

Municipal Securities Rulemaking Board,
1300 I Street NW, Suite 1000,
Washington, DC 20005

Re: Request for Information on Environmental, Social and Governance (ESG)
Practices in the Municipal Securities Market (2021-17)

March 8, 2021

To Whom May Concern:

Thank you for the opportunity to respond to the Municipal Securities Rulemaking Board's ("MSRB" or the "Board") Request for Information (RFI) to solicit public input on environmental, social and governance (ESG) practices in the municipal securities market. As the purpose of the 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, it is with great honor that I deliver my response.

ESG in municipal finance is essential, and not just because it implies that different and more sustainable projects are getting funded, but rather because it means the introduction of frameworks into the muni market, which inherently encourages best practices and more sustainable finance.

ESG practices are some of the most important factors in protecting municipal investors as they are inexorably linked to transparency, issuer performance, community outcomes, and most importantly, credit. And while the thinking around "E" is most developed, with the "S" rapidly evolving, perhaps it is the "G" that ultimately has the greatest intersectionality with the goals of the MSRB in protecting municipal market participants. The MSRB must be part of the "G" solution.

Without the participation of the issuers, and those there to assist issuers, there is no ESG market. Therefore, the development of the ESG municipal market has largely been left to motivated issuers, and market participants, like broker-dealers, bond counsel, and advisors, educating and in some cases advising issuers on the benefits and requirements to enter the market. However, as mentioned, I believe the MSRB should play a more central role in organizing the ESG market. This can be accomplished through, for example, things like development of best practices and accredited frameworks, creation of sector specific disclosure working groups, or the expansion of EMMA to meet the market's needs.

All these things, in the spirit of ESG, will make the muni market stronger.

Below are various responses to questions listed in the RFI. In addition, while I am currently part of the general public, having been an issuer, and having worked at a broker-dealer and with a wide-variety of advisors and counsel on ESG, I do provide comments on additional sections as well.

Issuer (Former)

Question 1 - During my time as an issuer at New York State Homes and Community Renewal (“HCR”), we made a concerted effort to maximize ESG disclosures for four main reasons 1) it meant that the Agency was better describing and reporting to the investing public HCR’s program, financing, and use of proceeds 2) some of ESG data was already required by existing investors 3) HCR already had publicly available ESG data that was not directly disclosed that was requested by new investors 4) it was, in and of itself, good governance (“G”).

As background, HCR is an issuer of sustainability bonds for multifamily affordable housing, where the Agency uses the Climate Bond Initiative (“CBI”) to formally certify the green characteristics as a “Green Bond,” which sits inside a self-certified “Sustainability Bond” ESG framework utilizing the International Capital Markets Association’s (“ICMA”) Sustainable Bond Guidelines. On single-family (first time home buyer, low and moderate income), HCR self-certifies to the ICMA’s “Social Bond ” guidelines. In both cases of self-certification, the Agency uses extensive data and reporting, including new data and tables, reorganized disclosure and voluntary filings, including on EMMA, to meet the requirements of the programs as determined by the Agency and its counsel.

Data and transparency are likely the two most important factors in ESG. In the case of HCR, as it designed its program, it was entirely about redesigning its existing offering statement through this lens of better describing the program. As mentioned previously, HCR uses CBI for “G” certification, but built out an entirely new table in the Official Statement showing new details on project cost, use of proceeds, impacted community, source of funds, units, affordability requirements, etc. HCR formally put in one place, a simple table for investors to see, all the “E” and “S” characteristics of the projects that it was financing with the bond proceeds, or any new information that was requested by investors. For example, after a proactive conversation with a major institutional investor, HCR began adding factors like floodplain (and mitigation steps, if necessary) and the State’s environmental review process (additional “E” and “G”) to the offering document.

Overall, much of the “G” was updating the disclosure itself, incorporating better and more complete information around program design and the Agency, as well as making HCR’s financings more transparent. Essentially, HCR took ICMA’s frameworks and built their disclosure document around it. And there is no reason that every municipal bond could not be put into the ICMA’s frameworks (Green, Social, Sustainable) which asks for simple factors.

1. Use of Proceeds
2. Process for Project Evaluation and Selection
3. Management of Proceeds
4. Reporting

Of course, there would need to be other sections, like security, background on the issuer, other financial information related to credit included in the offering statement, but having muni issuers who issue ESG bonds have a standardized framework, would make sense. And using the ICMA as this basic framework, would allow issuers to then fill in for themselves, how green, or how socially beneficial, or how sustainable a project is through various disclosed metrics. But at least investors would know what and where to look. At HCR, the Agency used the ICMA’s linkage to the United Nations’ Sustainable

Development Goals, as again, a way to standardize the Agency's methodology around an existing ESG framework that would link the Agency's issuance to the larger global issuance community.

