



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