

# The Financial Data Transparency Act: Transitioning to Structured Data in the Municipal Securities Market

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*The Financial Data Transparency Act (FDTA) enacted in December 2022 mandates the establishment of data standards for required submissions to a broad range of federal financial regulators using structured data. The FDTA is likely to usher in significant changes in how information is prepared, disseminated, and consumed by municipal securities market participants. This paper analyzes the multiyear rulemaking process mandated under the FDTA, with a focus on the unanswered questions and unique issues that will need to be addressed as structured data is implemented in the municipal securities market.*

## THE FINANCIAL DATA TRANSPARENCY ACT OF 2022

**T**he Financial Data Transparency Act of 2022 (the “FDTA”), enacted by Congress as Title LVIII of the National Defense Authorization Act for Fiscal Year 2023, was signed into law by President Biden on December 23, 2022. The FDTA mandates the establishment by most federal financial regulators

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of new data standards with the purpose of enhancing the searchability, comparability, and transparency of information in the financial markets. The FDTA is likely to usher in significant changes in how information is prepared, disseminated, and consumed by participants in the market for bonds, notes, and other obligations (“municipal securities”) issued by state and local governments, their political subdivisions, and their agencies and other public instrumentalities (“municipal issuers”). Even though final rules under the FDTA for the municipal securities market are not slated to be completed for another four years or more, critical first steps in the multilayered standards-setting process laid out in the FDTA can be expected to begin in the near future. The municipal market will need to be actively engaged in this process from the beginning to assure that appropriately tailored data standards fit for use in the highly diverse municipal securities market emerge from this process. Input from market participants will also be critical to assuring that such data standards are implemented in a phased, nondisruptive manner that takes full account of the unique profile of municipal issuers and other market participants, as well as the regulatory structure embodied in the so-called Tower Amendment, as reconfirmed by the FDTA, limiting certain powers of the Securities and Exchange Commission (the “SEC”) and Municipal Securities Rulemaking Board (the “MSRB”).<sup>1</sup>

## MUNICIPAL MARKET IMPACT OF THE FDTA

The FDTA requires that the SEC adopt data standards (the “Municipal Market Data Standards”) for information submitted to the MSRB. The focus of discussion on the FDTA within the municipal securities market has been primarily on the significant impact any new Municipal Market Data Standards will likely have on municipal issuers, particularly in light of increased costs and other burdens of preparing financial data, the possible impact on the nature, quality, and timing of disclosure, and the danger of regulatory encroachment. However, this mandate, by its terms, is not limited to particular types of municipal market information (i.e., not just financial statements), or to submissions under particular municipal market rules or statutory provisions (i.e., not just primary or secondary market disclosures), or to information submitted by particular categories of municipal market participants (i.e., not just municipal issuers). The manner in which the SEC implements the municipal market mandate will determine the ultimate reach and impact of the FDTA on the municipal securities market and its stakeholders.

The municipal securities market operates under a different regulatory regime than do the other U.S. securities markets. Except for certain of the antifraud provisions, the federal securities laws exempt municipal securities from most provisions applicable more generally to the securities market. Instead, the Exchange

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<sup>1</sup> Securities Exchange Act of 1934, as amended (“Exchange Act”), Section 15B(d). The Tower Amendment, enacted as part of the 1975 amendments to the Exchange Act creating the MSRB, places limitations on the SEC and MSRB regarding establishing requirements for municipal issuers to file or provide documents or information to the regulators or investors, as described below. See notes 27–29 and accompanying text.

Act provides for a limited regulatory structure providing for direct regulation by the MSRB of (1) broker-dealers effecting transactions in, or that are underwriting, municipal securities<sup>2</sup> and (2) municipal advisors providing certain categories of advice to or in respect of municipal issuers, other municipal entities, and not-for-profit or for-profit nongovernmental entities that support repayment of a municipal issuer's bond offering, such as in conduit bond issues or other private activity bond offerings ("obligated persons").<sup>3</sup> The MSRB's rules establish a number of regulatory obligations applicable to the activities of the regulated entities subject to the MSRB's jurisdiction. However, the federal securities laws do not establish a regulatory regime for municipal issuers, which remain largely exempt from direct regulation other than under the federal antifraud provisions.<sup>4</sup>

