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**Stakeholders**

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Request for Information

**Comment Deadline**

March 8, 2022

## Request for Information on Environmental, Social and Governance (ESG) Practices in the Municipal Securities Market

### Overview

The Municipal Securities Rulemaking Board (“MSRB” or the “Board”) is issuing this Request for Information (RFI) to solicit public input on environmental, social and governance (ESG) practices in the municipal securities market. The purpose of this RFI is to obtain input from market participants and the general public in furtherance of the MSRB’s mandate of protecting investors, municipal issuers and the public interest by promoting a fair and efficient municipal securities market.

The Board is seeking this input as part of its broader engagement on ESG trends in the municipal securities market to give all interested stakeholders an opportunity to provide their feedback. In particular, the Board welcomes further stakeholder dialogue regarding how best to enhance issuer protection, investor protection, and the overall fairness and efficiency of the municipal securities market in relation to: (1) the disclosure of information regarding ESG-related risk factors and ESG-related practices (“ESG-Related Disclosures”)<sup>1</sup> and (2) the labeling and

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<sup>1</sup> Such information regarding ESG-related risk factors, ESG-related practices and associated data is collectively referred to herein as “ESG-related information.” An example of an ESG-related risk factor might be a municipal entity or conduit borrower’s (collectively referred to herein, as “municipal issuers”) exposure to the physical effects of climate change, such as the impacts of changing weather patterns, storm intensity, sea-levels and frequencies of extreme weather events. *See, e.g.,* Securities and Exchange Commission (SEC): *Guidance Regarding Disclosure Related to Climate Change*, [Release No. 33-9106](#) (Feb. 2, 2010), 75 FR 6290 (Feb. 8, 2010) (SEC interpretive release providing guidance to public companies as to how existing securities disclosure requirements apply to climate change matters); *see also, e.g.,* Government Finance Officers Association (GFOA), [Debt Management Best Practices](#) (voluntary best practices for disclosures affecting a government’s credit profile related to environmental factors, social factors and governance issues) (hereinafter, “GFOA ESG Disclosure Best Practices”). An example of an ESG-related practice might be a municipal issuer’s approach to equity and inclusion. *See, e.g.,* *Final Interagency Policy Statement*



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marketing of municipal securities with ESG designations (“ESG-Labeled Bonds”).<sup>2</sup>

Comments may be submitted in electronic or paper form by no later than March 8, 2022. [Comments may be submitted electronically by clicking here.](#) Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.<sup>3</sup>

## Background

Increasing investor appetite for “sustainable investing” or “impact investing” strategies<sup>4</sup> has drawn greater attention to the quantity and quality of ESG-Related Disclosures in the municipal securities market.<sup>5</sup> Growing investor demand has also led to the creation and marketing of ESG-designated municipal fund securities (e.g., ESG-designated 529 savings plans),<sup>6</sup> bond funds, and other collective investment products

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*Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies*, [80 FR 33016](#) (May 22, 2015) (interagency policy statement of the federal financial regulators establishing joint standards for assessing the diversity policies and practices of their regulated entities).

<sup>2</sup> Examples of ESG-Labeled Bonds include municipal securities labeled or marketed as green bonds, social bonds, environmental impact bonds or sustainability bonds. See, e.g., [letter from Brian Egan, Director of Governmental Affairs, National Association of Bond Lawyers \(“NABL”\) to SEC Chair Gary Gensler regarding Climate Change Disclosures](#) (Sept. 9, 2021) (“NABL Climate Risk Letter”) (discussing “Labeled Bonds and Values-Driven Investors”).

<sup>3</sup> Comments generally are posted on the MSRB's website without change. For example, personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

<sup>4</sup> See generally S&P Global Ratings: [2021 Sustainable Finance Outlook: Large Growth in Green, Social, Sustainable Labels As Municipal Market Embraces ESG](#) (Feb. 16, 2021); and also [Nuveen: Unlocking the Value of ESG in municipal bonds](#) (July 21, 2020).

