October 21, 2024
Submitted via www.sec.gov
(SEC Release No. 33-11295)

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RE: Response to the Proposed Financial Data Transparency Act Joint Standards
[Release No. 33-11295; 34-100647; IA-6644; IC-35290; File No. S7-2024-05]

On behalf of the more than 2,300 public finance law professionals we represent, the National Association of Bond Lawyers ("NABL") respectfully submits the following comments in response to the Proposed Financial Data Transparency Act Joint Standards ("Proposed Joint Standards") promulgated by the U.S. Securities and Exchange Commission ("SEC") and other Covered Agencies.[1] Given the potential for the application of new data standards on information submitted to the Municipal Securities Rulemaking Board ("MSRB") to greatly impact various municipal market participants, possibly including municipal issuers and conduit borrowers, we appreciate this opportunity to comment and raise our concerns.

It remains difficult, if not impossible, to foresee the total breadth of impact of the implementation of the Financial Data Transparency Act (the "Act" or "FDTA") without a full understanding of who within the municipal market constitutes a "financial entity" and what "information submitted to the Board ['MSRB']" is covered by the Act. We acknowledge that many of the details relating to the application of new data standards to information submitted to the MSRB remain uncertain

[1] The agencies concurrently promulgating the Proposed Joint Standards include the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Board, the Federal Deposit Insurance Company ("FDIC"), the National Credit Union Administration ("NCUA"), the Consumer Financial Protection Bureau ("CFPB"), Federal Housing Finance Agency (FHFA), the Commodity Futures Trading Commission ("CFTC"), the Securities Exchange Commission ("SEC"), and the Department of Treasury, and are referred to herein collectively as the "Covered Agencies" or individually as a "Covered Agency".

and will likely not be determined until the SEC promulgates rules under the agency-specific stage of rulemaking. As such, our comments at times address potential scenarios.

Our comments are structured in five sections: (1) "About the Act," (2) "Unique Properties of the Municipal Market," (3) "General Comments on the Proposed Joint Standards," (4) "Responses to Specific Invitations for Comment," and (5) "Advance Comments on the Second Stage of the Rulemaking Process." Our comments summarize our current thoughts and concerns and are non-exhaustive. They will likely evolve and expand as data standards are developed and implementation of the Act continues.

The Covered Agencies and the SEC have an imperative to find a proper balance between improving market data quality with new standards and protecting municipal market participants, particularly small entities with limited budgets and resource constraints, from unnecessary regulatory burden. Above all else, we remain concerned that if regulators strike an improper balance, the burdens imposed by new data standards could outpace any promise of new market efficiencies and risk driving a larger share of state, local, nonprofits, and conduit borrowers into the private placement market or to seek other, less-regulated sources of financing. Such a result would also likely impact the liquidity in the municipal market and increase the borrowing costs for market participants. To that end, we look forward to working with various regulators through each step of the implementation process to find a proper balance.

NABL is an association of public finance attorneys and professionals working across the municipal bond market. Our comments were approved by our Board of Directors and prepared by our ad hoc working group on the FDTA, the members of which are listed in Appendix A.

1) About the Act

Congress enacted the Act in December 2022.[2] The Act broadly requires Covered Agencies to propose and "establish data standards for the collections of information reported to each Covered Agency by financial entities under the jurisdiction of the Covered Agency." Covered Agencies are to issue Proposed Joint Standards within 18 months of enactment of the Act and finalize the Joint Standards within 24 months of enactment. In developing such data standards, the Act instructs the Covered Agencies to incorporate common identifiers, including a nonproprietary legal entity identifier, and that the standards shall, to the extent practicable:

i. Render data fully searchable and machine-readable;
ii. Enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying regulatory information collection requirements;

[2] The Act was included as Title LVIII of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. Public Law No. 117-263.

iii. Ensure that a data element or data asset that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata;
iv. Be nonproprietary or made available under an open license;
v. Incorporate standards developed and maintained by voluntary consensus standards bodies; and
vi. Use, be consistent with, and implement applicable accounting and reporting principles.

