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RE: Comments of the National Association of Bond Lawyers Regarding SEC Request for Comment on Proposed Enhancement and Standardization of Climate-Related Disclosures for Investors [File Number S7-10-22]

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 proposed amendments to its rules under the Securities Act of 1933 (the “Securities Act”) and Securities Exchange Act of 1934 (the “Exchange Act”) that would require registrants to provide certain climate-related information in their registration statements and annual reports (see [17 CFR 210, 229, 232, 239 and 249](#)) (the “Proposed Rule”). The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee comprised 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 comments on the Proposed Rule.

NABL was established in 1979 to promote the integrity of the municipal market through the education of its members in the laws affecting state and municipal bonds. Although the amendments to the Securities Act and the Exchange Act set forth in the Proposed Rule are directed at registered corporations and do not directly apply to the municipal securities market, we would like to underscore the differences between the corporate and municipal securities market and note how current federal securities law already adequately requires and encourages disclosure of climate-related risks in the municipal securities market.

Disclosure Guidance Grounded in Materiality

Municipal issuers are not subject to the line-item disclosure requirements that regulate their corporate, registered counterparts. Instead, municipal issuers are subject to the antifraud provisions of the federal securities laws, which (1) require disclosure of material information about securities to allow investors to make informed decisions, and (2) prohibit misrepresentation or other fraudulent conduct in connection with the purchase and sale of securities. Such objectives are accomplished largely through Section 17(a) of the Securities Act and Section 10(b) of the Exchange 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 any statement, in the light of the circumstances under which it was 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.

Under the principles-based approach of the antifraud provisions, municipal issuers are already required to disclose information relating to the material risks applicable to municipal offerings. As demonstrated by numerous municipal offering documents published in the past several years, many municipal market participants have already determined that climate-related risks are material to their securities and have disclosed such risks in their primary offering documents. Many municipal issuers and/or conduit borrowers already consider how climate-related risks may impact a particular offering, including analyzing how climate-related risks may impact the revenue sources pledged to the repayment of the offered debt and what climate-related risks may threaten the sustainability, resiliency and general operations of the municipal issuer and/or conduit borrower. Given the breadth of the municipal securities market and variety of municipal issuers and/or conduit borrowers, the current principles-based approach allows municipal issuers and/or conduit borrowers to tailor their climate-risk disclosure to the particularities of the security being offered.

Voluntary Efforts to Enhance Climate Change Disclosure in 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 includes a focus on climate change and ESG matters.

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, increased precipitation events, wildfire, 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 for public and private entities. 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 “labeled bonds,” including 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 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” attributes of the project or 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 climate change related 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 “Public Statement”)¹, which encouraged disclosure on the impact of the COVID-19 pandemic on the issuers’ current and expected future operations and finances. Clear and flexible SEC guidance on climate change disclosure should also encourage tailored disclosure based on the facts and circumstances, and discourage the tendency towards expansive and immaterial boilerplate disclosure. 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 on climate change disclosure, we encourage a similarly flexible and principles-based approach.

We recognize the SEC’s efforts in the Public Statement to balance the unforeseeable and unpredictable nature of the COVID-19 pandemic against

¹ “The Importance of Disclosure for our Municipal Markets,” joint statement by SEC Chairman Jay Clayton and OMS Director Rebecca Olsen (May 4, 2020), available at <https://www.sec.gov/news/public-statement/statement-clayton-olsen-2020-05-04>.

investors' desire for current information regarding the pandemic's impact on a particular municipal security. 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 Public Statement is warranted. Forward looking climate risk analysis requires a myriad of assumptions, inputs and modeling choices, and any SEC guidance for climate change disclosure should be drafted with a full appreciation of the inability of existing models to accurately predict weather events and other impacts of climate change, their associated timelines and their potential costs and impact on an issuer's operations and finances. If the SEC issues such guidance for the municipal market, NABL encourages the SEC to limit civil liability and SEC enforcement for good faith forward looking climate projections scenarios including third party data and projections which are accompanied by meaningful cautionary language.

We welcome further dialogue with the SEC and the staff at the Office of Municipal Securities to develop flexible and principles-based guidance specific to the municipal securities market that encourages disclosure of climate change related risks that are material to a particular financing. I have asked our Director of Governmental Affairs, Brian Egan, to facilitate any follow up or answer questions you may have regarding our comments. You can reach Brian via email at began@nabl.org or via phone at 202-503-3290.

Sincerely



Ann D. Fillingham

President

National Association of Bond Lawyers (NABL)

Exhibit I

Ann D. Fillingham, NABL President

Joseph (Jodie) E. Smith, NABL President-Elect

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