



May 3, 2019

The Honorable Jay Clayton, Chairman
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Mr. Gary Hall, Chair
Municipal Securities Rulemaking Board
1300 I Street NW
Suite 1000
Washington, DC 20005

RE: The Current State of Municipal Disclosure

Dear Chairman Clayton and Chair Hall:

The National Federation of Municipal Analysts (NFMA) is a not-for-profit association with nearly 1,300 members in the United States, comprising a broad range of municipal bond analysts from the buy-side, sell-side, rating agencies and bond insurers. The mission of the NFMA is to enhance the professional development and analytical contributions of municipal market participants through best-in-class educational programs, networking opportunities and targeted advocacy that supports improved disclosure to benefit the industry. The NFMA has published an extensive library of Best Practices in Disclosure and White Papers which are available on our website, www.nfma.org.

Current State of Municipal Disclosure

The NFMA has been a strong advocate of robust primary and secondary market disclosure in the municipal bond market since its inception in 1983 and was a signatory to the Joint Statement on Improvements in the Municipal Securities Market that was published on December 20, 1993. In the following year, the U.S. Securities and Exchange Commission (the Commission) issued its Interpretative Release: “Regarding Disclosure Obligations of Municipal Securities Issuers and Others” that identified the shortcomings in the timeliness of annual financial reports. The report states, “Participants in the municipal securities market do not dispute the need for ongoing disclosure following an offering of securities, but municipal issuers reportedly resist developing a routine of ongoing disclosure to the investing market because of concerns about the costs of generating and disseminating that information and potential liability relating to such disclosure.” *

Twenty-five years after the Commission’s report, lapses in providing continuing disclosure remain the case for many municipal bond issuers. Many issuers[†] continue to file financial reports long after the close

* Federal Register Volume no. 52, March 17, 1994 Rules and Regulations p. 12755.

[†] We use the term “issuer/issuers” to refer to the borrower/obligor on the bond unless otherwise noted.



of their fiscal years and resist making timely continuing disclosures affecting publicly issued debt because of concerns about the costs and potential liability relating to such disclosure. Members of the NFMA believe that the lack of official Interpretative Guidance from the Commission since 1994 has resulted in a generally more permissive stance regarding secondary market continuing disclosure among issuers, with some being advised by their counsel to limit their public disclosures and interactions with investors.

Already limited issuer-investor interactions were further constrained, unintentionally, by the Municipal Securities Rulemaking Board's (MSRB) Market Advisory on Selective Disclosure, issued on December 13, 2017. Since the publication of the MSRB's Market Advisory, members of our organization (mainly investors) have experienced a reduced willingness of many issuers to have meaningful interactions on substantive issues related to their debt in both the primary and secondary markets. Questions raised by investors during new issue research and portfolio surveillance, and regarding non-interactive web presentations now go largely unanswered. Since many issuers only file an annual Comprehensive Annual Financial Report (CAFR) or audited financial statement with EMMA, there is often no information shared with investors between annual filings unless a new issue prospectus is released.

A recent study conducted by Merritt Research Services on fiscal year 2017 financial audit timeliness found that only the Wholesale Electric, Hospital, Private Higher Education and Toll Road sectors had a median reporting time of less than 120 days. The slowest median financial audit completion times were between 169-179 days for State and Local Governments.[‡] These segments of the municipal market remain the most delinquent in audit timeliness and have made little or no progress during the past decade.

The lack of timely financial disclosures in the municipal bond market is not acceptable and is inconsistent with the more timely and robust disclosure that investors are accustomed to in the equity and corporate bond markets. For example, corporations that issue securities in the municipal market via conduit issuers, provide far less timely and complete information for municipal investors on EMMA than they do for corporate investors on EDGAR. This inequity in disclosure could easily be remedied by requiring corporations with municipal securities to file disclosure contemporaneously to EDGAR and EMMA.

