would incent more issuers to provide ESG information to investors. Retail investors are still relatively unsophisticated compared to institutional investors on ESG information. In the taxable market, issuers need significant size (in excess of \$250 million) to be eligible for taxable indices and more attractive to taxable buyers. This is a higher bar than for most tax-exempt ESG investors who may be interested in smaller size transactions.

6) *The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website.¹⁸ This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?*

Yes. More information is better than less. MSRB should consider providing guidance to differentiate between the ESG labels.

7) *What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?*

It would be helpful to market participants, if MSRB could utilize word search technology as shown in EMMA labs to link to the ESG-Related Disclosures and other ESG-related information. EMMA website would be enhanced with additional information regarding the four pillars of ESG – use of proceeds, selection of ESG projects, management of proceeds, and reporting linked for all market participants to review.

8) *Is there any additional information that you would like to share with the MSRB regarding any other ESG-related activities or trends in the municipal securities market?*

N/A



J. BEN WATKINS III
DIRECTOR

STATE OF FLORIDA DIVISION OF BOND FINANCE

RON DESANTIS
GOVERNOR

ASHLEY MOODY
ATTORNEY GENERAL

JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

NIKKI FRIED
COMMISSIONER OF AGRICULTURE

March 8, 2022

Florida Division of Bond Finance Response to MSRB Request for Information on Environmental, Social and Governance (ESG) Practices

(A) Municipal Issuers

- 1. Are you currently providing ESG-Related Disclosures or ESG-related information beyond the legally required disclosures in your offering documents, continuing disclosures or other investor communications? If so, please consider providing examples. If not, please consider describing how you address ESG-Related Disclosures in your offering documents, continuing disclosures or other investor communications. In your view, should municipal issuers include a separate section in their official statements and other offering documents expressly devoted to ESG-Related Disclosures?**

We provide ESG-related disclosures in primary offering documents but do not currently provide ESG-related marketing content. We do not consider the information we provide as being 'beyond what is legally required' and would not consider providing information beyond legal requirements in an offering document.

Several years ago, Florida added an 'Environmental Risk Factors' disclosure to all offering documents (Attachment 1) to fully inform investors about the environmental risks Florida faces and the policies and mitigation efforts in place to address those risks. Similarly, we have added an 'Information Technology Security' disclosure section regarding cybersecurity (Attachment 2). These disclosures were added after careful evaluation of how risks in these categories could impact the State in the future, our credit quality, and ability to make payments on outstanding bonds.

We have traditionally provided a great deal of information that falls into the 'G' category in our disclosure documents. The introduction to all of our official statements describes the legal authority to issue bonds and the necessary approvals that have been obtained, including the language of the resolutions. We also provide information such as demographic and economic data that can be categorized as 'S' social. Municipal issuers have customarily provided this kind of information long before it was categorized as 'Governance' or 'Social' within the ESG moniker.

We do not feel that rearranging or renaming sections of offering documents as 'ESG' is necessary to meet the information needs of investors. If the relevant disclosure information is included in a rational order and easy to follow, it should not require a label for investors to locate it within the offering document.

- 2. Do you believe the information included in ESG-Related Disclosures should be standardized? If so, how? If not, why not? In your view, is there a consensus on what information and which metrics are important? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are**

relevant and should be included in ESG-Related Disclosures?

No, we do not believe there would be a benefit to standardizing ESG-related disclosure. The strength of the muni market is in the unique attributes of the issuers, the infrastructure financed which provides essential public services, and the dependability of the revenues typically used to secure the bonds. This is entirely inconsistent with the notion of uniformity and homogeneity. Imposing additional regulatory burdens related to mandated, uniform ESG metrics will not serve to improve investor protections or increase available, meaningful information.

ESG is still a relatively a new concept and analysts and investors have not developed a consensus on what data and which metrics are important to their analysis. Accordingly, there are varying approaches to evaluating ESG risks. Therefore, the information investors want varies according to what they determine to be important to their individual analysis to evaluating credits.

In fact, last year we called several investors to try to determine if we were providing the necessary environmental disclosure to meet their needs and how they were evaluating the information provided by issuers through an ESG lens. None of the firms we called could provide insight into what they were looking for or metrics they were using to evaluate environmental risks. It would seem extremely premature to standardize information when investors have not coalesced around what is important to them.

ESG-related disclosures should follow the longstanding guidelines for risk-based disclosure for municipal market offering documents. The SEC has noted in the past that the diverse nature of this market means it is particularly ill-suited to a “one size fits all” approach to such disclosure and has historically taken a principles-based approach to disclosure in the municipal securities market. For example, certain environmental risks, like hurricane damage, are only applicable to certain issuers. It would be difficult to mandate disclosures around climate change when the nature of the risk will depend on the region in which the issuer is located and the type of credit. Each individual issuer is in the best position to determine risks relevant to its own credits. In addition, the GFOA’s ESG Best Practices provide issuers with helpful guidelines along with the flexibility to define for themselves the most relevant and important risks they are confronting regarding ESG factors. These Best Practices and other industry-led initiatives on this topic should be given time to work prior to creating standards or “uniform metrics” that may serve to confuse or limit meaningful ESG risk disclosures.

- 3. Have you issued ESG-Labeled Bonds? If so, please consider providing an example and describing what criteria were used to make the ESG designation. Did you utilize an independent party to validate or otherwise attest to the use of the ESG designation? Please consider explaining why or why not.**

No, we have not issued ESG-labeled bonds because there is currently no evidence that indicates a pricing benefit or wider distribution that would justify the expenditure of public funds for additional staff time or potential third-party verification expense. Much of the information that would likely be needed to issue labeled bonds is really marketing information and not relevant to disclosure or the kind of information that is appropriate for inclusion in an offering document. Additionally, public infrastructure, by its nature, has self-evident ESG attributes that benefit the general public making independent validation a needless expense and generally unnecessary.

- 4. If you issued ESG-Labeled Bonds, did you commit to providing any ongoing or continuing disclosure related to the ESG designation? If so, was that disclosure commitment incorporated into the continuing disclosure agreement or similar contractual obligation related to Securities Exchange Act Rule 15c2-12 (collectively, “CDA”)? If so, please consider providing an example of the CDA. If the disclosure commitment was not incorporated into the CDA, how is the information made available to an investor on an ongoing basis and at what frequency?**

Although we have not issued ESG-labeled bonds, we would not be in favor of adding any ESG-related reporting to the CDA. Adding reporting to the CDA would likely add an additional expense when, as stated above, there is no evidence that issuing ESG-labeled bonds results in savings for issuers. Additionally, in terms of the evolving world of ESG, it is very difficult to determine what metrics are meaningful and would have continued relevance for reporting over the 20-30 year life of a bond.

- 5. Are you providing information to the credit rating agencies regarding ESG-related risk factors and ESG-related practices? If so, what type? In your view, how does this information generally compare to the information provided in your offering documents and continuing disclosures? Are the credit rating agencies requesting any new types of ESG-related information? Has the credit rating process changed in any significant ways in relation to ESG-related information?**

Yes, we are providing ESG information to rating agencies through our annual meetings and presentation (Attachment 3, ESG slide). The information provided is very similar to what is contained in our official statements and the presentation is available on our investor website, sbafla.com/bond.

Rating agencies have produced reports/scores regarding Florida ESG risks. For the most part, we did not provide information to help formulate outcomes but would have appreciated the opportunity to do so. The narrative form taken in the Fitch and S&P Florida ESG reviews provides more relevant and in-depth information than Moody's score-based approach. The varying rating agency approaches offer a good example of why standardization of ESG disclosure or reporting is not as meaningful as flexible, freeform narrative. We have not experienced any significant changes to the credit rating process related to ESG-related information since any ESG risk factors that are relevant to our credits were already being assessed by the ratings agencies and made part of their reviews and published credit opinions. The primary change we have observed is that the ratings agencies are attempting to be more transparent in their reports regarding how such factors impacted their credit analysis by including them in a separately identified section.

(E) All Municipal Market Participants

- 1. Are there any ESG-related factors that could pose a systemic risk to the municipal securities market? If so, how might the MSRB approach such systemic risks from a regulatory perspective? Are there non-regulatory approaches the MSRB could take that would advance issuer protection, investor protection, and the overall fairness and efficiency of the market?**

The largest risk is the threat of mandatory ESG disclosure standards which could impair the efficient operation of the municipal market. Sufficient investor protections already exist within the current legal framework (antifraud provisions of federal and state securities laws, SEC Rule 15c2-12, etc.).

The SEC could encourage issuers to provide additional ESG-related information through something similar to the statement on the Importance of Disclosure for our Municipal Markets regarding COVID-19 (the "COVID-19 Statement") which provided guidance for disclosure and is a great example of the right regulatory approach to enhancing information available in the municipal market. The COVID-19 Statement encouraging voluntary disclosures had the most meaningful and timely impact to enhance disclosure than any previous regulatory actions. Providing principles-based guidance affords sufficient flexibility for issuers to formulate disclosures specifically tailored to their circumstances. The guidance was embraced by the issuer community and resulted in thousands of voluntary filings on issuer websites and the municipal industry's EMMA platform. A similar approach to encouraging issuers to provide information related to ESG risks and mitigation strategies in their bond offering documents coupled with assurances regarding protection from securities liability and enforcement actions could be a game changer for ESG disclosures.