The Act then instructs each individual Covered Agency, including the SEC on behalf of the MSRB, to conduct its own agency-specific rulemaking to conform the data reporting from financial entities to the Covered Agency with the characteristics set forth in the Joint Standards.

2) Unique Properties of the Municipal Securities Market

Prior to answering specific questions, we wish to provide high level commentary on the municipal market, focusing on characteristics that regulators should consider prior to finalizing Joint Standards and developing agency-specific rules. While every individual financial market possesses distinctive attributes, the municipal market is particularly dynamic, unique, and diverse. The municipal securities market enjoys a number of characteristics that set it apart from other areas covered by the Act as well as other financial markets that have previously undergone similar data standardization efforts.[3]

Regulators should consider the following statutory protections and structural differences in determining whether and how new data standards should be applied in the context of financial and disclosure information submitted by municipal market participants to the MSRB's Electronic Municipal Market Access ("EMMA") system.

Varying Size and Frequency of Issuers and Types of Issues

The municipal market includes an estimated 50,000 issuers and conduit borrowers across the country varying in size from small local units of government to the largest states.[4] Many of these issuers and borrowers face resource and budget constraints that make complying with existing rules challenging and accommodating new regulatory burdens difficult. Furthermore, issuers and borrowers of all sizes vary greatly in the frequency of access to the municipal market. Many issuers issue bonds on the public market on rare or infrequent occasions, making significant, new

[3] The SEC applied a series of requirements on corporate registrants to submit various forms of information in eXtensible Business Reporting Language (XBRL) and Inline XBRL formats over the past two decades. We raise various dissimilarities between the corporate and municipal market that could make an analogous extension of similar standards in the municipal market difficult.

[4] Municipal Securities Rulemaking Board (MSRB). "Dealer Participation and Concentration in Municipal Securities Trading." June 2018. Page 3. Web Access: https://www.msrb.org/sites/default/files/MSRB-Dealer-Participation-and-Concentration-Report.pdf

regulatory burdens an even more significant barrier that risks driving them away from the public markets or exponentially increasing costs to access the public market.

Further, a single issuer may utilize different streams of revenue to secure different bond issues. It is not unusual for a large municipality to issue bonds secured by tax revenues, bonds secured by revenues accruing to its general fund, bonds secured by water utility revenues, bonds secured by sewer utility revenues, bonds secured by airport revenues, etc. Each source of revenue typically stands on its own, complicating any effort to impose uniformity on the municipal market.

Indirect Regulation of the Municipal Market

Issuers of municipal securities and obligated conduit borrowers are not directly required to submit information to the Covered Agency, in this case the SEC. Subsection (d) of Section 15B(b) of the Securities Exchange Act of 1934 prohibits both the SEC and MSRB from requiring "any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities." The rule also prohibits the MSRB from requiring "any issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer."[5]

The FDTA specifically references these protections against direct or indirect regulation of obligated persons with respect to municipal securities when it states that "nothing in this paragraph may be construed to affect the operation of paragraph (1) or (2) of subsection (d).''[6] An obligated person in public municipal securities offerings instead executes a continuing disclosure undertaking in which it contractually obligates itself to provide ongoing information to the market via the MSRB's EMMA system.[7]

The Act further outlines protections when it states in Section 5826:

> Nothing in this subtitle, or the amendments made by this subtitle, shall be construed to require the Securities and Exchange Commission, the Municipal Securities Rulemaking Board, or any national securities association to collect or make publicly available additional information under the provisions of law amended by this subtitle (or under any provision of law referenced in an amendment made by this subtitle), beyond information

[5] See Subsection (d) of 15 U.S.C. 78o–4(b) often referred to as the Tower Amendment.
[6] See Section 5823 of the Act.
[7] See 17 CFR § 240.15c2-12, requiring an *underwriter* of municipal securities to "reasonably determine" prior to the purchase of the securities that the issuer and any obligated person has undertaken in writing, for the benefit of holders of the securities, to provide certain ongoing disclosure information to the MSRB.

that was collected or made publicly available under any such provision, as of the day before the date of enactment of this Act.