Question 2 - The long and short answer is yes. However, standardization can best occur in the development of adhered to frameworks and/or framework documents. Every muni sector or issuer type is different, and those will require specific sector level (housing, water & sewer, GO, etc.) disclosure archetypes to be developed, but at a high level, it can be done. Very similar to how the corporate bond market has taken a more standardized approach.

But, as discussed above, the MSRB could help provide the industry with vetted frameworks, agreed upon required disclosure by sector, formatting and layout consensus, perhaps even an auto document builder and autofiling of standardized continuing ESG disclosure. All detailed language around an issuer or issuance would have to be vetted by counsel, but model documents and formats could be adopted. For example, with collaboration, affordable housing bond documents could be nearly standardized across all HFA bond issuers, accounting for different credits (MBS, whole-loan, loan performance, etc), call structures, local laws, along with program description / policies and procedures, etc, but much else could be standardized, including the layout, making it easier for issuers and lawyers to prepare and verify documents and for investors to use them.

Question 3 - See above. HCR adopted ICMA's framework for its single-family (social) and multifamily (sustainable) bond programs. Both ICMA frameworks are self-certified, but the Agency developed new and reformatted disclosure documents with an ESG framework. It is possible to have these self-certification programs certified easily and efficiently, by firms such as Sustainalytics. Additionally, on multifamily, the green aspects of HCR's building were looked at by Sustainalytics and certified by CBI.

At the end of the day, the most important thing is data and the actual disclosure. A green bond is a result of a green project, so until there are more green and sustainable projects, there will not be more green and sustainable bonds. However, that said, there are many governments that are doing really great projects that are not describing them very well, and could qualify under some of these standards. And certification can be extremely low cost, especially when compared to any basis point of savings on an issuance or the long-term benefit of broadening an issuer's investor book.

When it comes to certification it is both a framework to adhere to, as well as an easier way for investors to identify certain bonds. Though most large investors or those with ESG areas of expertise usually do independent evaluation.

I believe making sure there are standards is an important component of ESG itself. For example, even though HCR's framework was designed around the idea that deeply subsidized affordable housing is inherently social and that the Agency's building requirements are green, HCR thought it was important for others to agree with them. Especially when the cost is de minimis as an issuer of multimillion (or billion) dollars worth of municipal bonds.

Question 4 - As an issuer, HCR committed, under the ICMA's guidelines, to do reporting on their projects. For HCR, they tied the continuing disclosure into the final construction milestone where everyone certifies that they built the building they said they were going to build and the Agency spent the proceeds as they said they were going to. It is a minimal effort and HCR thought it was important for investors. It was voluntary, and not in the CDA. However, many issuers have milestones in their CDA which likely

would meet the needs of ESG investors already. This is how HCR approached it, just creating one additional filing on an annual and project level, but lifting up information that was already being tracked and in some cases, already reported on separately.

However, HCR was not providing ongoing impact reporting or other ESG data outside of its agreed upon continuing disclosure after project conversion to permanent or expending of bond proceeds. That said, under the use of proceeds, the Agency covenants to investors that under the IRS rules for use of tax-exempt bonds and low-income housing tax-credits there are programmatic restrictions around income and affordability that would remain in place for up to 15 years, and in some cases, the Agency restricted affordability for much longer, often coterminous with the final maturity of the bonds. Again here, the Agency could easily report on ongoing metrics based on data it is already collecting. Like HCR, many issuers already covenant to report on data that would be considered part of ESG reporting already.

Question 5 - At the time of departure, information provided to the rating agencies was consistent with information provided to the public around ESG.

All Municipal Market Participants Questions

Question 1 - The lack of long term ESG disclosure and data reporting frameworks must be developed and provided to the marketplace. The risk is that there is no standardization and risks are actually not disclosed, or unable to be disclosed in a manner that can be understood, as a result, risks are missed.

Additionally, rating agencies not appropriately factoring in ESG factors is a systemic threat to the viability and credibility of the US muni market.

Question 2 - Labeling and frameworks are good for market organization. Investor preference will likely determine long-term ESG labeling requirements, but as discussed above, more transparent and better data and disclosure is likely more important in the long run than labels. But, the market has evolved since the ICMA and CBI frameworks and standards were first developed, with new entrants, who are looking at alternative methodologies, data and metrics to measure transactions.

Voluntary standards are good when people adhere to them and there is market policing around adherence, as a label is only as good as its credibility. That said, the real answer lies in issuer disclosure and the more and better data, organized in a more efficient manner, could eliminate the need for labeling because the ESG characteristics become self evident.