- 2. There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI.¹⁷ Does the availability of these voluntary, market-based standards provide adequate guidance for issuers and transparency for investors in the municipal**

securities market? If not, what additional guidance or transparency do you believe are warranted with respect to ESG-Labeled Bonds?

Yes, there is a plethora of information available on how to issue ESG-labeled bonds. Issuers can use external sources to better understand how various groups are advising on the issue and make informed decisions about what works best for their circumstances. There could be some usefulness in a set of industry accepted guiding principles for labeled bonds to ensure a more uniform application of the marketing of ESG bonds.

- 3. There are a number of industry-led initiatives underway intended to improve the quality of ESG-related information available in the municipal securities market. Does the availability of these voluntary, market-based initiatives enhance the ability of investors and other market participants to make informed decisions in the municipal securities market?**

Industry-led initiatives are always preferable to regulation. Industry practices are more adaptable and effective than regulation. There are several industry organizations, including the GFOA, that have provided meaningful guidance on ESG disclosure. The GFOA is also working on a best practice on designated bonds. Industry-led initiatives should be given time to work before regulation is contemplated. Regulation should always be a last resort to a clear problem not a tool for advocating or promoting social causes.

- 4. There are numerous vendors providing ESG data for the municipal securities market. Does unequal access to ESG data result in disparate impacts to investors and other market participants? Does competing ESG data create investor confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?**

No. The best place for investors to find information about an issuer's ESG risks is from the issuer or the issuer's official offering document. If investors choose to seek information from other sources that is their prerogative and there are many venues, both free and fee-based that may provide useful information. Non-uniform ESG data and information does not create confusion and is no different than any other external information investors might use to augment their analysis and inform their investment decisions. The official statement should remain the primary document that investors rely on to make informed investment decisions.

Standardization through EMMA would likely serve to sanitize useful information and set a ceiling rather than a floor on information being disclosed. Additionally, EMMA is not designed for segregating one-off disclosures into specific categories. This would likely be a slippery slope that could lead to innumerable categories for postings that then lose their usefulness to analysts and investors.

- 5. Does the availability of ESG-related information (or lack thereof) in other financial markets directly or indirectly influence the functioning of the municipal market? If so, how? For example, when evaluating competing investment opportunities, do taxable ESG investors expect the same timeliness and quality of ESG-related information for a municipal issuer as for a corporate issuer? And how might the differing expectations of different classes of investors (e.g., foreign versus domestic; retail versus institutional; or tax-exempt versus taxable) regarding ESG-related information affect pricing, underwriting, trading, and other market activities?**

No, the municipal market, due to the public nature of the issuing entities, is unique and information that may be available in other markets will not impact the efficient functioning of the municipal market. Trying to translate conventions of other markets into the municipal market is ill-advised as the diversity of issuers and differences among sectors and credit structures does not lend itself to off-the-shelf, one-size-fits-all solutions.

State and local governments are on the frontline of providing essential infrastructure in communities and addressing challenges posed by ESG risks to protect the health, safety and welfare of our citizens. These

goals are central to the mission of government entities and therefore should alleviate many investor questions and concerns that may arise from dealing with less transparent for-profit companies.

Differences between markets has no impact on attracting capital in the municipal market. Investors in our market are focused on the tax exempt nature of the security and the safety that the government sector provides. This can be quantified by the more than \$60 billion in fund flows into the municipal market in 2021.

- 6. The MSRB recently incorporated an ESG indicator from an independent data vendor, IHS Markit, into the New Issue Calendar shown on the EMMA website. This ESG indicator denotes when an issuer has self-labeled a bond issue as green, social, or sustainable, or if the issuer includes an independent ESG certification as part of the offering document. Does making this ESG indicator available on the EMMA website enhance market transparency regarding ESG-Labeled Bonds? Specifically, is it valuable to investors, municipal issuers or other market participants?**

No, we do not believe that the ESG indicator on EMMA added any meaningful information to the market. This initiative, although well-intentioned, seems to fall outside the MSRB's mission and may actually serve to further confuse by adding another third-party opinion to the mix of information. Additionally, the MSRB indicator is an endorsement of the IHS Markit inappropriately favoring a private market data provider or the go-to for ESG designation. For satisfying its ESG criteria, if any, the label should not excuse an investor from doing their own analysis and evaluation prior to making an investment decision rather than relying on an arbitrary indicator.

- 7. What improvements could the MSRB make to the EMMA website regarding ESG-Related Disclosures, ESG-Labeled Bonds and other ESG-related information? Which improvements to the EMMA website would most enhance access for investors and other market participants to ESG-related information? Which improvements to the EMMA website would most enhance the fairness and efficiency of the municipal market?**

Improvements to the searchability of ESG information on EMMA would be helpful. However, improvements to the generally functionality of EMMA should be the focus of the MSRB not one-off projects that nip around the edges rather than focus on the overall ease and usefulness for market participants.

Environmental Risk Factors

With more than 2,000 linear miles of coastline and relatively low elevations, Florida's weather and natural resources affect its economy in a variety of ways. Economic activity attributable to in-migration and tourism represents a significant part of the State's economy, and the State's warm weather and beaches are responsible for attracting seasonal and permanent residents and tourists to the State. In addition, a majority of the State's residents live and work in coastal counties. Because of the State's reliance on its natural resources to generate business and sustain in-migration, its economy and financial condition may be vulnerable to the impacts of environmental events, including hurricanes and inland and coastal flooding, as well as long-term environmental risks associated with climate change, such as accelerated sea level rise.

The State has effectively responded to past environmental events because of its financial resources, emergency response system, and dedicated leadership and regulatory programs focused on addressing environmental risks. However, the frequency of environmental events, such as hurricanes, may increase on an annual basis according to models and forecasts. Consequently, the magnitude of the impact on the State's operations, economy, or financial condition from environmental risks is indeterminate and is unpredictable for future environmental events. There can be no assurance that such risks will not have an adverse effect the operations, economy, or financial condition of the State.

Resources - The State has a variety of resources available to respond to damage caused by environmental events. The State has financial reserves available to cover response-related expenditures, and, in most cases, the State can request reimbursement from federal relief funds to pay for a portion of such expenditures. Further, upon a declaration of a state of emergency, Florida law provides the Governor broad spending authority to meet financial needs resulting from a disaster. Notwithstanding multiple hurricanes, State finances and the economy have only experienced temporary economic disruption. In addition, the State has improved its resiliency to the threat of environmental risks through the establishment of the Florida Hurricane Catastrophe Fund and the Citizens Property Insurance Corporation to stabilize the property insurance market in the State.

Emergency Response - The State can respond to the impacts of environmental events through its robust emergency response system. The Division of Emergency Management ("DEM") was established as part of the State's structure to plan for and respond to both natural and manmade disasters. In addition to coordinating disaster response activities, DEM prepares and implements a statewide Comprehensive Emergency Management Plan and routinely conducts extensive exercises to test state and county emergency response capabilities.

Leadership - The State's response to environmental risks includes the creation of state-level leadership positions to help coordinate resilience efforts through Florida's 67 counties and over 400 cities. Although a portion of environmental resiliency efforts in each county or city falls on its respective local government leadership, state-level leadership provides valuable resources and support to the State's local governments. In 2019, the Governor created the position of Chief Resilience Officer in the Executive Office of the Governor to work with state agencies to, in part, develop and coordinate the implementation of a comprehensive statewide resilience plan with goals designed to adapt to the environmental challenges facing Florida's communities. Also in 2019, the Governor created the Office of Environmental Accountability and Transparency, led by the State's Chief Science Officer, to conduct scientific research that focuses on current and emerging environmental concerns most pressing to Floridians. The Chief Resilience Officer consults with the Chief Science Officer on policy issues so that each policy decision takes into consideration the environmental impact strictly from a scientific perspective.

Regulatory Programs and Planning – State Level - The State's resilience to environmental risks has been enhanced through state law restrictions and targeted regulatory programs. Coastal construction is regulated by DEP in various ways in order to protect Florida's beaches and dunes from imprudent construction. For example, under the Coastal Zone Protection Act, Florida law imposes strict construction standards for most

activities within the “coastal building zone”, which covers over 1,500 feet from the coastline. Further, the Office of Resilience and Coastal Protection was created within DEP to focus time, energy, and resources into resiliency issues. DEP regulations include a prohibition on most construction within 50 feet of the mean high-water line, known as the 50-foot setback. Also, DEP requires new construction in the coastal areas with higher risks of environmental impacts to meet more stringent standards and demonstrate that the proposed project will not result in a significant adverse impact. Additionally, for coastal areas that are further inland, DEP makes 30-year erosion projections and generally will not issue construction permits for areas projected to be within the erosion projection. In lieu of meeting state law restrictions, Florida’s local governments may establish coastal construction zoning and building codes as long as they are pre-approved by DEP.