The mechanisms governing disclosure to investors in the municipal market differ substantially from those in the corporate market, in which corporate issuers are directly required by the SEC to preregister securities in public offerings and to provide ongoing disclosure information to the market via the SEC's systems.

Other municipal market participants—including broker-dealers, underwriters, and municipal advisors—have direct reporting obligations to the MSRB, but in many cases these data are already submitted in varying levels of structured formats.

Nonuniform Accounting Standards

Issuers in the municipal market do not adhere to a single accounting standard. Many states require at least some of their governmental units to complete financial statements that follow the Generally Accepted Accounting Principles ("GAAP") developed by the Governmental Accounting Standards Board ("GASB GAAP"). However, other states do not require the use of such standards or adhere to their own state-specific variations of accounting standards. Many of the states that do require the use of GASB GAAP provide various exemptions for smaller units of government. Unlike in the corporate market where issuers are required to complete financials in GAAP developed by the Financial Accounting Standards Board ("FASB GAAP"), issuers in the municipal market rely on a patchwork of different accounting standards and variants of generally accepted ones. This condition adds a layer of practical complexity to applying data standards composed of globally shared taxonomies to financial statements in the municipal market.

3) General Comments on the Proposed Joint Standards

In the Proposed Joint Standards, the Covered Agencies frequently defer to the future rulemakings that each individual Covered Agency will conduct on several key points. We strongly agree with this approach and echo this support in our answers to select specific questions from the Proposed Joint Standards (see *Responses to Specific Invitation for Comment*, below). As previously mentioned, the municipal market has a number of specific considerations and concerns that may not exist or translate equally in the application of these data standards on other Covered Agencies' collections of information. Deference to each individual Covered Agency on these key decisions will empower the SEC with the flexibility to address the niche concerns within the municipal market without tying its hands with binding decisions made at this earlier stage. Before commenting on specific questions, we wish to applaud the Covered Agencies on providing such deference in the Proposed Joint Standards and to urge you to pursue the maximum amount of deference to each individual Covered Agency in the final Joint Standards.

4) Responses to Specific Invitations for Comment

Below are responses to invitations to comment on several specific areas included in the Proposed Joint Standards, as well as answers to questions pertaining to the Act's implementation posed by Commissioner Peirce. [8]

- *On the incorporation of the Paperwork Reduction Act (PRA) definition of "collection of information" for the purposes of the Proposed Joint Standards. (Section A)*

  We note that the Act frequently references the term "collection(s) of information" but uses different terminology to describe covered data in the context of the municipal securities market. It remains unclear how the use of the term "collection(s) of information" will operate in conjunction with the term "information submitted to the Board," which is used only in the context of the Act's application to the MSRB.[9] It appears Footnote 17 of the Proposed Joint Standards aims to reconcile these different terms when it states that for the purposes of this stage of the rulemaking the Covered Agencies "interpret the directive of section 124(b)(1) of the Financial Stability Act to apply to such specific collections of information."

- *On the proposed selection of International Organization for Standardization (ISO) 17442-1:2020, Financial Services - Legal Entity Identifier (LEI) as the legal entity identifier joint standard. (Section B)*

  We understand the Covered Agencies have a statutory requirement to select a legal entity identifier but remain concerned about the potential financial and administrative burdens imposed by any mandates on market participants to obtain yet another identifier to engage in the municipal market.

  We also share the concerns of other market participants on the potential for market disruption by the introduction of a new identifier to existing information systems. The LEI identifies only the entity and not the credit involved in a municipal security offering. Unlike in the corporate market, security offerings in the municipal market are often secured by individual revenue streams, enterprise funds, or other segregated sources of funds. Bondholders are therefore equally as interested in tracking the specific credits as they are in tracking the entities involved in such an offering. This dual interest renders the LEI less useful to the investing community in the municipal market.

[8] In her August 2, 2024, statement in support of the Proposed Joint Standards, Commissioner Hester Peirce posed several additional inquiries into the potential burdens of the Act's implementation on various stakeholders, including municipal entities. Web access: https://www.sec.gov/newsroom/speeches-statements/peirce-statement-financial-data-transparency-act-080224

[9] See Section 5823 of the Act.