Today, disclosure practices by municipal issuers are primarily addressed indirectly by Exchange Act Rule 15c-12 ("Rule 15c2-12")<sup>5</sup> applicable to any broker-dealer acting as an underwriter (which under Rule 15c2-12 includes serving as placement agent) of a new issue of municipal securities, but not to the municipal issuer of such offering or any obligated person. Rule 15c2-12, therefore, does not directly obligate a municipal issuer to produce a disclosure document in connection with an issuance of municipal securities. Instead, in connection with most new issues of municipal securities, underwriters are required under Rule 15c2-12 to obtain, review, and send to requesting customers documents disclosing information about the terms of municipal securities and financial and operating data ("official statements"). The nature, manner of presentation, and content of such financial and operating data are not prescribed, and audited financial statements of the municipal issuer or obligated person are not required to be included in the official statement. Official statements and related disclosure documents used in connection with a new issue of municipal securities are generally referred to as "primary market disclosures."

Rule 15c2-12 also addresses disclosures made by municipal issuers and obligated persons subsequent to initial issuance, generally referred to as "continuing disclosures," by placing a regulatory obligation on the underwriter, rather than on the municipal issuer or obligated person, to ensure such parties agree to provide

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<sup>2</sup> Broker-dealers are also subject to the general registration, regulatory examination, and enforcement powers of the SEC and the Financial Industry Regulatory Authority ("FINRA"), primarily with respect to their general broker-dealer activities. Although certain broker-dealer rules of the SEC also apply to the municipal securities activities of broker-dealers, FINRA rules do not apply to such activities.

<sup>3</sup> Municipal advisors are required to register with the SEC and are subject to the examination and enforcement powers of the SEC and FINRA, depending on the nature of the firm.

<sup>4</sup> The MSRB has no regulatory authority over municipal issuers or obligated persons. Notwithstanding the Tower Amendment, the SEC has stated that the federal securities laws do not, by their terms, preclude the SEC from promulgating disclosure standards in municipal offerings, although there is no express statutory authority contained in the Exchange Act over disclosure by municipal issuers. See Report on the Municipal Securities Market (July 31, 2012), iii, available at <https://www.sec.gov/news/studies/2012/munireport073112.pdf>.

<sup>5</sup> 17 CFR §240.15c2-12, adopted by the SEC pursuant to its authority to prescribe means reasonably designed to prevent such acts and practices by broker-dealers with respect to purchases, sales, and other transactions in municipal securities as are fraudulent, deceptive, or manipulative under Exchange Act Sections 15(c)(2)(B) and (D).

continuing disclosures. Specifically, Rule 15c2-12 prohibits underwriters for most new issues of municipal securities from purchasing or selling the municipal securities unless they reasonably determine that the municipal issuer or an obligated person has undertaken in writing to provide certain types of continuing disclosure to the MSRB (“continuing disclosure undertakings”). These continuing disclosures generally consist of financial information and operating data of the type included in the official statement, including audited financial statements (even if not included in the official statement) if produced, on an annual basis and notices of specific enumerated events that may occur from time to time relating to the municipal securities, the municipal issuer, or an obligated person.

Importantly, the failure to comply with the provisions of Rule 15c2-12 with regard to either primary market disclosures or continuing disclosures would potentially constitute a violation of Rule 15c2-12 by the underwriter, not by the municipal issuer or obligated person. Thus, a municipal issuer may offer a new issue of municipal securities without an official statement or without entering into a continuing disclosure undertaking, and the municipal issuer would not itself violate Rule 15c2-12, if (1) the issuer sells the municipal securities directly to investors without the intermediation of an underwriter, in which case Rule 15c2-12 does not apply; (2) the new issue is underwritten but meets an exemption;<sup>6</sup> or (3) the underwriter violates Rule 15c2-12 by underwriting a covered issue without an official statement or a continuing disclosure undertaking, as applicable. Furthermore, where a continuing disclosure undertaking has been entered into as contemplated by Rule 15c2-12, a failure by the municipal issuer or obligated person to provide a continuing disclosure to the MSRB under the continuing disclosure undertaking may constitute a contractual violation of the continuing disclosure undertaking but does not constitute a violation of Rule 15c2-12.<sup>7</sup>

The MSRB has created a centralized venue for submission of primary market and continuing disclosures for public access, known as the Electronic Municipal Market Access (EMMA) system.<sup>8</sup> Under MSRB Rule G-32, underwriters currently are required to submit to EMMA copies of official statements received from

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<sup>6</sup> There are several categories of new issues that are either exempt in whole or in part from the primary market disclosure and/or continuing disclosure provisions of Rule 15c2-12, or are subject to more limited versions of such provisions. Subject to the applicable conditions specified in Rule 15c2-12, these categories generally consist of issues under \$1 million (paragraph (a)); issues sold in limited offerings to sophisticated investors (paragraph (d)(1)(i)); short-term issues (paragraphs (d)(1)(ii) and (d)(3)); issues by small municipal issuers (paragraph (d)(2)); and variable rate demand and other securities having a tender option (paragraph (d)(5)).