Question 3 - No additional comment

Question 4 - Yes, there needs to be a centralized methodology to source ESG data. It is creating unequal access, and much data sits behind the paywall. The practice should be made that all municipal data is public and should be made publicly available, perhaps through EMMA.

For example, if there was a framework for ESG disclosure that was developed, issuers could use EMMA to report directly to the market on the platform, with integration into various other programs used by issuers for tracking deals and transactions. Again, the EMMA website could be used for auto document and notice generation, creating standardization wherever feasible. An open-source tool for standardizing

market disclosure could be included as part of the MSRB's own long-term sustainability and ESG planning.

Question 5 - Yes, I believe that generally, the US muni finance industry is a laggard in ESG disclosure, however, this is largely because it has not been motivated (or regulated) into adopting already available "best" practices. For example, many muni projects would already qualify for a green, social, or sustainability bond label, or fit under the ICMA's guidelines, however, issuers likely do not have the necessary information to make informed decisions as the required next steps or they believe that there are too many steps to adoption and adherence. These can be made more simple.

There are many global ESG capital markets practices that the muni market could easily and broadly adopt, including things like the EU taxonomy, the ICMA guidelines, among others that would aid creating a more ESG friendly market, especially in the taxable space, where these international standards may be important in both educating the market and attracting foreign investors. But there are other steps toward embracing ESG, around transparency, including changing reporting, creating machine readable documents, digitizing and making public real time budgets, are already available steps that municipal governments can and are taking to improve their disclosure. The muni market should just hold itself to a higher standard, which, again, is in and of itself, a function of "G."

Sustainability and ESG is good for investors, good for communities, good for projects, and good for municipalities' bottom line, especially in light of a more connected, ever changing, and complex world around us.

Question 6 - A forward calendar, and an accurate and detailed forward calendar is a very important part of increasing investor participation in ESG bonds, but generally a very important part of providing investors with expectations around timing and details of a bond sale. I personally believe publishing a forward calendar should be considered mandatory for purposes of best execution, as soon as it has been authorized for issuance or is made public.

As the market currently behaves, especially in cases of competitive sales or some negotiated sales with a very brief order period, access to muni bonds can be very difficult. And investors must really work to try and access bonds that they care about. By providing markers on forward calendars is a good way to attract investors, and giving an issuance an ESG label is an easy way to distinguish the issuance for investors.

It would also be good if there was a "pre-order" information button on the MSRB website for example, to be notified about a sale by the lead broker-dealer when the transaction was coming to market.

Question 7 - As discussed above, the MSRB should have information on select and vetted frameworks, standardized docs to the extent possible, development of reporting requirements for various ESG sectors, and the ability to auto report built into EMMA.

In fact, in the spirit of ESG, it would be in the best interest of the MSRB and its own "G" to invest as many resources as possible into the development of EMMA as a tool for the market to improve better governance. The more and better resources that the MSRB can make available to issuers, the stronger the industry becomes and the more effective the MSRB can be at servicing members of the municipal finance community.

Question 8 - No additional information.

Dealer

Question 1 - Dealers are one of the main links between issuers and investors around ESG, in fact, many of the ESG investors that helped HCR in the development of its ESG criteria were introduced to the Agency by dealers. The Agency worked with its broker-dealer partners on doing extensive listening sessions with investors trying to discern “data pain points” that would improve HCR’s disclosure.

Dealers must prioritize expanding the investor market for issuers, including ESG. A true market is where all issuers meet all investors, and the more dealers can work to expand investors the better for both the primary and secondary markets.

Muni Advisor

Question 1 - As a fiduciary, municipal advisors should 110% be advising their issuer clients to seek out and implement the best ESG and disclosure practices as possible. There are absolutely additional buyers that can be added to an order book through creating a well designed ESG bond program and that can make a positive difference in pricing. Municipal advisors should already be advocating for ESG labeled bonds given the demonstrated pricing results.

For example, while at HCR, over 50 new institutional accounts participated in transactions, most of which were a result of improved disclosure document development of a new sustainability program. The concerted effort to listen to investors (see Dealer section) strengthened HCR’s relationship with investors, and informed our decisions on disclosure.

These new investors, while providing some market benefits in terms of pricing (5-10 basis points in some cases), did backstop the HFA bonds, especially on the long end of the yield curve where there tends to be more volatility and fewer investors. ESG investors, in some cases, tend to exhibit longer duration purchases, many times because they themselves can afford to look at the long term sustainability of the projects, issuers, and assets they are investing in.

Again, thank you for the opportunity to submit.

Best,

James McIntyre