October 21, 2024

Secretary
Securities and Exchange Commission
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Comments of the National Association of Health and Educational Facilities Finance Authorities Relating to Joint Agencies Notice of Proposed Rulemaking for the Financial Data Transparency Act of 2022, 89 FR 67890 (August 22, 2024)—S7-2024-05

I. Introduction

The National Association of Health and Educational Facilities Finance Authorities (NAHEFFA) appreciates the opportunity to comment on the joint agencies' "Proposed Rule on Financial Data Transparency Act Joint Data Standards."

NAHEFFA (NAHEFFA.com) is the national trade association for statewide and other issuers of municipal securities for charitable, nonprofit institutions. Our authorities, which are constituted under state law, serve as a conduit financing mechanism for healthcare, education, senior living, cultural and other charitable purposes for thousands of institutions, large and small, throughout the United States. The conduit financing mechanism is used to provide the federal and sometimes state tax-exempt status for the bonds issued by the authorities on behalf of the borrowers. Because of federal and state laws, a governmental authority is needed to issue tax-exempt bonds on behalf of these institutions, who are the ultimate borrowers of proceeds of tax-exempt debt. These borrowers— not the state or the authority-- are solely responsible for regulatory compliance and repayment of the loans from investors in the bonds.

The National Association of College and University Business Officers has authorized NAHEFFA to state that it supports these comments.

Although this sector of the market is significantly smaller than "governmental bonds," it nonetheless is a large market. NAHEFFA members alone, for example, reported issuing over $14.8 billion of bonds in 2023.

The mandates proposed under the initial proposed rule would not apply to NAHEFFA member bond-issuing entities but effectively would apply to our nonprofit borrowers – whether they be hospitals, addiction treatment centers, colleges and universities, museums, performing arts centers, sheltered workshops and other qualified not-for-profit borrowers, among the wide diversity of charitable institutions. This regulation would apply to the required filings such institutions make under their continuing disclosure agreements that are submitted to the Municipal Securities Rulemaking Board's EMMA system for the purpose of public access to relevant information, per SEC Rule 15c2-12.

NAHEFFA files these comments to emphasize the special characteristics of nonprofits and their financings which are relevant to the decisions under this proposed regulation and ultimately the SEC regulation. Additionally, we fully support the comments filed by GFOA, PFN, and NABL.

Our response to the proposed regulation is driven by two major elements. First, this proposal practically speaking is a meta-regulation, setting a framework for the actual effective agency regulations. Therefore, without knowing what the agencies want to do specifically in our sector—for municipal securities this falls to the SEC and the MSRB- it is difficult at this point to respond concretely to the questions posed in the proposed regulation as well as the excellent additional questions and issues raised by SEC Commissioners Peirce and Uyeda.

Second, this legislation essentially seeks a solution for a problem that does not exist. This makes it difficult to grapple with what would be appropriate regulation. The law was pursued by technology, software and services firms who see a profitable market opportunity through governmental mandates. There was no demand or outcry from the general public or even the investment community for this law, calling into question the results of cost/benefit analysis when the benefits may be negligible for investors.

Therefore, the best regulatory approach is to do the absolute minimum required by law that is least burdensome to those regulated, particularly for many smaller entities, in our case, the non-profit borrowers. Congress wisely conditioned and limited regulatory requirements "to the extent practicable" and as "feasible." Additionally, there must be agency fidelity to the law's restrictions, among other restrictions, that these requirements cannot affect the SEC's limitations under the "Tower Amendment" or require additional information beyond that already obligated for disclosure today.

II. Need for Principles-Based Regulation

A principles-based approach with respect to this final "meta regulation" should contain the following components:

A. Rely on the next set of SEC rulemaking and do not unnecessarily hamstring the SEC's ability to propose parameters that are relevant to our market and its submarkets. The law and this proposed rule are so general and broadly based, covering so many agencies and

such great diversity of information submitters, that the next set of agency regulations will be what is critical. This regulation should not constrain agencies by imposing strict standards that are costly to comply with while providing no material information that is not already readily available in a form that is accepted by the market. Rather, it should ensure the flexibility for agencies to develop appropriate rules for their sector and subsectors. The goal should be to provide adequate information, at a reasonable cost, with minimal intrusion on operations of the borrowers.