<sup>7</sup> However, one of the few content requirements for an official statement under Rule 15c2-12 is disclosure regarding compliance with the continuing disclosure undertaking. The SEC took a series of settled enforcement actions against municipal issuers and obligated persons that the SEC alleged made material misstatements in the official statement regarding their compliance with their continuing disclosure undertakings, in most cases stating that they had not failed to comply when in fact the SEC was able to identify various compliance failures. The enforcement actions did not allege violation of Rule 15c2-12 but, instead, violation of the federal antifraud provisions. See SEC Office of Municipal Securities, *Municipal Securities Cases and Materials: MCDC Initiative* (August 2020), available at <https://www.sec.gov/municipal/municipal-securities-cases-mcdc-initiative>.

<sup>8</sup> See <https://emma.msrb.org>.

municipal issuers under SEC Rule 15c2-12, as well as any official statements produced by municipal issuers in new issue offerings exempt from Rule 15c2-12,<sup>9</sup> in electronic portable document format (PDF) form. In addition, continuing disclosure undertakings entered into since 2009 by municipal issuers and obligated persons as contemplated under Rule 15c2-12 must include provisions for submission by such parties of continuing disclosures to EMMA in PDF form. MSRB rules also currently require various types of submissions of documents and information to the MSRB by broker-dealers and municipal advisors in connection with the overall regulatory regime for regulated entities.<sup>10</sup>

Described below are the key steps in the establishment and implementation of the Municipal Market Data Standards. Although only the last two steps are specifically focused on the municipal securities market, what takes place during the first two steps will have a significant impact on the shape and breadth of the structured data mandate as applied to municipal issuers and other municipal market participants.

## **ADOPTION AND IMPLEMENTATION OF MUNICIPAL MARKET DATA STANDARDS**

### **First Step: SEC Corporate Data Quality Program and Structure Data Report to Congress**

The FDTA mandates that, by no later than 180 days after its enactment, the SEC must establish a program to improve the quality of corporate financial data filed or furnished by issuers under the Exchange Act, the Securities Act of 1933, as amended (the “Securities Act”), and the Investment Company Act of 1940, as amended. The goals of this program would be to improve the quality of data filed with or furnished to the SEC to a commercially acceptable level and to make data filed with or furnished to the SEC useful to investors. There have been ongoing data quality concerns expressed by investors in corporate securities for filings with the SEC that are required to be provided using XBRL (eXtensible Business Reporting Language), including material levels of data tagging errors and relatively high rates of the use of custom tags that some view as reducing the comparability of data between reporting companies, among other concerns.

The FDTA also mandates that, by no later than 180 days after its enactment, and every 180 days thereafter until the end of 2029, the SEC must submit to the Senate Banking and House Financial Services Committees a report on public and internal use of machine-readable data for corporate disclosures which, among other things,

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<sup>9</sup> Many municipal issuers produce official statements or other primary market disclosure documents (such as limited offering memoranda, offering circulars, private placement memoranda, information statements, etc.) in connection with new issues exempt from SEC Rule 15c2-12, often to assist the underwriter in successfully offering or placing such issues. If produced, MSRB Rule G-32 requires that the underwriter submit such primary market disclosure to EMMA, with limited exceptions.

<sup>10</sup> Submissions of documents and information to the MSRB are summarized in Table 1 and described in more detail in the text following the table. See *infra*, Submitters and Types of Submissions Potentially Subject to Municipal Market Data Standards.

will include an analysis of costs and benefits of machine-readable data in corporate disclosure for investors, markets, the SEC, and issuers, as well as an analysis of how the SEC uses the machine-readable data it collects.

Although neither of these requirements will cover the use of structured data in the municipal securities market, it would be expected that processes developed and information gleaned from both mandates would inform and help shape the Municipal Market Data Standards and the manner in which they are implemented, including how they are scaled or phased-in. In particular, such information would likely need to be considered by the SEC and MSRB in their economic analyses of their respective rulemakings to establish or implement the Municipal Market Data Standards.<sup>11</sup> Of course, additional information and analyses that take into account the specific structures, practices, and legal authorities applicable to the municipal securities market would be necessary to effectively meet the regulators' cost-benefit assessments of such impactful rulemaking.