<sup>5</sup> See generally letter from Emily S. Brock, Director of the Federal Liaison Center, GFOA, to SEC Chair Gary Gensler regarding [Public Input Welcomed on Climate Change Disclosures](#) (July 1, 2021) (hereinafter, “GFOA Climate Risk Letter”) (stating GFOA is “keenly aware that many analysts are clamoring for uniform metrics to evaluate ESG risks”); and NABL Climate Risk Letter (stating “[m]any issuers and industry leaders in the municipal securities market” are attempting to address ESG issues).

<sup>6</sup> See, e.g., [DC College Savings Plan website](#) (describing its U.S. Socially Responsible Equity Portfolio); and also [Florida 529 Saving Plan website](#) (describing its Social Index Fund).

(collectively, “ESG-Designated Funds”).<sup>7</sup> A distinct but related market trend is the evolving practice of municipal issuers labeling and marketing municipal securities as ESG-Labeled Bonds.<sup>8</sup>

At the present time, there are not uniform standards for ESG-Related Disclosures<sup>9</sup> or ESG-Labeled Bonds.<sup>10</sup> While the disclosure documents used by municipal issuers already must include any material ESG-related information required under existing disclosure standards,<sup>11</sup> many investors and other market participants are seeking ESG-related information beyond

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<sup>7</sup> See, e.g., [VanEck HIP Sustainable Muni ETF](#) (“investing in investment grade municipal debt securities that have been issued to fund operations or projects that support or advance sustainable development, as well as promote positive social and environmental outcomes”).

<sup>8</sup> See generally NABL Climate Risk Letter (discussing “Labeled Bonds and Values-Driven Investors”); and also Jennifer P. Brooks, Kimberly D. Magrini, Andrew Miles, and William C. Rhodes, White Paper: [ESG Disclosure in Municipal Offerings](#) (Aug. 2021).

<sup>9</sup> Specific to the municipal securities market, see generally GFOA Climate Risk Letter (stating that “the notion of developing a uniform set of metrics to measure or evaluate risks is so impractical as to be virtually impossible to develop or implement”); and NABL Climate Risk Letter (discussing issuers and industry leaders “proactive approach” to addressing ESG disclosures).

<sup>10</sup> In terms of industry-led criteria related to ESG-Labeled Bonds and non-municipal ESG-labeled financial instruments, see, e.g., [voluntary standards from International Capital Market Association](#) (ICMA); and also [standards from the Climate Bond Initiative](#) (CBI).

<sup>11</sup> For a broader discussion regarding the disclosure obligations of municipal issuers, see generally Release No. 34-33741 (Mar. 9, 1994), 59 FR 12748, at 12750 (Mar. 17, 1994) (hereinafter the “SEC’s 1994 Release”) (“Disclosure documents used by municipal issuers, such as official statements, are subject to the prohibition against false or misleading statements of material facts, including the omission of material facts necessary to make the statements made in light of the circumstances in which they are made not misleading. The adequacy of the disclosure provided in municipal security offering materials is tested against an objective standard: an omitted fact is material if there is a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable investor. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” (original brackets omitted)); and also SEC Chairman Jay Clayton and Rebecca Olsen, the Director, Office of Municipal Securities, [The Importance of Disclosure for our Municipal Markets](#) (May 4, 2020) (stating “[m]unicipal issuers and investors in municipal securities should recognize that [various factors, such as the size, importance, complexity, and specialized nature of the municipal market,] generally mean that to some meaningful extent both issuer-specific disclosures and security-specific disclosures are material”) (citing to the SEC’s 1994 Release, 59 FR at 12755-56)).

what historically has been provided to the market.<sup>12</sup> In response, private vendors are offering ESG certification services,<sup>13</sup> and certain industry associations have developed voluntary best practices and other tools to aid issuers in identifying and communicating material ESG-related information.<sup>14</sup> Adherence to these industry-led standards is optional, and the regulatory framework governing municipal securities presents challenges to more directly standardizing ESG-Related Disclosures and ESG-Labeled Bonds.<sup>15</sup> Consequently, ESG trends implicate important questions regarding issuer protection, investor protection, and the overall fairness and efficiency of the municipal securities market.