B. The minimal benefits of the ultimate regulations argue for minimal requirements, burdens, and costs. First, agencies should consider in this regulation and the agency-specific regulations whether ongoing and future market developments in technologies and artificial intelligence make this entire regulatory approach obsolete or overtaken by events, making it unnecessary for borrowers to change their systems while allowing the end user the desired access to information. Regardless, only the most modest requirements are justified. There is no financial or informational justification to implement new, costly and burdensome programs to assist large, sophisticated institutional investors. If there was market demand for this transformation it would already be occurring.

C. Require the SEC and the other agencies to minimize the burden on regulated and affected parties while providing flexibility in ways particularly relevant to the municipal bond market and its subsectors. This principle should be one of the few mandates finalized in this rule.

D. Do not lock in particular technology as a regulatory monopoly. This principle is basic, good regulatory policy. Competition and choice should be the key with an openness to understanding how technology, such as artificial intelligence, is evolving and may make obsolete the requirements that Congress may have considered to be cutting edge. Market data aggregators, such as Bloomberg LP, already are using existing technologies to capture, organize and report financial and operating data in an automated way. The technology companies who will benefit from mandates undoubtedly have and will employ the most resources to ensure their favored status, but if there are viable alternatives they should be encouraged and not excluded. Requiring a specific technology under the rule constrains market innovation and can result in the adoption of suboptimal solutions. It would be far better to allow borrowers to adopt technology developed by the market to compile and provide the needed information. The use of market forces to determine the most successful solution will both keep costs as low as practicable and provide a superior technical solution, thereby providing the market with data that complies with the rules at the lowest cost.

E. Scaling – The Proposed Rule recognizes and encourages that agencies may scale data reporting requirements to reduce burden on smaller entities. The final rule should not just encourage this activity but require it to minimize disruptive changes. In the municipal securities market, this could be accomplished by exempting thousands of smaller issuers and borrowers of municipal securities. In addition, there should be a phase-in of

compliance dates based on the size of the reporting institution, as is commonly the case for new accounting pronouncements.

F. Beta-test specific regulatory proposals using independent organizations. Before imposing requirements on many thousands of institutions in the municipal securities space, there should be independent beta testing of the requirements. Unlike the XBRL demonstrations which the MSRB has touted, this should be done by neutral parties and those who will ultimately have to comply with the regulations.

G. Require multiple, in-depth meetings with municipal bond sectors and subsectors. The potential regulatory requirements here are complex and must be dependent on a combination of readily available, inexpensive technology and sensitivity to the wide diversity of bond types and financial structures used in the municipal market. This situation requires that the SEC commit to go well beyond the usual notice and comment and public hearing approach. It must reach out and hold meetings with a large variety of municipal bond stakeholders, particularly the many types of borrowers and their representatives who will de facto incur new regulatory obligations. Fortunately, the SEC's current Office of Municipal Securities has an excellent track record in such engagement, but to the extent other parts of the SEC will be involved with making decisions they must be part of this engagement as well.

III. There are many unanswered questions and lack of definition in this proposed regulation which limit the ability to make effective comments and require much more engagement with the regulated community.

The good questions asked in the NPR and by the SEC commissioners can be more completely and comprehensively answered once the regulatory proposal is further defined and clarified. For example:

A. LEI. This would be for municipal securities borrowers a totally new mandate to obtain legal entity identifiers. It raises questions about new costs, how it applies to complex organizations and other aspects that the new regulated parties have not dealt with previously. How the LEI system would work in the municipal securities sector, especially for our members and borrowers, needs to be carefully studied. Utilizing a new system that identifies the ultimate borrower may sound like a good idea, but implementing this and ensuring recognition of the complexities that abound in our sector need to be addressed first. The GLEIF must engage with this community in order to understand how we work and to ensure that the system is accurate and is reliable. It is also unclear if recent MSRB initiatives would have the same results in being able to identify the ultimate borrower of debt.