## **Second Step: Joint Data Standards to Be Adopted by Federal Financial Regulators**

**Joint Rulemaking.** The FDTA as a whole applies to a broad range of federal financial regulators, including the SEC and most of the other regulators making up the membership of the Financial Stability Oversight Council ("FSOC"),<sup>12</sup> as well as FINRA.<sup>13</sup> The federal financial regulators (other than FINRA) are required to jointly issue proposed rules for public comment by mid-2024, and to adopt final rules by December 2024 (the "Joint Rulemaking"), to establish data standards (i.e., rules by which data is described and recorded) for the collections of information reported to each regulator by financial entities under their respective jurisdictions (the "Joint Data Standards").<sup>14</sup> These Joint Data Standards, in turn, will serve as the basic paradigm for further rulemaking by each of the individual federal financial regulators to apply standards to matters within their respective regulatory jurisdiction.

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<sup>11</sup> Requirements to undertake economic analysis in connection with SEC rulemaking are set forth in Exchange Act Sections 15A(b)(9) and 15B(b)(2)(C), as well as under the SEC's Current Guidance on Economic Analysis in SEC Rulemakings (March 16, 2012), available at [https://www.sec.gov/divisions/riskfin/rsfi\\_guidance\\_econ\\_analy\\_secrulemaking.pdf](https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf). The MSRB is also obligated to undertake economic analysis in connection with its rulemaking pursuant to its Policy on the Use of Economic Analysis in MSRB Rulemaking (undated), available at <https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking>.

<sup>12</sup> See Financial Stability Act of 2010, Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Financial Stability Act"). Covered regulators include the SEC, Department of the Treasury, Federal Reserve, Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Federal Housing Finance Agency and National Credit Union Administration. See FDTA Section 5811(a), which adds new Financial Stability Act Section 124. The only FSOC member not subject to the FDTA is the Commodity Futures Trading Commission.

<sup>13</sup> See FDTA Section 5824, which adds new Exchange Act Section 15A(n). FINRA, the only currently registered national securities association, is not an FSOC member. Although early drafts of the FDTA included the MSRB as responsible for adopting the Municipal Market Data Standards, the MSRB was replaced by the SEC in the final language of the legislation.

<sup>14</sup> See FDTA Section 5811(a), which adds new Financial Stability Act Section 124.

**Joint Data Standards and Required Specifications.** The Joint Data Standards to be established by the federal financial regulators must adhere to the following set of specifications, with the Joint Data Standards to become effective by no later than two years after the final adoption of the Joint Rulemaking (e.g., contemplated under the FDTA to be no later than December 2026):

- **Identifier specifications:** Include common identifiers for information reported to the agencies, including legal entity identifiers (“LEIs”)<sup>15</sup> for entities required to report to the regulators;
- **Technical specifications** (to the extent practicable):
  - Render data fully searchable and machine-readable;<sup>16</sup>
  - Enable high-quality data through schemas, with accompanying metadata<sup>17</sup> 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;<sup>18</sup>
  - Ensure that a data element or data asset (i.e., group of data elements or data sets) that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata.
- **Access specification** (to the extent practicable): Be nonproprietary or made available under an open license;<sup>19</sup>
- **Standards-body specifications** (to the extent practicable):
  - Incorporate standards developed and maintained by voluntary consensus standards bodies (i.e., the structure and functionality of mandated data standards must conform to such a body’s standards);
  - Use, be consistent with, and implement applicable accounting and reporting principles (i.e., mandated data standards must be able to handle data prepared according to any such applicable accounting or reporting principles).

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<sup>15</sup> See <https://www.financialresearch.gov/data/legal-entity-identifier>. The LEI framework is coordinated and overseen by the Regulatory Oversight Committee (the “ROC”). See <https://www.leiroc.org>. The ROC’s most recent guidance on the assignment of LEIs to government entities is LEI Eligibility for General Government Entities: Guidance Document (December 2020), available at [https://www.leiroc.org/publications/gls/roc\\_20201229.pdf](https://www.leiroc.org/publications/gls/roc_20201229.pdf).

<sup>16</sup> “Machine-readable” means data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost.

<sup>17</sup> Metadata means structural or descriptive information about data such as content, format, source, rights, accuracy, provenance, frequency, periodicity, granularity, publisher or responsible party, contact information, method of collection, and other descriptions.

