



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]).

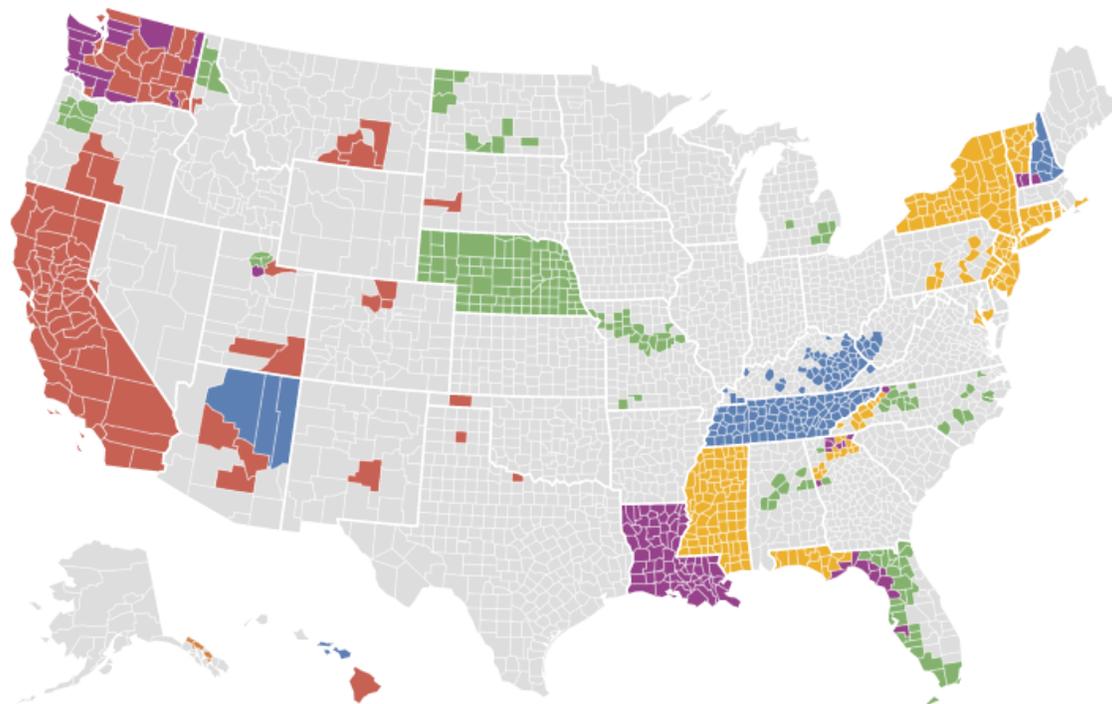
¹⁰ Lauren Coleman-Lochner, *Another Climate Risk for Cities: Higher Borrowing Costs*, Bloomberg (Aug. 23, 2021), <https://www.bloomberg.com/news/articles/2021-08-23/another-climate-risk-for-cities-higher-borrowing-costs>, (“Higher borrowing costs from extreme dry weather would add to expenses governments 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

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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

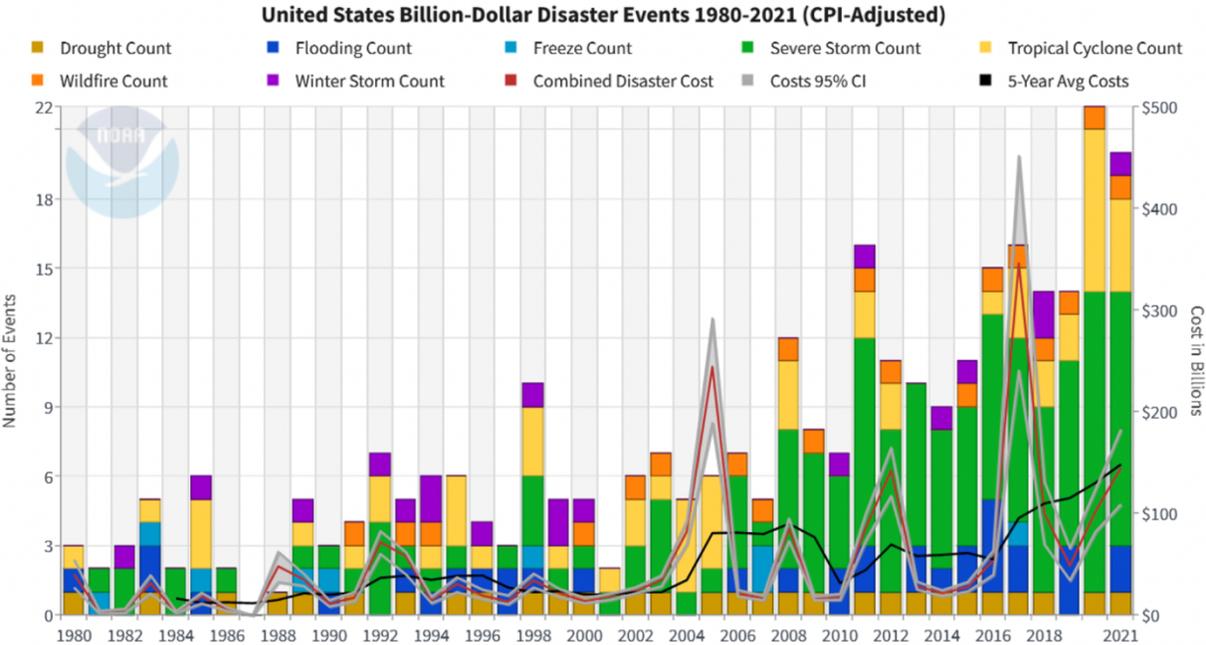
As described in the report, these billion-dollar events included, “1 drought event, 2 flooding events, 11 severe storm events, 4 tropical cyclone events, 1 wildfire event, and 1 winter storm event.” Further, “[t]he 1980–2021 annual average is 7.4 [billion-dollar] events (CPI-adjusted); the annual average 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', with a stylized, cursive script.

Dylan Bruce
Financial Services Counsel