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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 issuing Designated Bonds (or bonds issued for specific purposes in which investors may make 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 is 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.

<u>Issuer Question #4:</u> *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.

<u>Issuer Question #5:</u> *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.
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> 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.

<u>All Participants Question #1:</u> *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".

<u>All Participants Question #4:</u> *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.

<u>All Participants Question #6:</u> *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,

Emily S. Brock

Emily Swenson Brock
Director, Federal Liaison Center

- “ESG” Best Practice - “E” Environmental (gfoa.org)
- “ESG” Best Practice - “S” Social (gfoa.org)
- “ESG” Best Practice - “G” Governance (gfoa.org)
- Marketing Municipal Bonds as Green, Sustainable, Social, or Other Alternatively Designated Bonds (gfoa.org)
- Voluntary Disclosure (gfoa.org)