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# COMMENTS OF THE NATIONAL ASSOCIATION OF BOND LAWYERS REGARDING CLIMATE CHANGE DISCLOSURES

The following comments are submitted to the Securities and Exchange Commission ("SEC") on behalf of the National Association of Bond Lawyers ("NABL") relating to the SEC's public statement and request for public input on climate change disclosures (see https://www.sec.gov/news/public-statement/lee-climate-change-disclosures, March 15, 2021) (the "Public Statement"). The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee composed of those individuals listed on Exhibit I and were approved by the NABL Board of Directors. NABL appreciates the opportunity to respond to the request for public input by the SEC.

As noted in the Public Statement, the SEC is evaluating its disclosure rules to determine whether consistent, comparable, and reliable information on climate change is being disclosed to investors. In recent years, climate change disclosure has become a focus of certain market participants and meaningful questions have been raised about the adequacy of such disclosures in offering documents. Although the Public Statement primarily seeks public input on whether investors in registered companies are sufficiently informed of climate change-related risks as they evaluate investment decisions, we would like to address these matters as they apply to the municipal securities market.

***Unique Characteristics of the Municipal Securities Market***

Municipal issuers are not subject to regulatory line-item disclosure requirements as are their registered-company counterparts. Instead, municipal issuers are subject to the anti-fraud provisions of the federal securities laws, which (i) require disclosure of material information about securities to allow investors to make informed decisions, and (ii) prohibit misrepresentations or other fraudulent conduct in connection with the purchase and sale of securities. Such objectives are accomplished largely through Section 17(a) of the 1933 Act and Section 10(b) of the 1934 Act (and Rule 10b-5 promulgated thereunder). When municipal issuers make disclosures to investors, they must ensure that the disclosures do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. These requirements are the benchmark of disclosure in the municipal securities market, and the adequacy of the disclosure must be analyzed each time a municipal issuer speaks to the market.

***Disclosure Guidance Grounded in Materiality***

Issuers may choose to disclose the costs of remediation of past climate-related damage, the projected costs of future adaptation to climate change or projected changes in the issuer's business model as a result of climate change, but for such disclosure to be required under the anti-fraud rules, the disclosure must be deemed material to a reasonable investor, as that concept is widely understood, measurable, and applied under current law. NABL appreciates the legitimate concerns of ethical or values-driven investors who may want information about the issuer's level of emissions or other facts about how the issuer affects society and the environment. However, simply because a particular class of investors desires certain information from an issuer does not make such information *per se* material under the anti-fraud rules. SEC guidance to the municipal market must avoid a strained interpretation of materiality designed to advance specific policy outcomes without regard for the particularities of the issuer, the source of repayment for the offered security, and how a particular climate-related issue might affect a specific municipal security. The concept of materiality, as currently defined and understood in the municipal securities market, is already sufficient to encompass those specific instances where climate-related issues are material to a particular investment decision.

***Climate Change Disclosure Already a Focus of the Municipal Securities Market***

Many issuers and industry leaders in the municipal securities market, including the Government Finance Officers Association ("GFOA"), are addressing climate change and environmental, social, and governance ("ESG") disclosures and taking a proactive approach to address these important issues. Similarly, NABL is currently working on a risk factor disclosure project that will include considerations on climate change and ESG matters, as well as various other risk factors. This project will explore the appropriate level of risk factor disclosure for the particular credit structure of the bonds being issued and include sample risk factor disclosures and related analysis. NABL is targeting a late 2021 publication for this project.

On the issuer side, the market has seen issuers focused on climate change-related disclosure addressing issuer-specific risk factors, as well as capital projects and planning efforts that aim to increase resilience on a broad array of climate issues, including rising temperatures, air quality issues, increased precipitation events, rising sea levels, storm surges, and widening flood zones. While the financial effects of climate change are difficult to quantify, many issuers have developed (and disclosed) projected cost estimates related to the future fiscal impact of climate change, which can address both the risk of expensive climate events and the increased everyday cost of doing business. Where applicable, many issuers also describe climate change readiness and sustainability plans that address initiatives to prepare for future climate-related challenges.

NABL and other public finance industry organizations continue to work with their respective members on best practices on climate change-related disclosures, and such efforts are expected to continue as the municipal securities market digests the evolving guidance on climate change and ESG matters.

***Labeled Bonds and Values-Driven Investors***

In response to the demands of ethical and values-driven investors, the municipal securities market has seen a steady increase of so-called "labeled bonds," which includes green bonds, social bonds, environmental impact bonds, and sustainability bonds. Such bonds receive their respective designations because they are issued to support special purpose projects and can be self-labeled by the issuer or opined upon by third-party verifiers. As part of financings involving labeled bonds, issuers may commit to comply with certain requirements in order to earn the specific bond designation and may agree to certain reporting obligations. "Green" bonds may be issued to finance a variety of climate change-related initiatives, including transportation and infrastructure projects, energy efficiency projects, water and waste management projects, and anti-pollution efforts, among others, and seek investors who may be motivated to buy the bonds because of the "green" initiatives the project is designed to support. In such financing scenarios, the need for accurate and complete disclosure of material climate change-related issues is undisputed, as it is part of the marketing plan for the bonds. Such disclosure in offering documents for labeled bonds can be easily distinguished from ESG risk factors and disclosure more generally. Issuers should be able to decide whether to label or market their bonds to environmentally or socially-driven investors, but should not be required to otherwise meet climate change labelling requirements, barring materiality concerns.

***Forward Looking Statements and Link to May 4, 2020 Public Statement***

Should the SEC decide to issue climate change guidance for municipal market disclosure, NABL would look favorably on guidance along the lines of the May 4, 2020 Public Statement, "The Importance of Disclosure for our Municipal Markets", which encouraged disclosure on the impact of the COVID-19 pandemic on issuers' current and expected future operations and finances. Clear and flexible SEC guidance on climate change disclosure should also seek to discourage the tendency towards expensive and immaterial boilerplate. We appreciate the SEC's grasp of the tremendous complexity and diversity of the municipal market as expressed in the Public Statement, and, should the SEC issue guidance or rules, we encourage a similarly flexible and principles-based approach.

We recognize the SEC's efforts in the May 4, 2020 Public Statement to balance the unforeseeable and unpredictable nature of the COVID-19 pandemic against investors' desire for current information regarding the pandemic's impact on a particular municipal security. While the COVID-19 pandemic was unforeseeable and unpredictable, predicting future weather patterns and their future remediation and adaptation costs involves even more uncertainty and complexity. Should the SEC encourage issuers to disclose their plans for and expectations regarding climate change based on forward-looking climate projection scenarios, NABL believes an approach similar to the one outlined in the May 4, 2020 Public Statement should be followed. Any such guidance for climate change disclosure should be drafted with a full appreciation of the inability of existing models to accurately predict weather events and their consequent costs. Forward-looking climate risk analysis requires a myriad of assumptions, inputs and modeling choices. If the SEC issues guidance for the municipal market, NABL encourages the SEC to include guidance limiting civil liability and SEC enforcement for good faith efforts to provide forward-looking climate projections scenarios, including third-party data and projections that are accompanied by meaningful cautionary language. The same principle should be part of any statement by the SEC in connection with the disclosure of unaudited financial information generally.

Exhibit I

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