In 2020, the State enacted the Clean Waterways Act that strengthens regulatory requirements and provides a wide range of water-quality protection provisions aimed at minimizing the impact of known sources of nutrient pollution, including stormwater-related pollution. The Clean Waterways Act directed DEP and Florida's water management districts to update stormwater design and operation regulations using the latest scientific information.

Regulatory Programs and Planning – Local Level - DEP also implements programs related to sea-level rise and coastal issues that offer technical assistance and funding to communities dealing with coastal flooding, erosion, and ecosystem changes, including the Beach Management Funding Assistance Program and the Florida Resilient Coastlines Program.

On the regional level, Broward, Miami-Dade, Monroe, and Palm Beach Counties formed a collaboration, the Southeast Florida Regional Climate Change Compact (Compact), to address climate change. The Compact’s work includes developing a Regional Climate Action Plan and developing a Unified Sea-Level Rise Projection. Many local governments in southeast Florida have since incorporated the Compact’s projections into their planning documents and policies. Florida’s local governments in coastal areas are required to have a coastal management element in their comprehensive plans that uses principles to reduce flood risk and eliminate unsafe development in coastal areas. In certain coastal areas, local governments are authorized to establish an “adaptation action area” designation in their comprehensive plan to develop policies and funding priorities that improve coastal resilience and plan for sea-level rise.

Planning for the Future - Although the State has effectively responded to past environmental events, the State is vulnerable to future environmental events. In order to position itself to effectively respond to future events, the State has taken additional actions to plan for the future. In 2020, the State Legislature enacted legislation, effective July 1, 2021, that requires DEP to adopt rules to develop a standard by which a governmental entity must conduct a sea level impact projection (SLIP) study under certain circumstances prior to commencing construction of a coastal structure. The DEP and the Chief Science Officer will review the SLIP studies in order to develop policies and guidance to address issues that may arise on a statewide basis.

Additionally, in 2021, Governor Ron DeSantis signed into law Senate Bill 1954, which establishes statewide programs for adaptation to flooding and sea level rise. The programs are intended to address flooding all across the state, including the creation of the Resilient Florida Grant Program within the DEP to provide grants to counties or municipalities for community resilience planning, such as vulnerability assessments, plan development, and projects to adapt critical assets. The law also requires DEP to develop a Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment, including statewide sea level rise projections, containing information necessary to determine the risks of flooding and sea level rise to inland and coastal communities. DEP is also directed to develop the Statewide Flooding and Sea Level Rise Resilience Plan consisting of ranked projects addressing the risks of flooding and sea level rise to communities in the state. Furthermore, the law creates the Florida Flood Hub for Applied Research and Innovation (Hub) within the University of South Florida (USF) College of Marine Science. USF’s College of Marine Science will serve as the lead institution to coordinate efforts to support applied research and innovation to address flooding and sea level rise in the state.

Information Technology Security

Similar to other large organizations, the State relies on electronic systems and information technologies (“IT”) to conduct operations. Protecting the State’s IT infrastructure and data is essential to delivering government services. The State maintains a security posture designed to protect data, deter attacks on IT infrastructure, and respond to security incidents to minimize the impact on operations. The State has also historically maintained reserve funds and a liquidity position that provide the ability to respond to potential incidents.

The State has defended against cyber-attacks in the past, and cyber-attacks are an on-going risk to the State’s IT infrastructure and data. Despite the State’s robust cybersecurity policies and procedures designed to protect their data and IT infrastructure, no assurance is given that such security measures will prevent cyber-attacks, nor can any assurance be given that any cyber-attacks, if successful, will not have a material impact on State operations.

The Florida Digital Service (“FDS”), created within the Department of Management Services, is the lead entity for cybersecurity for the State and is led by the State Chief Information Officer who is charged with implementing the State’s comprehensive framework for addressing cybersecurity and establishing standards and processes consistent with best practices for IT security across all State agencies. The FDS is responsible for assessing cybersecurity risks and determining appropriate security measures for each State agency; creating and annually updating the statewide cybersecurity strategic plan, including security goals and objectives and performance monitoring; developing a framework for use by State agencies to meet their IT security responsibilities, such as conducting IT security risk assessments and reporting IT security incidents; and annually reviewing each State agency’s IT security plans. State law requires State agencies to annually review and consider upgrades to computing and software applications to help mitigate against potential breaches. Within Florida’s emergency response capabilities through the Division of Emergency Management, FDS established a Cybersecurity Operation Center (CSOC) that creates a centralized threat clearinghouse and site for incident response coordination. The CSOC is staffed by cybersecurity experts that help to monitor threats and vulnerabilities faced by state agencies during emergency and regular operations. The Florida Cybersecurity Advisory Council, comprised of cybersecurity experts from outside of State government, serves as an additional resource to assist State agencies by reviewing cybersecurity policies, assessing ongoing and potential risks, assisting the FDS in developing cybersecurity best practice and examining inconsistencies between state and federal law regarding cybersecurity.

The Board of Administration acts as the fiscal agent for the bonds issued by the Division of Bond Finance on behalf of the State and its agencies. As trustee for the Division of Bond Finance’s bond programs, the Board of Administration protects its data and IT infrastructure, including data and information related to bond programs, through a multifaceted cybersecurity strategy. The Board of Administration’s cybersecurity strategy includes a comprehensive set of security policies and procedures, which are designed to guide staff in their cybersecurity responsibilities; a security awareness program, which educates staff on active cybersecurity threats and security best practices; a risk-based threat and vulnerability management program; and a managed threat detection and incident response service which is continuously monitored by a third-party service provider. Additionally, the Board of Administration has implemented access and authentication protocols, which include multi-factor authentication and industry standard encryption to protect data in transit and at rest. As a further precaution, the Board of Administration’s cybersecurity program is subjected to routine internal audits to evaluate the effectiveness of the program, as well as annual external audits and penetration testing to identify opportunities to improve

its security posture. The Board of Administration's cybersecurity strategy is supported by administrative and technical controls, which assist in identifying potential threats and preventing attacks that may target the Board of Administration's data and IT systems. In the event a cybersecurity issue arises, the Board of Administration has an incident response capability to quickly address such issues, including comprehensive plans and external services to assist with incident response, crisis communication, and breach notification management.

Environmental, Social, and Governance (ESG)

- “S” & “G” of ESG have favorable long-term characteristics, supporting State’s credit fundamentals—vulnerability around “E”
- Actions taken to address climate change, global warming, sea-level rise and attendant consequences

Resources

- FY 2022 spending plan includes more than \$4.44 billion in environmental funding, including \$791 million for the protection of Florida’s water resources

Emergency Response

- Robust Division of Emergency Management (DEM) to plan, coordinate and manage emergency response
- Statewide Hazard Mitigation Plan and routine proactive coordination with local governments and first responders

Leadership

- Office of Environmental Accountability and Transparency, led by Chief Science Officer, to conduct scientific research on current and emerging environmental concerns
- The Chief Resilience Officer consults with the Chief Science Officer to assess environmental impact from a scientific perspective

Regulatory Programs and Planning

- Statewide hurricane building codes to harden infrastructure and “coastal building zone” imposes strict construction standards for coastal areas with higher risks of environmental impacts
- Mandated sea level impact projection (SLIP) studies prior to commencing construction of a coastal structure for governmental entities
- Resilient Florida Grant Program to provide grants to locals for community resilience planning
- Developing Comprehensive Statewide Flood Vulnerability and Sea Level Rise Data Set and Assessment, including statewide sea level rise projections





STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor
Kathy Blumenfeld, Secretary-designee
Brian Pahnke, Administrator

March 8, 2022

Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, N.W. Suite 1000
Washington, D.C. 20005

RE: MSRB Notice 2021-17
Request for Information on
Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

Dear Mr. Smith,

The State of Wisconsin is a frequent issuer of municipal securities and, over the years, considers itself to be a leader with respect to municipal disclosure practices. As Capital Finance Director responsible for the authorization, disclosure, sale, issuance, and post-issuance compliance efforts in the State of Wisconsin, I appreciate the opportunity to provide comments regarding the MSRB's request for information on ESG. **In short, I support the comments that were provided in the response of this date from the Government Finance Officers Association (GFOA).** In addition, the following is intended to highlight key considerations as the topic of ESG continues to evolve in the municipal market.

