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,

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