## REQUEST FOR INFORMATION

While the following questions are addressed to specific stakeholder groups, the Board encourages commenters to address any question upon which they are willing to share a view.

### (A) Municipal Issuers

The MSRB seeks input from municipal entities and conduit borrowers regarding ESG-Related Disclosures and ESG-Labeled Bonds, including input on the following questions.

- (1) Are you currently providing ESG-Related Disclosures or ESG-related information beyond the legally required disclosures in your offering documents, continuing disclosures or other investor communications? If so, please consider providing examples. If not, please consider describing

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<sup>12</sup> See, e.g., Value Reporting Foundation, [SASB Standards](#) (identifying a subset of ESG issues most relevant to financial performance in various industries); and also [CDP](#) (a not-for-profit charity operating a disclosure system for investors, companies, cities, states and regions to manage their environmental impacts).

<sup>13</sup> See, e.g., description of certification services provided by Build America Mutual, summary available [here](#); First Environment, summary available [here](#); Kestrel Verifiers, summary available [here](#); Sustainalytics, summary available [here](#); and Vigeo Eiris (part of Moody's ESG Solutions), summary available [here](#).

<sup>14</sup> In terms of voluntary best practices related to ESG-Related Disclosures, see, e.g., GFOA ESG Disclosure Best Practices (link available at note 1). Separately, in terms of voluntary criteria related to ESG-Labeled Bonds, see, e.g., standards from ICMA and CBI (links at note 10 above).

<sup>15</sup> See, e.g., SEC: *Report on the Municipal Securities Market*, at p. vii - ix (July 31, 2012) (discussing various recommendations relating to improving disclosure in the municipal securities market in light of the SEC's "limited regulatory authority").

how you address ESG-Related Disclosures in your offering documents, continuing disclosures or other investor communications. In your view, should municipal issuers include a separate section in their official statements and other offering documents expressly devoted to ESG-Related Disclosures?

(2) Do you believe the information included in ESG-Related Disclosures should be standardized? If so, how? If not, why not? In your view, is there a consensus on what information and which metrics are important? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus? What topic areas do you believe are relevant and should be included in ESG-Related Disclosures?

(3) Have you issued ESG-Labeled Bonds? If so, please consider providing an example and describing what criteria were used to make the ESG designation. Did you utilize an independent party to validate or otherwise attest to the use of the ESG designation? Please consider explaining why or why not.

(4) If you issued ESG-Labeled Bonds, did you commit to providing any ongoing or continuing disclosure related to the ESG designation? If so, was that disclosure commitment incorporated into the continuing disclosure agreement or similar contractual obligation related to Securities Exchange Act Rule 15c2-12 (collectively, "CDA")? If so, please consider providing an example of the CDA. If the disclosure commitment was not incorporated into the CDA, how is the information made available to an investor on an ongoing basis and at what frequency?

(5) Are you providing information to the credit rating agencies regarding ESG-related risk factors and ESG-related practices? If so, what type? In your view, how does this information generally compare to the information provided in your offering documents and continuing disclosures? Are the credit rating agencies requesting any new types of ESG-related information? Has the credit rating process changed in any significant ways in relation to ESG-related information?

## **(B) Investors in Municipal Securities**

The MSRB seeks input from investors in municipal securities regarding ESG-Related Disclosures and ESG-Labeled Bonds, including input on the following questions.