B. Mandating Replacing CUSIP with FIGI-- the possibility of completely moving away from the certainly imperfect but well-known world of CUSIP's to FIGIs is daunting. Questions for which answers are needed before a decision can be made include:

Why is this necessary, what tangible benefits will a change provide, how will it apply retroactively to outstanding bonds, what information can borrowers be forced to provide in the future once committed to a new system and how might it be manipulated against borrowers' interests? The question of when a change would be required also must be considered. There is also the question if FIGI doesn't replace CUSIP and the two systems need to coexist for different purposes, how that will impact borrowers, issuers, and the market more generally. A failure to have certainty of what is being done with the use of FIGI and the need for a clean transition will quite possibly harm users with incorrect data and could be disruptive to the entire market.

The CUSIP system is not perfect, but it benefits from human assignment of CUSIP numbers at the time of subscription, creating some level of standardization of identifier assignment from issuer-to-issuer and among an issuer's different borrowing programs. The CUSIP6 allows for aggregation of issues within a single borrowing program for a single issuer. That feature is particularly helpful for issuers to be able to properly identify all outstanding CUSIPs against which to file secondary market disclosures. It also allows investors to quickly aggregate all outstanding debt for such issuer.

A randomly assigned identifier, instead, creates a situation where the FIGI may identify a security as a municipal, and may identify such security as fixed rate, but would potentially generate an outcome where a single issuer's or borrower's identifiers are put in a virtual blender with every other issuer's and borrower's identifiers with no logical way to reorganize those identifiers in a way meaningful to either issuers/borrowers or investors—other than relying on a database maintained behind a paywall by a well-positioned data aggregator willing to undertake the effort of building it.

C. Imposing data standards and taxonomies. Ideally, the new technology and data standards requirements would simply allow greater transparency in search functionality that would allow users to compare data, without requiring any changes in the substance or format of what borrowers now submit to MSRB. Additionally, because terms utilized in financials vary greatly, any uniform and new taxonomies should be avoided. The emphasis should simply be on making it easier to extract data for the end user to tailor to its needs. It is incumbent on the SEC to work closely with issuers, borrowers, accounting standards groups and other municipal market participants as it determines if and what data standards and taxonomies should apply in this sector.

D. In the municipal bond marketplace, the SEC must take into account the different applicable accounting standards that are used by issuers and borrowers. Non-profit borrowers generally use FASB not GASB guidance for their financial reporting. This further complicates the discussion around accounting standards and perhaps

taxonomies. Therefore, it is imperative for the SEC to acknowledge and address – and seek input from – our part of the municipal bond spectrum to find the relevant, feasible and least burdensome applications for non-profit FASB reporting borrowers.

E. The SEC will be required to thoroughly review total direct and indirect costs of adopting contemplated data standards for each significant sector and subsector. This cannot be done superficially and without sufficient interaction between the Commission and the vast municipal securities community in order to determine, for example, whether costs vary based on factors such as borrower size or type. The types of costs and burdens which must be specifically accounted for include:

1. Implementation of enterprise resource platform/financial management systems to convert information.

2. Converting information into each potential format such as advanced PDF, XBRL, and HTML.

3. Costs for outsourcing these tasks and continuing maintenance and management of new systems.

4. Costs to reorient/ reprogram/reorganize any systems in place.

5. Costs for staff to learn new systems, develop appropriate policies and procedures, and possibly add additional staff in a technical area in which governments and non-profits already struggle to attract and retain personnel.

6. Cost to hire consultants to implement training and undertake other tasks.

7. Costs to remain compliant on a continuing basis.

8. Financial and other consequences of noncompliance; and

9. Costs to acquire, migrate to, and implement any new identifiers.

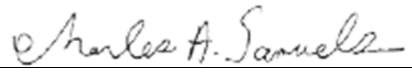
IV. Conclusion

The nature of the law and this initial rulemaking are such that it is difficult to provide specific responses and specific proposals that fit the market. Rather, this is more of an issue-spotting exercise and notification of critical issues that the SEC, in the second round of rulemaking, must address. Critical to this NPR is that such necessary in-depth dialogues and groundwork for ultimate regulations are not stymied by unnecessary restrictions in this

regulation. Rather, this regulation must promote minimum burdens, minimum compliance requirements, special sensitivity to small, regulated and affected parties and the need to recognize that evolving technology may make much of the substantive proposed requirements irrelevant in short order if not already today.

NAHEFFA thanks the agencies again for the opportunity to submit these comments and will remain engaged on this important issue. We would be glad to meet with Treasury and the SEC on the points raised herein.

Respectfully submitted,



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