- The State of Wisconsin has long-standing practices and processes with respect to good municipal disclosure. It is material to highlight that with respect to ESG, there is no core difference between longstanding disclosure principles and ESG disclosure principles – they are one in the same.
- GFOA, other issuer groups, and other market participant groups have worked, and continue to work, collaboratively to address the many discussions that involve ESG. The Request for Information correctly identifies many of the discussions that are occurring and questions that have been raised. However, it is prudent to give industry-led initiatives time to work prior to any regulatory approach. Regulations focused on ESG matters will quickly diminish the interest and feasibility of issuer's expanded participation in designated bonds and other ESG-related activities.
- While improving, many ESG discussions that occur among market participants often conflate (i) ESG risk disclosures, (ii) issuing Designated Bonds or other bonds specifically designated for purposes as outlined in the offering statement, and (iii) primary disclosure and ongoing disclosures related to Designated Bonds (or bonds issued for specific purposes in which investors may make ESG

investment decision). The State of Wisconsin is hopeful that submissions to the Request for Information, together with the review of such submissions, adequately take into consideration and recognize this conflation.

- The term “standardization” is used in the Request for Information in reference to disclosure language. The State of Wisconsin has long been a leader in disclosure language concepts that others have utilized in their own disclosure documents. This market-based approach to good municipal disclosure will generate better disclosure language and approaches than any “standardized” requirement.
- If any “standardization” is needed in these ESG discussions, it may relate more to investors and the need for investors to provide a more direct, clear, and consistent messages to the market on (i) specific disclosure information that is needed in order for an investor to provide a pricing premium for an ESG-Labeled Bond, and (ii) the expectations for continuing disclosure information on specific information if an investor is providing a purchase premium on an ESG-Labeled Bond.
- The author of this letter has publicly stated that the EMMA system is the best thing since the Green Bay Packers. The Request for Information focuses on changes to EMMA that relate to just ESG matters. EMMA has been successful since it has evolved with technology and trends in municipal disclosure. As voluntary disclosure grows (both general and related to ESG), EMMA can be improved by allowing better and easier access for issuers to post information and voluntary disclosures that can be clearly identified for investors. As general improvements occur, coupled with the EMMA Labs and other recent enhancements to EMMA, the EMMA system will become a very holistic system that will provide investors the opportunity to find information needed about an issuer or credit. Enhancements to the EMMA system that create silos and data traps, such as designations of disclosures for ESG factors, will only be a step backwards from most of the improvements made over the past few years.

Thank you for this Request for Information and opportunity to provide comment.

Sincerely,



David R. Erdman
Capital Finance Director



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March 8, 2022

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005
Submitted Electronically

Re: Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market, MSRB Notice 2021-17

Dear Mr. Smith:

Teachers Insurance and Annuity Association of America (“TIAA”) and its wholly-owned subsidiary Nuveen, LLC (“Nuveen”), referred to together as TIAA, welcome the opportunity to submit this comment in response to the request for information on ESG practices in the municipal securities market (the “RFI”)¹ issued by the Municipal Securities Rulemaking Board (the “MSRB”). We recognize that this RFI is part of the MSRB’s broader engagement on ESG issues in the municipal securities market, and we support the MSRB’s efforts to carefully examine the ways in which the rapidly-evolving field of ESG investing presents issues that are unique to municipal securities issuers and investors. As investor interest in and demand for sustainable investment products grow, regulators and standard-setting bodies are well advised to study the current regulatory framework around ESG investing and consider whether enhancements are appropriate. Given Nuveen’s long history and leadership in the municipal bond market, coupled with our organization’s responsible investing expertise, we are especially appreciative of the chance to share our perspective on how best to strengthen investor protections, as well as greater fairness and efficiency in the market, by improving the quality and availability of ESG-related information disclosed by issuers. With that perspective in mind, we offer our comments below, both generally and in response to certain questions set forth in the RFI.

I. About TIAA and Nuveen.

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over its century-long history, TIAA’s mission has always been to aid and strengthen the institutions and participants it serves and to provide financial products that meet their needs. To carry out this mission, TIAA has evolved to include a range of

¹ *Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market*, MSRB Notice 2021-17 (Dec. 8, 2021), available at: <https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2021-17.ashx?>.

financial services, including asset management and retail services. Today, TIAA's investment model and long-term approach serve more than five million retirement-plan participants at more than 15,000 institutions. With its strong nonprofit heritage, TIAA remains committed to our mission of serving the financial needs of those who serve the greater good.

Nuveen, the investment management arm of TIAA, offers a comprehensive range of outcome-focused investment solutions designed to secure the long-term financial goals of institutional and individual investors. The Nuveen organization includes investment advisers that collectively manage over \$1 trillion in assets, including in the Nuveen and TIAA-CREF registered fund complexes, as well as in private funds, structured vehicles, and separately managed accounts. Nuveen has extensive experience in the municipal securities market, and ranks as the one of the largest municipal bond fund managers in the United States.² Based on decades of responsible investing expertise, Nuveen has developed a rigorous in-house, data-driven methodology to assess municipal ESG leadership, tailored to individual municipal bond sectors. Nuveen is also an active participant in, and in some cases is a founding member of, organizations that have shaped the responsible investing field over the past five decades, including the UN Principles for Responsible Investment's Sub-Sovereign Debt Advisory Committee, the Government Finance Officers Association ("GFOA"), and the California Debt and Investment Advisory Commission ("CDIAC"). By participating in working groups focused on responsible investing as well as traditional public finance, Nuveen helps bridge gaps in conversations that have historically left ESG out of the municipal market. Through these partnerships, Nuveen is helping to advance ESG disclosure and best practices in the field, bringing focus and client interest to this growing area.

II. Expanded issuer disclosure of ESG data is needed to increase ESG integration in the municipal securities industry.

Over the past decade, the integration of ESG factors into investment analysis and decision-making has become widespread in the public equities and corporate taxable fixed income markets. The municipal securities market, on the other hand, has been slower to adopt ESG integration as a common practice. There are several reasons for this disparity, in our view – but we believe the primary driver of this gap is a lack of quality ESG data from municipal issuers. The municipal market lacks third-party ESG ratings from the types of data providers that offer valuable inputs into the equity and taxable fixed income markets. The sheer volume of municipal issuers and the relative lack of standardized ESG disclosure by these issuers contribute further to this gap. As a result, very few municipal strategies explicitly integrate ESG factors or ratings, and those that do tend to focus on social and green labeled bonds.

For Nuveen, when paired with our in-depth fundamental municipal credit expertise, ESG integration serves as another tool to evaluate municipal issuers for clients that seek to align their investments with their values. Our proprietary ESG scores are available for consideration to all Nuveen municipal analysts and portfolio managers, and are part of the investment criteria in our ESG-focused municipal bond strategies. In ESG portfolios, our disciplined investment process

² Morningstar Direct as of 30 Sep 2021. Based on total net assets of U.S. open-end funds for the Nuveen Family of Funds and the TIAA-CREF Funds, excluding exchange-traded funds, money market funds and fund of funds. Based on a review of 658 fund families and 109 fund families with municipal offerings.

begins with the client's objectives, incorporates analysis from the credit research team, and includes the ESG score as a component of the process. While Nuveen has the resources and expertise to develop its own robust ESG methodology, our investment process would be enhanced if we had greater access to quality, consistent ESG data from municipal issuers, disclosed in a uniform format. What's more, we recognize that many municipal securities investors lack access to the type of ESG-related data they need from issuers to make fully informed investment decisions. We acknowledge that municipal issuers are required under federal securities laws to disclose all material information, which includes material ESG-related information. But issuers vary widely in their interpretations of the materiality of ESG data – and even where issuers do choose to disclose ESG-related information, those disclosures are often inconsistent in scope and level of detail, making it difficult for investors to make comparisons across all issuers.

III. TIAA would support enhanced ESG disclosure requirements for municipal issuers.

Given the rapidly evolving nature of ESG investing and the significant inconsistencies in issuer disclosure of ESG-related information, we believe *all* investors stand to benefit from expanded access to reliable, comparable ESG data from municipal issuers. For that reason, we would support the creation of a new disclosure framework that requires municipal issuers to publicly provide high-quality ESG-related information in a consistent, easily accessible format. Specifically, and as discussed in more detail below, we recommend that any new ESG disclosure standards for municipal issuers should be sector-specific; include detailed information on the issuer's use of bond proceeds; focus on climate mitigation efforts, not just climate risk; and occur periodically so long as the issuer has debt outstanding. In particular, getting more specificity as to an issuer's use of bond proceeds and the relative dollars allocated to each project within a bond offering would help our analysis greatly. We are mindful that many municipal issuers would need to devote significant resources to comply with new disclosure standards along the lines we have described. To ensure that those standards are not unduly burdensome, they would need to be carefully designed to produce the targeted data that investors most need to make informed investment decisions.

We applaud the MSRB for studying those ESG issues and practices that are specific to the municipal securities market and inviting public feedback on the topic. We hope the comments submitted in response to the RFI – including ours – will help prepare the MSRB to engage in an informed and thoughtful manner in the work other regulators may do to improve municipal issuer disclosure of ESG data.

IV. Responses to RFI Questions for Investors in Municipal Securities.

Question 1: Do you consider ESG-related information material to your investment decisions? If so, in what way? Is ESG-related information important to your evaluation of a municipal issuer's creditworthiness? If so, what ESG-related information do you consider most relevant to a municipal issuer's creditworthiness and why?