<sup>18</sup> Examples of taxonomies and their associated schemas currently in use for certain categories of corporate, fund, rating agency, and swap data repository filings made to the SEC’s EDGAR system or disseminated publicly are available at <https://www.sec.gov/info/edgar/edgartaxonomies>.

<sup>19</sup> “Open license” means a legal guarantee that a data asset is made available at no cost to the public and with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting such asset.

While not named in the FDTA, XBRL is generally viewed as the most likely business reporting standard for meeting these requirements in the near term and is currently used for certain categories of required filings with the SEC, in many cases as Inline XBRL (“iXBRL”) that embeds machine-readable data in a human-readable document.<sup>20</sup> However, the FDTA does not foreclose other potential data standard paradigms, nor does it dictate the technological environment within which the required specifications are implemented, so that the data standards established by the federal financial regulators under the FDTA need not foreclose adoption of innovative approaches in the securities market that may currently or in the future be developed, so long as the core specifications are met.

### Third Step: Municipal Securities and Other Required Rulemaking by Regulators

Each of the federal financial regulators (other than the Department of the Treasury) is separately required to engage in rulemaking to adopt data standards applicable to specific information submission requirements under each regulator’s enabling statute (the “Regulator-Specific Data Standards”). The Regulator-Specific Data Standards must incorporate, and ensure compatibility with (to the extent feasible), the Joint Data Standards, including (to the extent practicable) the technical, access, and standards-body specifications of such Joint Data Standards.

**Municipal Market Data Standards.** The FDTA amends Exchange Act Section 15B to mandate that the SEC adopt Municipal Market Data Standards for information submitted to the MSRB.<sup>21</sup> Like other Regulator-Specific Data Standards, the Municipal Market Data Standards must incorporate, and ensure compatibility with (to the extent feasible), the Joint Data Standards, including (to the extent practicable) the technical, access, and standards-body specifications of such Joint Data Standards.<sup>22</sup>

The SEC may scale the Municipal Market Data Standards to reduce unjustified burdens on smaller regulated entities and is required to seek to minimize disruptive changes to persons affected by the rules.<sup>23</sup> The term “regulated entities” as used in this provision is ill-suited to addressing concerns regarding burdens to municipal securities issuers and obligated persons, which are not entities regulated as described above.<sup>24</sup> However, the SEC can be expected to exercise its discretion

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<sup>20</sup> Filings with the SEC may be viewed by the public on EDGAR. To view samples of actual filings using iXBRL, users can navigate to <https://www.sec.gov/edgar/search>, enter “xbrl” as a search term, click on a search result, click on the “Open filing” button that appears, then click on the link labeled “iXBRL” (many but not all search results will have such a link, depending on the category of filing being viewed). Most web browsers should support the XBRL viewer needed to view the document, which should load automatically within the browser window. The XBRL viewer should provide a menu of options, and items that have been tagged should be highlighted, allowing users to click a tagged item to view metadata containing embedded attributes of the tagged information.

<sup>21</sup> See FDTA Section 5823(a), which adds new Exchange Act Section 15B(b)(8)(A).

<sup>22</sup> See FDTA Section 5823(a), which adds new Exchange Act Section 15B(b)(8)(B).

<sup>23</sup> FDTA Section 5823(b)(2).

<sup>24</sup> The term “regulated entities” is used uniformly throughout the FDTA provisions related to the other federal financial regulators, with the difference being that such federal financial regulators are not expected to apply their Regulator-Specific Data Standards to entities they do not regulate.

under the FDTA to seek to reduce unjustified burdens on smaller municipal issuers and obligated persons, consistent with the clear intent of the FDTA, as it scales the Municipal Market Data Standards.<sup>25</sup>

Unlike for other federal financial regulators in connection with their adoption of Regulator-Specific Data Standards, the SEC is required to consult with market participants in establishing the Municipal Market Data Standards.<sup>26</sup> These would include, presumably, market participants that would be directly affected by the need to produce and submit information to the MSRB pursuant to the Municipal Market Data Standards, including, in particular, municipal issuers, obligated persons, and regulated entities. The SEC would also be expected to consult with market participants who use the information submitted to the MSRB and obtainable from EMMA or other MSRB information systems, such as investors, data vendors that use MSRB data in their market information products or services, other market professionals, and the general public. Furthermore, the SEC will need to consult closely with the MSRB to ensure that the Municipal Market Data Standards are appropriately coordinated with applicable MSRB systems and rules to effectively implement the Municipal Market Data Standards in a manner that addresses concerns with regard to burdens and disruptions to affected market participants and that allows for an effective transition to the new data paradigm.