The municipal market is a \$3.8 trillion market, nearly tripling in size over the past twenty-five years. Additionally, as municipal bond issuers continue to try to attract a vast array of taxable investors, such as hedge funds, crossover buyers and international institutions, the lack of transparency is an impediment to market efficiency and fair pricing.

Closing the Information Gap Between Financial Statement Filings

While the NFMA continues to advocate for more timely submissions of CAFRs and audited financial reports, the lack of timely disclosures can best be addressed by the Commission encouraging issuers to provide the broad array of existing public information to EMMA on a continuing basis.

The public availability of more expansive and frequent financial and credit-related information, as well as rating agency submissions and non-deal road shows, would vastly improve disclosure in the municipal

[‡] Fiscal Year 2017 Municipal Bond Audit Times Are Still Too Slow, MuniNet Guide, Merritt Research Services, December 5, 2018.



market and close the information gap that often exists during the time between CAFR or audited financial report filings. This information could include current information on revenue collections, cash flows, budget updates, economic forecasts, and pension/OPEB valuations that are prepared by the issuer for its respective executive and legislative bodies, non-profit Boards of Directors or similar oversight body. Key executive and legislative actions could also be disclosed as they occur. Unaudited financial information would also be very useful to market participants particularly in the context of a government with component units that produces a CAFR. Completion of component unit financial reporting is often not simultaneous, and some reporting units can take considerably more time than others leading to delays in finalizing the CAFR. During that time there can be restrictions on the release of component unit information, even for those with essentially completed financials.

Much of this issuer-prepared information is already provided to rating agencies, credit enhancement providers, and bank purchasers, yet often denied to investors, creating a system of asymmetrical disclosure that can affect ratings, security provisions, and/or pricing. This practice can impair investors since they are unable to make timely investment decisions based on the more complete information available to others. This lack of uniform disclosure undermines the fair treatment of investors that provide the funding that underpins the municipal bond market. This should be remedied immediately by the timely disclosure of such information to all market participants through postings on issuers' investor websites and to EMMA.

The Need for Interpretative Guidance

The current state of inadequate municipal disclosure and the reticence of issuers to communicate directly with investors is likely to be overcome only if the Commission provides greater clarity to issuers and their financial and legal advisers on its disclosure expectations. The NFMA requests the Commission provide Interpretive Guidance regarding the types of information it would consider valuable to improving municipal disclosure along with assurances that support a freer flow of information and communication with investors. A statement in any newly issued interpretive guidance on the type of disclaimer language the Commission would find acceptable is imperative in addressing the roadblocks to disclosure that have persisted for many years. We would also encourage a series of interpretative releases on a regular basis to better guide and reinforce to market participants how better disclosure can be achieved.

Modernizing EMMA

EMMA has greatly improved access to the relevant information needed for sound investment decisions in the municipal market. However, it must evolve from a repository to a functional data base for all investors. This is particularly important for retail investors, who do not have access to private technology systems that are available to some institutional investors.

There is also a growing interest in using XBRL to standardize municipal financial reporting. Users of municipal data will, however, continue to have challenges with publicly available municipal information that will inhibit the effectiveness and efficiency of new technologies, if there aren't changes to how data is captured and categorized on EMMA.

We believe that by addressing the following items the EMMA system's accuracy, functionality and usability would be greatly improved, increasing the flow of information and improving market efficiency.