With respect to Nuveen's ESG-branded investment strategies, high-quality ESG data plays a crucial function. The proprietary, data-driven ESG scoring models Nuveen has developed use

ESG data to quantitatively assign municipal issuers an ESG score from 1 (worst) to 5 (best). The scores differentiate municipal issuers that are considered ESG leaders (those scoring a three or higher) from those that are considered ESG laggards (those scoring a 1 or 2) based on a range of sector-specific ESG factors, aligned with the UN Sustainable Development Goals. The ESG score is available and integrated into the same analytical and portfolio management systems used by all of Nuveen's municipal analysts and portfolio managers.

While we may consider certain ESG information (e.g., climate risk data) in situations related to an issuer's credit rating, in the vast majority of cases, ESG data does not tie directly to creditworthiness. For example, municipal issuers with similar credit ratings may exhibit divergent ESG profiles under our methodology. In a recent white paper discussing innovations in ESG municipal bond investing, Nuveen examined the credit quality and ESG metrics of two state housing finance authorities in Massachusetts and Minnesota.³ While both agencies maintained relatively similar credit metrics and ratings, their ESG profiles were very different. Specifically, due to a higher local need for public housing and above-average rates of access to public transportation, the Massachusetts housing finance agency was more aligned with the underlying goals of sustainable cities. Under our methodology, the Massachusetts agency ultimately received a higher ESG rating than its Minnesota counterpart due to the various ESG considerations involved. When paired with Nuveen's in-depth fundamental municipal credit expertise, ESG data becomes another tool to evaluate municipal issuers. In this case, an ESG leader can provide the intended outcome (e.g., a higher quality of life) in a more positive way than its peers.

Question 2: Do you generally have access to all the ESG-related information you need to make an informed investment decision? If so, can you identify the source(s) of the information you use (e.g., municipal issuer disclosures on the EMMA® website, other municipal issuer communications, time-of-trade disclosures, third-party data vendors or proprietary analyses)? If not, please identify the gaps in information and market transparency.

Nuveen commits extensive resources to obtaining the ESG-related information we need to implement our methodology. Our sources of information include the EMMA website, the National Center for Education Statistics (for school district data), Medicare (for hospital data), general U.S. Census data, and other public and private data sources. Despite the wealth of resources at our disposal, however, we still faces challenges in acquiring relevant ESG data. We devote a great deal of time and effort to gathering the ESG-related information we need to apply our methodology – and even where reliable sources of data exist, gaps and inconsistencies in these sources' coverage of municipal issuers can make it difficult for us to get comparable data across multiple issuers. In some cases, we are able to engage directly with issuers on particular ESG issues to obtain information we cannot find from other sources. Even where we establish these types of

³ See Fig. 4, "Innovations in ESG municipal bond investing," (Oct. 1, 2021), *available at*: <https://www.nuveen.com/en-us/insights/municipal-bond-investing/Innovation-in-ESG-municipal-bond-investing>.

direct contacts, we are still sometimes unable to get the answers we need to determine whether an investment would be suitable from an ESG perspective.

Given the challenges that a well-resourced organization like Nuveen faces in trying to gather relevant ESG-related information, we know it is much harder – and in many cases impossible – for less resourced investors to obtain all the ESG data they need to make informed investment decisions. Investors who do not have access to methodologies like ours would benefit greatly from enhanced issuer disclosure of comparable, reliable ESG-related information. Likewise, Nuveen would benefit from expanded ESG disclosures from issuers. Gaining access to more high-quality ESG information would allow us to refine our methodology by, for example, including more relevant sector-specific factors. We would also spend less time making approximations to account for data gaps, and we would be able to run our proprietary models on a more frequent basis using less manual work. The benefits of requiring issuers to disclose relevant ESG data would be significant and widespread throughout the market, with important implications for retail and sophisticated investors alike.

Question 3: Does your expectation as to the availability and sufficiency of ESG-related information change depending on whether the purchase of municipal securities is made in the primary market or the secondary market? If so, how?

We do not expect the quality of ESG-related information to change depending on whether a municipal securities transaction occurs in the primary or secondary market. However, we do expect less availability of ESG data in the secondary market. Investors already have concerns that many municipal issuers are too slow to provide their annual disclosures of standard, non-ESG information that is material (e.g., financial and operating data) to investors. We have no reason to believe that issuers' disclosure of ESG-related information to investors would occur on a more frequent basis. Moreover, issuers are most likely to take the time to disclose relevant ESG data about a municipal bond at the point of new issue. Once that bond has settled, issuers are less incentivized to share additional ESG information with investors – another reason why we expect this data will be less available in the secondary market.

Question 4: In light of the potential availability of ESG-related information from other sources, how can municipal issuers best present and disseminate their ESG-related information to investors? What topic areas do you believe are most relevant for municipal issuers to include when providing ESG-Related Disclosures? In your view, is it sufficient for ESG-Related Disclosures to just describe material ESG-related risk factors? Is there a benefit to municipal issuers further describing the initiatives and other projects they are pursuing to address such risks?

As discussed above, many investors still lack access to the type of ESG data that can be particularly helpful in guiding their decisions and is difficult for third-party providers to source. Issuers are well positioned to fill these data gaps, in part by providing narrative descriptions around their ESG risks and practices to give investors real color and detail, as well as more quantitative, metric-driven ESG data. We believe any new disclosure requirements or standards for municipal issuers should be designed to elicit the publication of both types of ESG-related information.

In addition, we recommend that any new disclosure mandate be sector-specific to account for the various ESG risks and opportunities that issuers in different sectors face. While climate risk likely

poses challenges to issuers in all sectors, other ESG factors are more variable in their impact across industries. For example, in the healthcare industry, quality of care is vital to determining the social outcomes of a hospital. In the education sector, affordability is a crucial data point for colleges and universities. Water cleanliness may be one of the most important ESG data points in the water/sewer sector. Each industry has its own specific ESG-related challenges, and any new disclosure framework developed by a regulator or other standard-setting body should be carefully tailored to ensure that issuers are required to disclose the data that is most relevant for their specific sector.

We also believe that issuers should include in their disclosure detailed information on their use of bond proceeds. For certain strategies, Nuveen invests in thematic bonds, which directly finance environmentally friendly or socially beneficial projects. With respect to those investments, it is crucial that we have information about how bond proceeds are used to advance environmental projects, (e.g., wind and solar energy, clean drinking water or mass transit infrastructure). But it can be difficult for us to get information about an issuer's use of proceeds that is sufficiently detailed to support our investment decision-making. For example, an issuer's statement that it will use bond proceeds to "fund the 2022 capital plan" tells investors next to nothing about the ESG implications of the issuer's expenditures, and that level of disclosure should be deemed insufficient under any new disclosure regime. Instead, issuers should be required to be specific, providing a detailed accounting of the individual projects funded and the exact dollars allocated to each project. We would also appreciate issuer disclosure of more specific ESG-related expenditures that have been made as part of funded projects (e.g., a new LEED certified building, a brown field to green field conversion, the installation of new energy-conscious HVAC systems or a green roof, etc.). Far beyond labeling a bond with vague terms like "green" or "social" – terms with which an investor might disagree – an issuer's disclosure of this type of detailed information will give investors much more useful insight into the ways the issuer's use of proceeds are furthering certain ESG objectives.

We believe that climate risk has the potential to be material to creditworthiness in some cases, and have begun integrating climate risk considerations into our credit research. Today, issuers may choose to disclose information about a host of climate issues (and are required to disclose such information if it is material), including the damages and remediation expenses incurred by climate-related events. Nuveen also sources external data to help assess the climate risk exposure of various municipal securities from the outside in, but must rely on issuer disclosure to assess whether and how those climate risks are being mitigated. Therefore, we also recommend that in addition to disclosing information about their climate risk, issuers be required under any new disclosure framework to disclose their climate risk mitigation efforts, such as resilience planning or infrastructure improvements. Both types of data are necessary to give investors the full picture of an issuer's climate risk profile.

Finally, we suggest that issuers provide disclosures not just at a single point in time, but rather on a periodic basis, so long as the issuer has debt outstanding. By reporting data throughout the lifecycle of their outstanding debt, issuers can help investors stay up to date on the various ways ESG issues can impact a project over time. We believe these recommendations, taken together, would substantially improve investors' ability to integrate ESG factors into their own investing process, making them more confident and informed as they make investment decisions.

Question 5: Certain market participants have expressed concerns that, while analysts and investors have expressed their desire for more standardized ESG-Related Disclosures, there is

no consensus on which data and metrics are important or essential. Do you believe such disclosures should be standardized? Do you believe there is a consensus on which data and metrics are important or essential? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus?

