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National Association of Bond Lawyers
National Federation of Municipal Analysts
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NAHEFFA National Association of Health and Educational Facilities Finance Authorities
National Association of State Treasurers
NAMA National Association of Municipal Advisors
BDA Bond Dealers of America

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 system[1].

Issuers should be able to easily post voluntary ESG information that has a nexus to credit. GFOA[2] 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-19[3], Voluntary, Pension Obligation[4] and Bank Loan[5] 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

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[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.

<u>MSRB Scope and Authority.</u>

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,

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