Finally, the FDTA makes clear that its provisions are not intended to change the operation of the Tower Amendment.<sup>27</sup> That is, the FDTA does not:

- Authorize the SEC or MSRB to require a municipal securities issuer, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the SEC or MSRB, prior to the issuer's sale of securities, any application, report, or document in connection with the issuance, sale, or distribution of the securities;<sup>28</sup> or
- Authorize the MSRB to require a municipal securities issuer, directly or indirectly through a broker-dealer, municipal advisor, or otherwise, to furnish to the MSRB or to a purchaser or prospective purchaser of the securities any application, report, document, or information with respect to the issuer, provided that the MSRB may require municipal broker-dealers or municipal advisors to furnish to the MSRB or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer which is generally available from a source other than the issuer.<sup>29</sup>

Although adopted by the SEC prior to enactment of the FDTA and therefore not tailored to the data standards mandated thereunder, current requirements for corporate, fund, and other non-municipal submissions to the SEC using XBRL are

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<sup>25</sup> The FDTA states that it does not prohibit an agency head from tailoring its data standards, thus not placing constraints on the SEC to tailor the Municipal Market Data Standards. FDTA Section 5891(c).

<sup>26</sup> See FDTA Section 5823(a), which adds new Exchange Act Section 15B(b)(8)(C).

<sup>27</sup> See FDTA Section 5823(a), which adds new Exchange Act Section 15B(b)(8)(D).

<sup>28</sup> Exchange Act Section 15B(d)(1).

<sup>29</sup> Exchange Act Section 15B(d)(2).

governed, as a technical matter, in large part by SEC Rules 405 through 408 of Regulation S-T adopted under the Exchange Act.<sup>30</sup> The existing XBRL rules may provide perspective on the nature of certain aspects of the SEC's potential approach to rulemaking that will be required to adopt the Municipal Market Data Standards.

The SEC also will need to consider anew issues regarding potential legal liabilities under the antifraud provisions of the federal securities laws that could arise due to misleading or omitted tagging of data elements using structured data,<sup>31</sup> which may prove more challenging in the municipal market environment where the diversity of municipal issuers and obligated persons exceeds what exists among public companies and where accounting standards are not as uniformly applicable as in the corporate market. In particular, different municipal issuers and obligated persons may use different accounting standards based on the nature of the individual entity (e.g., private sector vs. governmental) and may be subject to state-imposed nonstandard obligations regarding treatment of certain items in their financial reporting. In addition, the underlying character of otherwise superficially similar data elements (for example, a specific type of tax revenue) may differ materially from jurisdiction to jurisdiction based on state or local law. As a result, the categorization of a specific data element in a submitter's financial disclosure using an existing label for a concept included in the Municipal Market Data Standards (such as the type of tax revenue) could, depending on the facts and circumstances, require the exercise of judgment as to whether there is an appropriate match between such label and the actual nature of the submitter's data element in order to assure that such labeling is not materially misleading. The nature of a submitter's potential antifraud liabilities for any such misleading labeling, and its obligation to undertake reasonable measures to protect against misleading labeling, will need to be considered and explained during the rulemaking process, including in the context of the use of third-party providers to assist in converting financial information and other disclosures from the original produced by a submitter into a conforming structured data submission.

**Timing of Municipal Market Data Standards Rulemaking.** The SEC is required to issue rules to adopt the Municipal Market Data Standards by no later than two years after the Joint Data Standards are adopted in the Joint Rulemaking. Assuming the federal financial regulators adopt the Joint Data Standards in a timely manner by December 2024, the SEC would be expected to adopt the Municipal Market Data Standards by no later than December 2026. However, the FDTA does not mandate an effective date for the Municipal Market Data Standards, in contrast to the other Regulator-Specific Data Standards, which are required to take effect by no later than two years after the Joint Rulemaking. Thus, while most of the federal financial regulators are given some discretion under the FDTA's scaling and disruption provisions to provide for an orderly rollout of the various Regulator-Specific Data Standards, the SEC likely has greater discretion to potentially

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<sup>30</sup> 17 CFR §§232.405 through 408.

<sup>31</sup> See, e.g., Interactive Data to Improve Financial Reporting; Final Rule, Exchange Act Release No. 59324 (Jan. 30, 2009), Section II.C; 74 FR 6776 (Feb. 10, 2009).

introduce the Municipal Market Data Standards in stages over a period of time consistent with the FDTA.