To the extent that there is a lack of industry consensus on which ESG-related data and metrics issuers should disclose, we believe it is likely due in part to the fact that ESG disclosure is still a rapidly evolving area, with many U.S. and international regulators and standard-setting bodies continuing to consider and propose different approaches to a new disclosure framework. We are encouraged that industry groups are working on voluntary best practice recommendations and common approaches that may help formulate consensus among member firms and shape disclosure practices.⁴ Additionally, any lack of consensus may also be due in part to the fact that there is currently significant variation in the types of disclosures made by municipal issuers on non-ESG issues, so investors have similarly differing opinions with respect to what municipal issuers should disclose, and how. Without a formal framework in place designed to elicit consistent, comparable non-ESG disclosures from municipal issuers, it can be difficult for investors to imagine what a framework for ESG disclosures should look like. With respect to potential ESG-specific data, we think there are a few logical guiding principles that should inform any disclosure framework, which we discuss in our response to Question 4 above.

Question 6: When purchasing municipal securities for ESG-Designated Funds, what ESG-related information is most useful for the investment decision? How do fund managers screen securities to ensure that they meet a fund's criteria? Once purchased, what information is most relevant in assessing that a security continues to meet the ESG criteria established for an ESG-Designated Fund?

While we cannot speak to the investment strategies of other fund managers, and the way certain ESG-related information may be useful to those investment strategies, we describe our own methodology for integrating ESG factors into our municipal investment decisions in our response to Question 1 above. We need high-quality data to support all of the ESG factors that feed into our methodology. We are currently able to source the data we need by doing a great deal of work. But a robust framework that requires consistent, detailed ESG disclosure from issuers would aid our efforts, as well as the investment decision-making processes of so many investors who lack our resources. As described above, the type of ESG data that would be most useful to us in the future would be sector-specific, and would include information on an issuer's use of proceeds, as well as information on an issuer's climate mitigation efforts, reported periodically so long as the issuer has debt outstanding.

Question 7: When purchasing ESG-Labeled Bonds, do you evaluate municipal securities with an independent certification differently from bonds that do not have such a certification? If so, how?

⁴ See, e.g., *Debt Management Best Practices*, Government Finance Officers Association, available at <https://www.gfoa.org/best-practices/debt-best-practices>; *The Green Bond Principles*, International Capital Market Association, available at <https://www.icmagroup.org/assets/documents/Sustainable-finance/2021-updates/Green-Bond-Principles-June-2021-140621.pdf>; and *The Social Bond Principles*, International Capital Market Association, available at <https://www.icmagroup.org/assets/documents/Sustainable-finance/2021-updates/Social-Bond-Principles-June-2021-140621.pdf>.

If not, why not? In your view, what are the benefits to an investor of purchasing a bond with an independent certification?

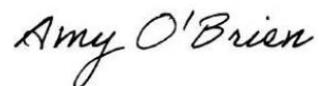
Our investment process does not take into account whether a bond is ESG-labeled or certified by a third party as being green or socially conscious. Rather than relying on a label or third-party certification, we prefer to source data on how issuers use their bond proceeds to further ESG objectives. For example, a public power authority with a heavy reliance on coal for generation is likely to have poor ESG performance. Yet that same public power authority may issue bonds to construct a wind farm, thereby diversifying its generating assets and reducing its environmental impact. The more detail we can get on a bond's use of proceeds, the better able we are to make an informed decision about investing in that bond.

This is why a formal ESG disclosure regime for municipal issuers would be so helpful. Too often, an issuer describes its use of bond proceeds with generic language like "implement various capital projects" or "construct a new fire station." These examples give little to no visibility into the project being financed or the dollars allocated to them. Perhaps these projects involve the conversion of an abandoned car dealership into a park and playground, or the replacement of leaking water mains with new equipment to eliminate water loss. Maybe the fire station in question will be LEED certified, or will have a green roof or a new HVAC system designed to decrease energy use significantly. These are all details that have the potential to make a meaningful impact – much more so than a third party's decision to certify a bond as green. It is our hope that new disclosure requirements or standards might elicit this level of detail from municipal issuers, giving Nuveen, and investors in municipal securities more generally, an enhanced ability to factor in real, reliable ESG data.

V. Conclusion.

Once again, we commend the MSRB for seeking to learn more about ESG practices in the municipal securities market and working to enhance industry dialogue on this important topic. Given our significant experience as a major investor in municipal securities, TIAA hopes the perspective we have shared in this letter will be helpful to the MSRB's work. We believe that a well-designed ESG disclosure framework for municipal issuers would benefit investors and help further the important ESG objectives so many of us care about. We appreciate the MSRB's consideration of our comments, and we welcome further engagement.

Sincerely,



Amy O'Brien



Yves Denizé



March 8, 2022

Municipal Securities Rulemaking Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Submitted via <https://www.msrb.org/CommentForm.aspx>

Re: Request for Information on Environmental, Social and Governance (ESG) Practices
in the Municipal Securities Market (2021-17)

Dear Sir/Madam:

On behalf of the undersigned, we respectfully submit the following comments in response to the Municipal Securities Rulemaking Board's ("MSRB" or "Board") Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market (2021-17) (RFI).

The seemingly innocuous RFI questions are actually precursors to MSRB rules that would require municipalities to make ESG-related disclosures. From the Founding, America's states and their subdivisions have been a cornerstone of her success. These communities require funding, and that means access to capital markets. Recognizing the special role of America's states and local governments, Congress enacted a unique regulatory regime for them, requiring that they abide by anti-fraud provisions but exempting them from onerous disclosure requirements that would otherwise drive up the costs of funding and threaten their ability to govern themselves. Congress maintained this balance when it created the MSRB, strictly forbidding it to demand disclosures from municipal issuers or to specify the content of disclosures. The MSRB should abandon this information gathering process and the creation of any disclosure rules governing municipal issuers.

First, the RFI thwarts Congress's decision to leave states free from bureaucratic securities supervision. The RFI seeks information that is useful for one purpose and one purpose alone: transgressing Congress's ban on requiring disclosures from municipal issuers or regulating their content. Here, MSRB is starting down the path towards such rulemaking and is thereby undermining that congressional proscription. The MSRB has no business seeking information that it cannot put to any lawful use.

Second, the Board's attempt to circumvent its statutory restrictions and disregard congressional objectives, as evident in the RFI, would render any eventual rulemaking arbitrary

in violation of the Administrative Procedures Act (APA). The RFI signals the Board’s myopic focus on transparency in the market for municipal bonds. Transparency is important, but it is not the only objective of the securities laws, and the Board’s inexplicable choice to pursue one of Congress’s objectives while ignoring others—such as preserving the independence of state and local governments and guaranteeing their access to affordable capital—would render any eventual regulation stemming from the RFI arbitrary and capricious.

Third, the RFI misunderstands the purpose of securities disclosures and therefore seeks to address a problem that does not exist. The Board candidly admits that the RFI’s purpose is to create access to information demanded by ESG “impact investors.” But the securities laws exist to ensure investors have material information, not whatever data they may seek in pursuit of social schemes.

Fourth, the RFI fails to seek the information the Board needs to make reasoned decisions about disclosures. Even if the Board had the authority to compel disclosures from municipal issuers and even if such disclosures could remedy a real problem in the market, the RFI fails to seek the information necessary to propose a sensible disclosure requirement. To do so, the MSRB would need to understand, at minimum, the costs of providing additional ESG-related information, the extent to which state and local self-governance would be displaced by the disclosure mandate, and the frightful human cost of diminished access to capital for local communities who refuse to change their policies on hot-button issues of the day.

DISCUSSION

I. The RFI thwarts Congress’s decision to leave states free from bureaucratic securities supervision.

Congress has exempted states and their subdivisions from the power of federal securities regulators to demand disclosures. The registration, disclosure, and reporting requirements of the Securities Act of 1933, and the SEC’s authority to implement these requirements, do not apply to municipal issuers.¹ Further, Congress specifically provided that neither the Commission nor the Board may “require any issuer of municipal securities ... to file” reports prior to and in connection with the sale of its securities.²

When it created the Board, Congress took great care to ensure that the Board may not evade this limitation. The statute bars the Board from creating indirect disclosure demands (i.e., demanding that issuers disclose to brokers, dealers, or advisors and then requiring that these pass disclosures along to purchasers).³ Nor may the Board demand that brokers, dealers, or advisors provide information that would in the ordinary course be available only from issuers and thus mobilize dealers, etc., to pressure issuers for disclosures, for the statute authorizes the Board to demand from dealers, etc., only such information about an issuer as “is generally available from

¹ 15 U.S.C. § 77c(a)(2); 15 U.S.C. § 77s(a).

² 15 U.S.C. § 78o-4(d)(1).

³ *Id.* at § 78o-4(d)(2).

a source other than such issuer.”⁴

Finally, Congress provided that the Board’s rules must “not be designed ... to regulate ... matters not related to the purpose of this title.”⁵ Because disclosures by municipal issuers fall outside the “purpose of this title,” the Board’s rules must not be designed to regulate them.

