



Government Finance Officers Association  
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October 26, 2021

Mr. Mark Kim, Chief Executive Officer  
Mr. Patrick Brett, Chairman of the Board  
Members of the Board  
Municipal Securities Rulemaking Board  
1300 I Street, N.W. Suite 1000  
Washington, D.C. 20005

Dear Mark, Patrick and Members of the Board,

The Government Finance Officers Association (GFOA) appreciates the opportunity to provide input for your consideration in advance of your October 2021 Board of Directors meeting this week. The purpose of this message is to provide context from the municipal issuer perspective as the Board discusses and develops informed decisions related to the various goals outlined in the MSRB's strategic plan, and in particular discuss the benefit of MSRB to the public trust. We want to be sure that you are aware of our efforts and industry efforts to highlight ESG disclosures for issuers.

***Development of GFOA Best Practices on ESG***

In GFOA's approach to development of [ESG Disclosure Best Practices](#), we carefully and deliberately determined how each ESG risk or factor could potentially affect an issuer's 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. A consistent theme in those sessions was the desire for meaningful disclosure about policy actions taken to address material ESG risks or factors identified by issuers. In response to that, the ESG Disclosure Best Practices developed by the GFOA not only encourages issuers to conduct internal due diligence to identify ESG risks or factors material to creditworthiness or ability to repay bonds, but to provide context about policy actions taken by jurisdictions to address those risks or factors and to report that information in primary market or voluntary disclosures where appropriate. To encourage voluntary disclosure, we also cite the safe harbor afforded by the May 2020 SEC commentary related to COVID-19 disclosure as a proxy that could be used in developing appropriately framed voluntary disclosure to the market without being second-guessed by regulators. We believe the ESG Disclosure Best Practices will lead to

more and better information available to the marketplace regarding ESG risks and factors impacted jurisdictions as we continue to educate our members.

### ***ESG Disclosure Principles No Different than Long Standing Municipal Disclosure Principles***

There is no core difference between longstanding disclosure principles and ESG disclosure principles – they are one in the same. The difference is making issuers aware that certain ESG risks or factors impacting their respective jurisdictions may be material and thus need to be disclosed. This is fundamentally different from other industry efforts also branded as “ESG”, such as the use of self or third-party labeled transaction products such as “Sustainable Bonds”, “Green Bonds” or “Social Bonds”. And, further delineated from marketing activities of banks and broker/dealers seeking to package “ESG” labeled bonds or other financial products to sell to their clients (such as through sustainable investment funds). It is important not to confuse or actively conflate these topics because each are different.

This is why we were surprised with MSRB’s actions on Monday, October 25, to launch a new section of EMMA that indicates, through a third party source, if an issuance is self-designated or certified as an ESG bond, notwithstanding that there is no standard, definition or criteria for such bonds. Further, these enhancements were done without prior discussion, despite our interactions with the MSRB on ESG over the past month.

The ESG Disclosure Best Practices released by the GFOA are just that – disclosure best practices. We are actively working on an “Issuance of Green Bonds” best practice slated for release in Spring 2022 to further demonstrate to issuers and the market that these topics are separate. Finally, 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 as the definition of materiality evolving.

### ***MSRB Should Remain Focused on Enhancing EMMA to Accommodate ESG Disclosures***

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 twofold – 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) We feel that any MSRB advocacy to issuers to complete the private sector survey and post it on EMMA seems to be 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.

Earlier this month, GFOA was very happy to host over 800 issuers at our MiniMuni Conference and we were very pleased to have the MSRB represented. What would have been a unique opportunity to discuss the MSRB strategic plan and updates on the development of EMMALabs (which are of interest to our membership) instead was used by the MSRB to address the definition of materiality in the context of ESG initiatives, some of which have very little nexus to credit and repayment of municipal securities. 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 Disclosure 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 together on these topics.

Sincerely,

A handwritten signature in black ink that reads "Emily S. Brock". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Emily Swenson Brock

Director, Federal Liaison Center