**Submitters and Types of Submissions Potentially Subject to Municipal Market Data Standards.** The Municipal Market Data Standards are to apply to “information submitted to” the MSRB.<sup>32</sup> The FDTA does not identify specific types of submitters, nor does it identify specific types of information submitted, although it provides the SEC with the ability to scale the data standards to reduce any “unjustified burden on smaller regulated entities” and must seek to “minimize disruptive changes to the persons affected” by the requirement.

Under current MSRB and SEC rules, information is submitted to the MSRB for a variety of reasons and by various types of municipal market entities. Some submissions are made directly to the MSRB through its primary website ([www.msrb.org](http://www.msrb.org), in most instance through MSRB Gateway), while others are made through EMMA ([emma.msrb.org](http://emma.msrb.org), through EMMA Dataport), and still others are submitted through a third-party utility. These submission requirements are summarized in Table 1.

***Establishing Data Standards for Document-Based Submissions and Potential Application to Data Elements within Documents:*** The FDTA introduces the greatest ambiguity in its intended approach in the case of information currently required to be submitted to the MSRB as documents rather than fielded data. For example broker-dealers currently are obligated to submit documents, as PDF files, provided to them by third-parties, including official statements and other primary market documents under MSRB Rule G-32 and letters of credit and other liquidity-related documents for variable rate securities under MSRB Rule G-34. Municipal issuers and obligated persons are obligated, pursuant to continuing disclosure undertakings entered into as contemplated by SEC Rule 15c2-12, to submit documents, currently as PDF files, to the MSRB.

This ambiguity can best be illustrated by considering audited financial statements, which likely represent the context of greatest concern to the municipal issuer community. Such financial statements currently are submitted either as exhibits to the municipal issuer’s official statements submitted by underwriters to EMMA under MSRB Rule G-32 or as continuing disclosures submitted by municipal issuers or obligated persons to EMMA under their continuing disclosure undertakings entered into as contemplated by SEC Rule 15c2-12.

The FDTA is silent as to how such financial statements are to be submitted, although there is little doubt that the expectation is that the financial statements will be prepared using structured data consistent with the Municipal Market Data Standards. However, a technical specification for FDTA-compliant data standards requires that such standards establish the meaning of the data “as defined by the underlying regulatory information collection requirements.” Similarly, another

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<sup>32</sup> See FDTA Section 5823(a), which adds new Exchange Act Section 15B(b)(8)(A). Broker-dealers and dealer municipal advisors currently registered with FINRA should be aware that FDTA Section 5824(a), which adds new Exchange Act Section 15A(n), would similarly make FINRA’s Regulator-Specific Data Standards broadly applicable to “all information that is regularly filed with or submitted” to FINRA and places development of such standards on the same timeframe as for the Municipal Market Data Standards.

**Table 1: Information Submitted to the MSRB<sup>a</sup>**

<b>Rule</b>	<b>Information Submitted</b>	<b>Submission Venue</b>	<b>Submitter<sup>b</sup></b>
MSRB Rule A-12	Registration/Contact Information (Form A-12)	MSRB Gateway	Broker-dealers; municipal advisors
MSRB Rule G-14/ Information Facility-1	Trade Reports	DTCC <sup>c</sup> Interactive Messaging & Real-Time Trade Matching system; MSRB RTRS Web	Broker-dealers
MSRB Rule G-32/ Information Facility-3	Primary Offering Disclosure (Form G-32)	EMMA Dataport; DTCC New Issue Information Dissemination Service	Broker-dealers
MSRB Rule G-34/ Information Facility-2	Variable Rate Security Market Information	SHORT System/EMMA Dataport	Broker-dealers
MSRB Rule G-37	Political Contributions (Form G-37) <sup>d</sup>	EMMA Dataport	Broker-dealers; municipal advisors
MSRB Rule G-45	Information on Municipal Fund Securities (Form G-45)	EMMA Dataport	Broker-dealers
SEC Rule 15c2-12/ Information Facility-3	Continuing Disclosures <sup>e</sup>	EMMA Dataport	Municipal issuers; obligated persons
SEC Rule 15Ga-1/ Information Facility-3	Asset Repurchases For Asset-Backed Securities (Form ABS-15G) <sup>g</sup>	EMMA Dataport	Municipal securitizers <sup>h</sup>

<sup>a</sup> Excludes information submitted by the public (comments, complaints, etc.) through the MSRB website.