We encourage the Covered Agencies and the SEC to solicit and heed the feedback of other market participants—such as issuers, borrowers, underwriters, and broker-dealers—who would face greater impacts by such a transition. While the Proposed Joint Standards "would not impose any requirements that any particular entity obtain an LEI and incur the associated costs," they go on to note that such a mandate may be determined "by the agency-specific rulemakings." We note that such a requirement imposed at any stage of the rulemaking process would constitute an unfunded mandate on municipal issuers and other market participants.

- *On the proposed selection of various other common identifiers. (Section C)*

  The Proposed Joint Standards propose several other shared identifiers to be used across the Covered Agencies. Of particular note, the Proposed Joint Standards select the Financial Instrument Global Identifier ("FIGI"), established by the Object Management Group, as the shared identifier of financial instruments. As market stakeholders, we have a number of questions pertaining to how the incorporation of the FIGI into MSRB information systems would work, particularly given the market's existing reliance on the CUSIP number as a security level identifier.[10] For example, would the introduction of the FIGI be additive or intended to supplant the CUSIP in the municipal market?

  Given the potential for market disruption from the introduction of new identifiers, we again encourage the Covered Agencies and SEC to solicit and heed the feedback of other market participants who would face greater impacts from the selection of the FIGI as a financial instrument identifier as well as the selection of the various other identifiers proposed in Section C of the Proposed Joint Standards.

- *On the proposed establishment of a properties-based joint standard for data transmission or schema and taxonomy formats, as well as the proposed properties. (Section D)*

  Again, we note that it is difficult to assess the feasibility of applying data standards—such as data transmission formats and schema and taxonomy formats—without knowing to which data such standards would ultimately apply. At this stage, we support the Covered Agencies' decision to opt for a properties-based joint standard in lieu of the selection of a specified single multiagency standard. The municipal market possesses a number of unique characteristics and complexities that differentiate it from other financial markets. Depending on the types of information to which these

[10] The CUSIP number is a unique number assigned to a bond by the Committee on Uniform Securities Identification Procedures ("CUSIP"). A six-digit "base" number is provided for each Issuer of Bonds, typically based on the type of repayment source pledged to the bonds; this "base" number is followed by three additional letters and/or numbers which are specific to each individual bond maturity selected under the CUSIP identification protocols. CUSIP numbers are usually printed on the face of each bond and on the cover or inside front cover of the offering document. They are also used to identify bonds called for redemption in redemption notices and to identify submissions to EMMA in connection with continuing disclosure undertakings or agreements.

data standards will apply, such unique conditions in the municipal market would likely make the implementation of a single shared multiagency data transmission standard difficult to configure and execute in the municipal market.

- *On the decision to not establish joint standards related to taxonomies at this rulemaking stage. (Section E)*

  The unique properties of the municipal market would make the application of a shared multiagency taxonomy difficult to implement in the municipal market. In addition, substantial variance exists within the municipal market, including in the use of multiple accounting standards, that would make even a global standard unique to the municipal market difficult to implement on the submission of financial information. In an effort to provide the SEC with the maximum flexibility to design rules that will work with the specific dynamics of the municipal market, we encourage the Covered Agencies to refrain from determining a single or set of eligible taxonomies at this stage.

  We also discourage the Covered Agencies from defining the term "taxonomy" via rulemaking at this stage. We instead encourage them to allow the SEC to proceed with the flexibility needed to address concerns in the municipal market. We therefore oppose both Options 1 and 2 outlined in Section E of the Proposed Joint Standards. If the Covered Agencies ultimately do proceed with one of these options, each individual Covered Agency must be provided with the flexibility to use other taxonomies, or to tailor or modify any selected multiagency taxonomies to meet the individual needs of their stakeholders.

- *General responses to questions posed by Commissioner Hester Peirce.*

  In her August 2, 2024, statement in response to the SEC approving the issuance of the Proposed Joint Standards, Commissioner Peirce posed a number of insightful questions pertaining to the implementation of the Act.[11] Many of the questions are difficult to answer without knowing exactly what the data standard requirements are, and to what information and entities the data standards will apply. We applaud the questions and are encouraged by the sentiments and concerns the Commission clearly shares with market participants.

