Baker Tilly Municipal Advisors, LLC
Comments to the Request for Information on ESG Practices in the Municipal Securities Market
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Baker Tilly Municipal Advisors, LLC ("BTMA" or "Baker Tilly"), a registered municipal advisor, is one of the largest municipal advisors in the Midwest (10th for the total par amount of bond issues, and 3rd by the number of bond financings for 2021 according to Bloomberg). The firm is dedicated to serving clients, including municipalities, counties, K-12 schools, higher education, utilities and transit, and state governments.

(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?

Baker Tilly believes there are some unique challenges presented by ESG-Labeled Bonds for a municipal advisor. Many of these challenges stem from the relatively new focus on ESG in the municipal securities market within the United States. Perhaps, the largest challenge is finding measurable ways to demonstrate the value of the designation. With limited available data to link a pricing differential to ESG-Labeled Bonds, it is more challenging to explain tangible market benefits to the designation. Unlike pursuing a rating or a credit enhancement, such as a line of credit or bond insurance, Baker Tilly is not able to show that the expected savings from obtaining the product are greater than the cost to procure the product. Nevertheless, it is also reasonable to believe that ESG-Labeled Bonds are likely to gain the attention of additional investors as the marketing of the ESG-Labeled Bonds becomes more prominent through visibility on web-based resources utilized by the primary and secondary market participants, such as Bloomberg, EMMA, and I-Preo. Although it is currently difficult to demonstrate a pricing benefit, this may become more measurable quickly, so ESG designations are an area that must be closely monitored.

Clients and municipal advisors are learning about ESG-designations simultaneously in many ways as ESG is now a "hot topic" across the marketplace, but there are still relatively few municipal issuers who have completed transactions with an ESG label. Our clients rely on us, as their municipal advisor, for advice, and we are still processing and evaluating the best approach for them to consider the designation. For example, if a utility is completing a project that would meet Climate Bonds standards for a "Green Bonds" certification, should a client consider pursuing and incurring the cost associated with a Climate Bond certification and its post-issuance requirements when the client may not realize a monetary benefit? Are there other non-monetary benefits to the designation that are measurable or important for the issuer to consider? On the other hand, the issuer could instead self-designate its bonds with an ESG-Label based upon another set of standards used in the municipal securities market, such as the International Capital Markets Association's Green Bond Principles and develop its post-issuance plan. In Baker Tilly's viewpoint, these are challenging questions. Regulators should convene market participants and industry groups to discuss considerations around ESG-Labeled Bonds. Additionally, there may be Rule G-42 considerations for municipal advisors related to assisting clients around ESG determinations.

(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?

Often information that may be classified as "ESG" has already been incorporated into an issuer's official statements in various sections of the disclosure document. However, determining what is classified as an ESG disclosure is often difficult due to the myriad of interpretations of what "ESG" is and adds complexity to disclosure. There has been market discussion about whether creating an "ESG" section within an official statement would be beneficial. Due to the breadth of ESG considerations, it makes more sense to discuss these issues in the context of the areas affected by ESG consideration, such as the project description or issuer overview.

Disclosure around ESG has two basic purposes: disclosure of material ESG-related risks and disclosure related to an issuer's ESG-focused initiatives or the financed projects. With respect to material disclosures, the consideration is whether the disclosure of the omitted information would have been viewed by a reasonable investor as having significantly altered the "total mix" of the information made available. Generally, disclosure is focused on financial risks or liabilities related to the issuer or the security. What a reasonable investor would want to know around ESG is more dependent on the investor's ESG focus rather than the traditional materiality assessment, primarily focused on financial considerations. It is more challenging to determine what is relevant to ESG-focused investors. That being said, it may still be difficult for municipal advisors to assist issuers in compiling the information needed based on each issuer's ability to obtain or prepare information as requested or required by investors. It is challenging to provide guidance to issuers about how much post-issuance reporting is needed to allow the issuer to benefit from the ESG-designation. Post-issuance commitments are important to ensure the representations made when bonds are offered come to fruition. However, they should be manageable reports for the issuer to provide. Additionally, incorporating any requirements into SEC Rule 15(c)2-12 would not be advisable as it may stifle ESG designations on bonds and would limit the ability for disclosure to grow organically with investor expectations around ESG-Labeled Bonds as the market and opportunities for these types of securities grows.