- (1) Do you consider ESG-related information material to your investment decisions? If so, in what way? Is ESG-related information important to your evaluation of a municipal issuer's creditworthiness? If so, what ESG-related information do you consider most relevant to a municipal issuer's creditworthiness and why?
- (2) Do you generally have access to all the ESG-related information you need to make an informed investment decision? If so, can you identify the source(s) of the information you use (*e.g.*, municipal issuer disclosures on the EMMA<sup>®</sup> website, other municipal issuer communications, time-of-trade disclosures, third-party data vendors or proprietary analyses)? If not, please identify the gaps in information and market transparency.
- (3) Does your expectation as to the availability and sufficiency of ESG-related information change depending on whether the purchase of municipal securities is made in the primary market or the secondary market? If so, how?
- (4) In light of the potential availability of ESG-related information from other sources, how can municipal issuers best present and disseminate their ESG-related information to investors? What topic areas do you believe are most relevant for municipal issuers to include when providing ESG-Related Disclosures? In your view, is it sufficient for ESG-Related Disclosures to just describe material ESG-related risk factors? Is there a benefit to municipal issuers further describing the initiatives and other projects they are pursuing to address such risks?
- (5) Certain market participants have expressed concerns that, while analysts and investors have expressed their desire for more standardized ESG-Related Disclosures, there is no consensus on which data and metrics are important or essential.<sup>16</sup> Do you believe such disclosures should be standardized? Do you believe there is a consensus on which data and metrics are important or essential? If so, can you provide insight as to what consensus you believe does or could exist? If not, what barriers do you believe exist in reaching a consensus?

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<sup>16</sup> See, *e.g.*, GFOA Climate Risk Letter (stating that “analysts and investors have not developed consensus on what data and which metrics are important to their analysis”).

- (6) When purchasing municipal securities for ESG-Designated Funds, what ESG-related information is most useful for the investment decision? How do fund managers screen securities to ensure that they meet a fund's criteria? Once purchased, what information is most relevant in assessing that a security continues to meet the ESG criteria established for an ESG-Designated Fund?
- (7) When purchasing ESG-Labeled Bonds, do you evaluate municipal securities with an independent certification differently from bonds that do not have such a certification? If so, how? If not, why not? In your view, what are the benefits to an investor of purchasing a bond with an independent certification?

### **(C) Dealers**

The MSRB seeks input from brokers, dealers, and municipal securities dealers regarding ESG-Related Disclosures and ESG-Labeled Bonds, including on the following questions.

- (1) Does the underwriting of ESG-Labeled Bonds raise any novel compliance issues for firms, such as challenges regarding fair dealing, due diligence, pricing or other related legal obligations? How is due diligence generally conducted regarding municipal issuers' ESG-Related Disclosures?
- (2) Do primary offerings that prioritize certain ESG investors raise any novel compliance issues for firms? What criteria are used to define an ESG Investor for purposes of such priority provisions? How might investors be assessed to ensure they meet the applicable criteria?
- (3) Does the purchase or sale of ESG-Labeled Bonds in the secondary market raise any novel compliance issues for firms, such as challenges regarding fair dealing, pricing, suitability, best execution, time of trade disclosures or other related legal obligations? Does this answer depend on whether the customer is a retail customer, institutional customer or Sophisticated Municipal Market Professional?

### **(D) Municipal Advisors**

The MSRB seeks input from municipal advisors regarding ESG-Related Disclosures and ESG-Labeled Bonds, including on the following questions.

- (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?
- (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?

### **(E) All Municipal Market Participants**

The MSRB seeks input from all municipal market participants, including input on the following questions.

- (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?
- (2) There are a number of organizations establishing voluntary standards for the issuance of ESG-Labeled Bonds, such as the ICMA and CBI.<sup>17</sup> 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?
- (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?
- (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

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<sup>17</sup> See note 10 above for links to ICMA and CBI's websites.

confusion? How could the MSRB use the EMMA website to reduce information asymmetry or investor confusion?

- (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?
- (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.<sup>18</sup> 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?
- (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?
- (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?

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<sup>18</sup> See MSRB Press Release: [New EMMA Feature Helps Investors Identify Green, Social, Climate, and Sustainable Bond Investments](#) (Oct. 25, 2021). [The New Issue Calendar is available here.](#)