Yet the Board’s RFI seeks information that can be useful *only* for making disclosure requirements that Congress has expressly forbidden. The RFI seeks information useful only for compelling and regulating disclosures:

- The RFI asks point-blank whether “municipal issuers [should] include a separate section in their ... offering documents expressly devoted to ESG-Related Disclosures.”⁶
- The RFI asks whether “the information included in ESG-Related Disclosures should be standardized”⁷— so the Board can decide whether to standardize it.
- The RFI also asks about what sorts of information should be included in ESG-Related Disclosures,⁸ which the Board needs to know only if it intends to specify the content of municipal disclosures.
- The RFI asks investors whether and how “ESG-related information [is] material to ... investment decisions,”⁹ as well as the extent to which investors already have access to this material information; information on these topics is relevant only for specifying the content of disclosures.
- Remarkably, the RFI even asks investors “how ... municipal issuers [can] best *present and disseminate* their ESG-related information,” and queries about the usefulness of including various sorts of information in municipal disclosures¹⁰—questions that make sense only if the Board plans to prescribe standards for disclosures.

Lest the RFI’s text leave any doubt, the MSRB’s CEO explained that its goal is “to enhance issuer and investor protections”¹¹; that is the purpose for which the MSRB will use the information submitted in response to the RFI. The MSRB cannot (falsely) claim to “enhance ... protections” pertaining to access to ESG information without mandating disclosure of that

⁴ *Id.*

⁵ *Id.* at § 78o-4(b)(2)(C).

⁶ RFI (A)(1).

⁷ *Id.* at (A)(2); *see also id.* at (B)(5).

⁸ *Id.* at (A)(2).

⁹ *Id.* at (B)(1).

¹⁰ *Id.* at (B)(4) (emphasis added).

¹¹ MSRB, “MSRB Seeks Stakeholder Perspectives on ESG-Related Disclosure and ESG-Labeled Bond Practices in the Municipal Securities Market” (Dec. 8, 2021), <https://msrb.org/News-and-Events/Press-Releases/2021/ESG-RFI>.

information in some way.

Under its statute and as explained above, the Board lacks authority to require municipal disclosures; it therefore has no business requesting information that would be useful only for that purpose. Nor may the Board mandate the content of disclosures that issuers *choose* to make. The statute prohibits the Board from “requir[ing] any issuer ... to furnish ... any ... information.”¹² The prohibition is categorical; it does not abate because an issuer has chosen to exercise its undoubted First Amendment right to offer purchasers information about itself and its securities. The Board thus cannot demand that, if an issuer chooses to disclose, it must include certain data elements in its disclosure.

The Board therefore has no business seeking information useful only for specifying the content of disclosures. The RFI makes sense only as part of a strategy for the Board to overstep its statutory limits. Accordingly, it must be withdrawn. Further, to reassure market participants who, in light of the RFI, may now doubt the Board’s view of its own authorities, the Board should issue a statement explaining that it acknowledges the statutory limits on its authority and intends to respect them.

II. The Board’s attempt to circumvent statutory restrictions and its disregard for congressional objectives would render any eventual rulemaking unlawful under the APA.

The securities laws represent Congress’s careful balance between the prevention of fraud and achievement of transparency and the need of states to obtain affordable funding for themselves and their subdivisions in a manner that preserves their freedom to govern themselves.

On the one hand, municipal issuers must comply with the antifraud provisions of 15 U.S.C. § 78j(b), which requires the revelation of any “material fact necessary in order to make the [issuers’] statements made, in the light of the circumstances under which they were made, not misleading.”¹³ Relying on this provision, the SEC maintains a regulation forbidding dealers and other securities professionals to buy or sell in a municipal offering unless the municipal issuer commits to disclose “information ... material to an evaluation of the [o]ffering,”¹⁴ with the goal of ensuring that issuers make available all information necessary to make their communications not misleading. If any ESG-related information is material, then by its own terms, this regulation would cover it.

On the other hand, the securities agencies’ authority to require disclosures is constrained by § 78o-4(d), which serves two main purposes. First, it lowers the burdensome costs of compliance for states and their subdivisions, which is to say, for American taxpayers. This is especially critical for the many small communities that issue municipal bonds. The MSRB estimates that more than half of all local governments have issued securities,¹⁵ and tens of

¹² 15 U.S.C. § 78o-4(d)(2).

¹³ 17 C.F.R. § 240.10b-5.

¹⁴ 17 C.F.R. § 240.15c2-12(f)(3); *see also id.* at § 240.15c2-12(a), (b).

¹⁵ *Municipal Securities: Financing the Nation’s Infrastructure* n.10 (2021).

thousands of these represent very small villages and towns.¹⁶ The costs of compliance for these communities must be spread over a very small tax base. Further, America's smallest towns often seek very modest amounts of funding through securities offerings.¹⁷ Because the cost of disclosures typically does not depend significantly on the size of the offering, requiring additional securities disclosures would raise the per-dollar cost of funding for small offerings, again penalizing small communities.

Second, it protects the independence of states to operate with limited interference from federal securities regulators. Since the early days of the Republic, the states and their subdivisions have provided a prime experience of self-government for millions of citizens and constituted, in Tocqueville's memorable description, a school of freedom.¹⁸ Further, the states have stood as the best bulwark against aggrandizement and abuse of federal power. Both roles depend on the continuing independence of the states from federal control.

While Congress left room for the Commission to require certain kinds of disclosures,¹⁹ likely in recognition of the Commission's broad perspective with respect to the entire securities market, it denied that power to the Board,²⁰ whose exclusive focus on the municipal market creates a risk of myopic over-regulation. As far as the Board is concerned, Congress's choice of state freedom and access to capital over disclosures is clear and dispositive.

Rather than seeking to adhere to the balance struck by Congress, the RFI fails to take into account the objectives enshrined in § 78o-4(d). The Board recognizes that § 78o-4(d) constrains its actions, but rather than accepting direction from the policies embodied in that provision, the Board views it as an obstacle to evade. It goes so far as to say that the provision "presents *challenges* to more directly standardizing ESG-Related Disclosures and ESG-Labeled Bonds."²¹ But congressional directives are commands for the Board to obey rather than "challenges" to overcome. Any rulemaking that attempts to circumvent these statutory restrictions would be unlawful under the Administrative Procedures Act.²²

But such rulemaking would also be arbitrary and capricious in violation of the APA because it "relie[s] on factors which Congress has not intended it to consider" and disregards the *objectives* to which Congress wished it to attend.²³ The Board has shortchanged Congress's objectives in § 78o-4(d) and will continue to do so in any subsequent regulation in line with the RFI. The RFI evinces single-minded focus on achieving greater transparency with regard to ESG-related disclosures. Transparency is indeed one purpose of § 78o-4. "But no legislation

¹⁶ See, e.g., Amel Toukabri and Lauren Medina, "Latest City and Town Population Estimates of the Decade Show Three-Fourths of the Nation's Incorporated Places Have Fewer than 5,000 People" (May 21, 2020), <https://www.census.gov/library/stories/2020/05/america-a-nation-of-small-towns.html>.

¹⁷ MSRB, *Self-Regulation and the Municipal Securities Market* 7 (2018), <https://www.msrb.org/-/media/Files/Resources/MSRB-Self-Regulation-and-the-Municipal-Securities-Market.ashx> (referring to "offerings less than \$250,000 in size issued by small localities").

¹⁸ *Democracy in America* 57 (Mansfield trans., 2000).

¹⁹ See 15 U.S.C. § 78o-4(d)(1).

²⁰ *Id.* at § 78o-4(d)(2).

²¹ RFI Background (emphasis added).

²² See 5 U.S.C. § 706(2)(A), (C).

²³ *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

pursues its purposes at all costs,” and the trade-off among various statutory purposes “is the very essence of legislative choice.”²⁴ Here, the Board has failed even to inquire about the effect of potential disclosure requirements on the congressional objective of ensuring that states may obtain affordable funding for themselves and their subdivisions in a manner that preserves their freedom to govern themselves.

The Board’s failure to appreciate the full range of congressional objectives appears clearly in the RFI’s question (E)(5), which asks whether the availability of and expectations for ESG-related information in other markets, such as the market for corporate securities, influences expectations in the municipal bond market. But these markets differ radically, precisely because states and their subdivisions are bodies of American citizens engaged in self-governance and therefore present a different set of interests and concerns than private corporations. The Board should not base any future action on alleged similarities to private-sector securities markets. Congress weighed the benefits of giving the Board power to extend to states and local governments the securities laws’ mandatory disclosure regime against the costs of the Board’s possession of that power—and decided to withhold the power. The RFI not only fails to respect that balance but fails even to inquire after the factors that Congress found controlling. Any regulation that continues to make these mistakes will necessarily violate the APA.

Further, any MSRB action that pressures states and cities into providing additional ESG disclosures would raise similar concerns. The RFI hints that the MSRB may introduce disclosures through the back door—for instance, by requiring dealers to exercise their leverage over issuers to demand additional ESG disclosures²⁵ or by making changes to its Electronic Municipal Market Access (EMMA) website to promote such disclosures.²⁶ But in all its actions—not just in issuance of any rule formally compelling disclosures—the MSRB has a duty to take into account the factors Congress considered relevant in creating the Board and conferring its mission. Thus, any rule affecting dealers, any modifications to the EMMA website, and any other actions the MSRB may take must respect the decision of Congress to protect municipal issuers from Board-compelled disclosures, rather than seeking a workaround to § 78o-4(d).