  The questions pertaining to the balance of costs to benefits further underscore the need for the Commission to be mindful when determining to which information the data standards will apply. Defining the rules so broadly as to compel complex information primarily intended for human consumption will place undue burdens on municipal issuers, borrowers, and smaller entities. As the proposal advances and more details on the SEC's direction become available, we welcome the chance to reexamine some of

[11] See footnote 6 on the August 2, 2024, statement from Commissioner Hester Peirce.

these questions. We have also provided some additional advance commentary for the SEC's consideration in the section below.

5) Advance Comments on the Second Stage of the Rulemaking Process

As previously noted, the SEC will likely define what constitutes a "financial entity" and what "information submitted to the Board" is covered by the Act. Without these clarifications, it remains difficult to properly assess the Act's application and resulting market concerns. We offer some advance considerations pertaining to these points and others as the implementation of the Act moves into the agency-specific rulemaking process.

Definition of Financial Entity

The SEC will need to define who is a financial entity to clarify ambiguities such as whether a state or local government issuer constitutes a financial entity for the purposes of the Act. When defining such terminology, the SEC should consider the constrained resources of smaller market participants and seek to use this definition as an opportunity to scale and minimize regulatory burdens.

Information Submitted to the Board

We understand that the MSRB already receives vast amounts of information through submissions from various market participants in various levels of structured form. Prior to determining the extent to which information submitted to the MSRB is covered by these new standards, regulators should consider the forms of information submitted to the board that are already structured, semi-structured, or unstructured—and whether extending new data standards to cover unstructured data submissions would offer market benefits that justify and offset the regulatory burdens they would surely place on market participants. To that end, we discourage the SEC from implementing a definition that is so broad as to extend new data standards to information, such as disclosure information and official statements, that is primarily intended for human consumption.

Scaling and Minimizing Regulatory Burden

The Act empowers the SEC to scale "data standards in order to reduce any unjustified burden on smaller regulated entities," and provides clear instruction "to minimize disruptive changes to the persons affected by those rules." Without knowing who will be impacted by the new data standards, we cannot effectively advise on scaling considerations. We do, however, wish to emphasize the critical importance of scaling new requirements based on size and resources considerations of the impacted entity. The municipal market is largely composed of smaller participants, particularly issuers and conduit borrowers, who already struggle to meet the numerous regulatory requirements imposed on them. Furthermore, governmental issuers are heavily reliant on taxpayers and public ratepayers to fund public services and debt payments.

Regulatory burdens are ultimately borne by the general public. The SEC would avoid many of these concerns by tailoring its definition of "information submitted to the Board" to not needlessly include complex, unstructured data intended primarily for human consumption.

Antifraud Provisions

If data standards are applied to the submission of information subject to the antifraud provisions of federal securities law, we would have concerns pertaining to how these provisions would apply in such circumstances.[12] For example, if a piece of discrepant metadata contained an error due to a mistake made during a file translation process, but the human readable form of the information contained no material errors, would the same antifraud standard apply? In the event of data standards applying to information subject to the antifraud provisions, we would strongly encourage the SEC to consider some degree of safe harbor to account for data mistakes made due to software error or otherwise without apparent scienter.

Conclusion

We once again thank you for your time and attention to these concerns. The application of data standards in the municipal market promises enhanced efficiencies, but if improperly executed it could threaten market stability and access. We look forward to continuing our work with the Covered Agencies, the SEC, and MSRB throughout this process. If you have any questions or concerns pertaining to our comments or our stance on the Act in general, please do not hesitate to reach out to our Director of Government Relations, Brian Egan. He can be reached via email at began@nabl.org or via phone at (202) 503-3290.

[12] Section 17(a) of the Securities Act of 1933 (15 USC 77q), Section 10b of the Securities Exchange Act of 1934 (15 USC 78j), and SEC Rule 10b-5 generally compose the Antifraud Provisions.

Appendix A:

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