1. *Link bonds not only by issuing entity but by ultimate borrower (obligor) and project.* The high number of conduit issuers in the municipal market means that a system that focuses on issuing entities for organizing, searching and displaying data falls short of market needs. The EMMA system should have the functionality to operate at the issuer, ultimate borrower (obligor) and/or project levels. Additionally, the ability to distinguish among different credits (security pledges) of the same issuer is important.
2. *Standardize or define sector classifications consistent with market use.* Currently, there are minimal sectors listed in the EMMA system and the methodology for assigning sector designations is unclear. This arrangement inhibits the accuracy and usefulness of sector-related, top down queries conducted on EMMA. The sectors used in the EMMA system should be consistent with industry standards. Ideally, the MSRB would engage market professionals to develop an industry-approved procedure for sector assignment of individual issuances. The multiple methodologies that exist today create confusion and an inability to compare data across reporting systems. Alternatively, sector classifications developed by a best-in-class data provider could be utilized along with disclosure of its methodology.
3. *Introduce quality assurance procedures and entry-system technology to reduce errors and enhance consistency.* One of the more significant impediments to the efficient use of the current EMMA system are the errors and inconsistencies in how the information is entered into the system. We have observed that errors and/or inconsistencies frequently occur in the following areas: the naming conventions used for issuers, resulting in multiple entries for a single issuer; the categorization of material events; the over-use of “Notice to Investor Pursuant to Bond Documents” and “Other Event-based Disclosures”, when submission to a specific category is warranted; the labeling (or lack thereof) of filed documents; and compliance with providing searchable PDFs.
4. *Provide a mechanism to identify active material events and those that have been resolved.* Currently, EMMA does not provide transparency on the status of a material event that has been reported. Issuers that file a material event, as required, have no ability to (voluntarily) indicate that a prior reportable material event has been resolved. The inability to reflect the status of a material event means that the lack of current information of an issuer’s financial position may lead to inaccurate pricing and/or investment decisions.
5. *Provide greater transparency on the currency of audit filings.* Users of EMMA do not have an easy way to determine the currency of financial reporting by an issuer. Based on the information provided with filings on EMMA, the system could create a counter that would calculate and prominently display the greater of the number of days since the end of the last fiscal year to the audit filing date or the number of days since the last fiscal year for which there is not a submitted audit. Users of EMMA could then quickly screen issuers to determine if they are providing ongoing information in an acceptable timeframe for their investment and/or underwriting standards. This feature could improve market disclosure by providing an incentive for issuers to be timelier in their audit submissions.



The NFMA believes that the Commission and the MSRB have the responsibility to make a concerted effort to improve municipal bond market disclosure so that institutional and retail investors have access to the same range of timely information that is provided in other U.S. capital markets. We are happy to meet with you in Washington, D.C. in the coming months to discuss these issues in greater detail.

Sincerely,

/s/

Scott Andreson, Chair
NFMA

Cc:

The Honorable Michael Crapo, Chairman, U.S. Senate Committee on Banking, Housing & Urban Affairs

The Honorable Sherrod Brown, Ranking Member, U.S. Senate Committee on Banking, Housing & Urban Affairs

The Honorable John Kennedy, Member, Banking, U.S. Senate Committee on Housing & Urban Affairs

The Honorable Chuck Grassley, Chairman, U.S. Senate Committee on Finance

The Honorable Ronald Wyden, Ranking Member, U.S. Senate Committee on Finance

The Honorable Richard Neal, Chairman, U.S. House of Representatives Ways & Means Committee

The Honorable Kevin Brady, Ranking Member, U.S. House of Representatives Ways & Means Committee

The Honorable Maxine Waters, Chairwoman, U.S. House of Representatives Financial Services Committee

The Honorable Patrick McHenry, Ranking Member, U.S. House of Representatives Financial Services Committee

The Honorable Robert J. Jackson, Jr., Commissioner, U.S. Securities & Exchange Commission

The Honorable Hester M. Peirce, Commissioner, U.S. Securities & Exchange Commission

The Honorable Elad L. Roisman, Commissioner, U.S. Securities & Exchange Commission

Ms. Rebecca Olsen, Director, Office of Municipal Securities, U.S. Securities & Exchange Commission

Ms. LeeAnn Gaunt, Chief, Municipal Securities & Public Pensions Unit, U. S. Securities & Exchange Commission

Mr. Rick Fleming, Investor Advocate, U. S. Securities & Exchange Commission

Ms. Lynnette Kelly, President & CEO, Municipal Securities Rulemaking Board