Any regulation of dealers designed to promote disclosures would also run into Congress’s ban on Board-mandated disclosure requirements that operate “indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise.”²⁷ To cure its incipient rulemaking of this defect, the Board should withdraw the RFI and, if it (incorrectly) continues to believe that it needs information on these topics, should issue an RFI that affords proper attention to the full range of congressional objectives embodied in § 78o-4.

²⁴ *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987).

²⁵ RFI (C).

²⁶ *Id.* at (E)(4)-(7).

²⁷ 15 U.S.C. § 78o-4(d)(2).

III. The RFI misunderstands the purpose of securities disclosures and therefore seeks to address a problem that does not exist.

The purpose of securities disclosures is to ensure that investors have access to material information.²⁸ And, as noted above, a regulation by the SEC currently requires the disclosure of material information in connection with municipal securities offerings.²⁹ The RFI does not suggest, or even ask whether, issuers are declining to provide any material ESG-related information that the SEC regulation demands.

The RFI, then, is driven not by the need for material information, but by a different concern: “[i]ncreasing investor appetite for ‘sustainable investing’ or ‘impact investing.’”³⁰ The information needed to satisfy this “appetite” is “beyond what historically has been provided to the market” under the existing demand to “include any material ESG-related information.”³¹ In short, the RFI aims to bring about the disclosure of *non-material* ESG-related information on the basis that impact investors now happen to want such information. Indeed, the RFI’s first question asks whether issuers are “providing ESG-Related Disclosures or ESG-related information beyond the legally required disclosures” mandated by the materiality standard.³² Likewise, the RFI seeks information about additional “benefit[s]” from issuers describing ESG-related projects beyond “material ESG-related risk factors.”³³

The RFI’s approach is fundamentally unsound, for the choice of issuers to disclose only any material ESG-related information is not a problem to be addressed but a sound decision to be protected. The Supreme Court has warned about the dangers of “an overabundance of information.”³⁴ Disclosing only material ESG-related information avoids these dangers. Further, even if the MSRB had authority to demand disclosures from issuers, demanding disclosures of non-material information would be arbitrary and capricious as unrelated to the purpose of disclosures under the securities laws.

In light of the foregoing, the MSRB must withdraw the RFI and, if it mistakenly decides to proceed in this area, must issue a new RFI focused on investors’ need for *material* ESG-related information.

IV. The RFI fails to seek the information the Board needs to make reasoned decisions about disclosures.

Even if the Board had the authority to require or regulate disclosures of ESG-related information—which it does not—the RFI does not seek the information the Board would need to propose a sensible disclosure mandate. At a minimum, to propose a disclosure mandate the Board would need to know the following information, which the RFI fails to solicit:

²⁸ See, e.g., *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988).

²⁹ 17 C.F.R. § 240.15c2-12.

³⁰ RFI Background.

³¹ *Id.*

³² *Id.* at (A)(1).

³³ *Id.* at (B)(4).

³⁴ *Basic*, 485 U.S. at 231.

- The costs to issuers of gathering, storing, analyzing, and disclosing ESG-related information;
- The changes in state policy that a disclosure mandate would force; and
- The potential of a disclosure mandate to cut off some communities, especially “dissident” ones, from funding.

Remarkably, among its five questions and twenty-four sub-questions directed to issuers, the RFI includes not one asking about the gathering, storing, analyzing or any other costs—even though the Board itself has admitted that concerns about costs for issuers was a driving factor in Congress’s decision to exempt municipal securities from the reach of the securities laws’ disclosure requirements.³⁵ Obtaining information about costs is all the more vital because, as the Supreme Court has made clear, failure to assess the costs of a regulation and to compare them to its benefits renders a regulation irrational.³⁶

As for changes in state policy, any ESG-disclosure mandate would call for states and their subdivisions to label themselves with regard to some of the most controversial matters in America’s culture wars. As the RFI itself notes, one “ESG-related practice” that may be subject to disclosure is “a municipal issuer’s approach to equity and inclusion”³⁷—one of today’s most controversial topics and the object of acrimonious dispute in, e.g., the U.S. Supreme Court.³⁸ Any disclosure mandate may also likely require information about a state’s asserted climate risks and “initiatives and other projects ... to address such risks,”³⁹ as well as information about any contributions the state assertedly makes to climate risk.

ESG advocates like to say that securities disclosures merely provide information rather than force conduct. But as the D.C. Circuit held in the context of another securities disclosure case, demanding an entity to “publicly condemn itself is undoubtedly a[n] ... effective way for the government to stigmatize and shape behavior.”⁴⁰ Here, cash-strapped states, towns, and villages would be forced to change their policies on today’s hot-button issues to avoid a scarlet letter that would cut them off from essential funding. That would especially be true were the MSRB to adopt any disclosure mandate that requires “issuers ... [to] describ[e] the initiatives and other projects they are pursuing to address” asserted ESG-related “risks.”⁴¹ Such a mandate would spark a bidding war, with states and cities launching new initiatives in hopes of attracting ampler and more favorable funding. If the Board mistakenly and unlawfully issues a disclosure mandate, it should at the very least not require the disclosure of such initiatives.

There is also potential that a disclosure mandate would cut off some communities from funding, especially “dissident” ones. While some states and local governments would change

³⁵ *Self-Regulation*, supra n. 19, at 6.

³⁶ *Michigan v. EPA*, 576 U.S. 743 (2015).

³⁷ RFI Overview n.1.

³⁸ See, e.g., Scott Jaschik, “Supreme Court Takes Affirmative Action Cases” (Jan. 31, 2022), <https://www.insidehighered.com/admissions/article/2022/01/31/supreme-court-will-hear-harvard-and-unc-affirmative-action-cases>.

³⁹ RFI (B)(4).

⁴⁰ *Nat’l Ass’n of Manufacturers v. SEC*, 800 F.3d 518, 530 (D.C. Cir. 2015) (internal quotation marks omitted).

⁴¹ RFI (B)(4).

their policies, others would refuse and face the consequences. These may include losing access to funding for essential infrastructure like hospitals, schools, homeless shelters, safe streets, and environmental treatment facilities,⁴² along with massive adverse effects to the people this infrastructure serves.

This loss of funding is likely to hit small, often impoverished towns and villages in rural America hardest, for these are more likely to hold the unpopular, conservative views that mandatory disclosures would disfavor. Blacklisting these communities from the widespread funding available to other cities would constitute precisely the “unfair discrimination ... among municipal entities” against which Congress warned the MSRB.⁴³ Further, it would only exacerbate our national partisan divide, as “blue” municipalities are perceived to be favored over “red” ones. The RFI does not even attempt to acquire the information needed to measure this human cost of the disclosure mandate it contemplates.

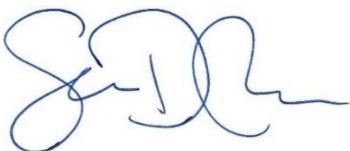
Because the current RFI seeks a radically incomplete set of data, MSRB must rescind the RFI and, if it mistakenly elects to proceed in this area, must issue a new RFI that seeks all the information the MSRB needs to make a sound decision.

CONCLUSION

The MSRB should abandon this RFI and any further steps towards rulemaking that would require ESG-related disclosures for municipal issuers because it is contrary to statute and congressional objectives, and seeks to address a problem that does not exist.

Thank you for the opportunity to provide comments. If you have any questions, please contact the Office of the Utah Attorney General, Office of the Utah State Treasurer, or Office of the Utah State Auditor.

Respectfully submitted,



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⁴² See, e.g., MSRB, *Financing*, *supra* n.17, at 4.

⁴³ 15 U.S.C. § 78o-4(b)(2)(C).



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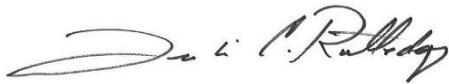
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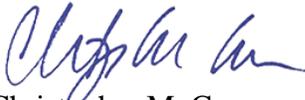
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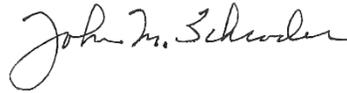
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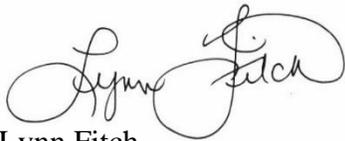
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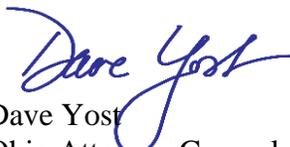
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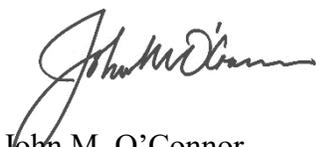
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