<sup>b</sup> Includes agents acting on behalf of the identified submitter.

<sup>c</sup> DTCC refers to the Depository Trust and Clearing Corporation, an SEC-registered clearing agency that, together with its subsidiaries, provides clearance, settlement, depository, and other services in connection with new issues of and transactions in municipal securities.

<sup>d</sup> Although applicable law may be different at such time as the SEC adopts the Municipal Market Data Standards, the SEC may be limited in its ability to make Form G-37 submissions subject to such standards due to other legal constraints. See, e.g., Pub. L. No. 117-328 (2022), Division E, Title VI, Section 633.

<sup>e</sup> In addition to continuing disclosures submitted under continuing disclosure undertakings pursuant to SEC Rule 15c2-12, municipal issuers and obligated persons often submit disclosures on a voluntary basis through the same process as for required disclosures.

<sup>f</sup> 17 CFR §240.15Ga-1, adopted by the SEC under Exchange Act Section 15Ga-1 and Section 943(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

<sup>g</sup> Securitizers of asset-backed securities generally are required to submit Form ABS-15G to the SEC’s EDGAR system under SEC Rule 15Ga-1, but municipal securitizers may elect under SEC Regulation S-T Rule 314, 17 CFR §232.314, to satisfy this requirement by instead submitting Form ABS-15G to the MSRB’s EMMA system. Unlike in the case of continuing disclosures under SEC Rule 15c2-12, the obligation of a municipal securitizer to submit Form ABS-15G to EDGAR or, in the alternative, EMMA is a direct regulatory obligation under the federal securities laws.

<sup>h</sup> Municipal securitizer is defined under SEC Regulation S-T Rule 314 and Exchange Act Section 15G(a)(3) as a state, U.S. territory or the District of Columbia, or any political subdivision or public instrumentality of the foregoing, that (a) is an issuer of an asset-backed security, or (b) organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.

technical specification requires that data that “exists to satisfy an underlying regulatory information collection requirement” be consistently identified. Today, there is no underlying regulatory information collection requirement with respect to financial statements as a whole in the context of their typical (though not mandated) inclusion in official statements, and no underlying regulatory information

collection requirement as to specific data elements or data assets within financial statements, either as part of an official statement or in the context of continuing disclosure.

The federal securities laws do not currently mandate the contents of municipal issuers' financial statements, nor do they mandate the standards or principles pursuant to which they are prepared.<sup>33</sup> Financial statements of municipal issuers are not required to be audited, and SEC Rule 15c2-12 does not mandate the use of generally accepted accounting principles (GAAP) established by the Government Accounting Standards Board (GASB) or Financial Accounting Standards Board (FASB).<sup>34</sup> In addition, SEC staff has recognized that other accounting principles, such as mandated state statutory principles, may be followed by some issuers.<sup>35</sup>

Many governments prepare an Annual Comprehensive Financial Report (ACFR), which provides significantly more financial information than do traditional baseline financial statements, but other governmental entities prepare only the more limited set of baseline financial statements. Further, many obligated persons that may be subject to continuing disclosure obligations consist of not-for-profit or for-profit nongovernmental entities that support repayment of a municipal issuer's bond offering, such as in conduit bond issues or other private activity bond offerings. Such obligated persons, particularly public companies, would adhere to FASB GAAP standards, while others may adhere to or diverge from such standards, and such nongovernmental obligated persons generally do not prepare an ACFR. Public company obligated persons often reference their corporate submissions to the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system when making submissions to the EMMA system as an obligated person. It is also possible that a municipal issuer or obligated person may include types of financial or operating information that go beyond those typically seen in an ACFR. In some cases, a single bond offering may involve a municipal issuer and multiple obligated persons providing differing types of financial information subject to different accounting standards.

Another issue to be addressed through the rulemaking process is whether the Municipal Market Data Standards would apply solely to the basic financial statements or whether data and other information appearing in supporting statements or other tables or schedules, including within the statistical section of an ACFR, would also be subject to being marked up through detailed tagging of specific data elements or other items of information, sometimes referred to as "facts." Furthermore, the SEC would need to address whether data points included within textual portions of an ACFR or other financial document, such

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<sup>33</sup> SEC Rule 15c2-12(b)(5)(ii)(B) currently requires that a continuing disclosure undertaking entered into as contemplated thereunder specify in reasonable detail the accounting principles pursuant to which financial statements will be prepared.

<sup>34</sup> See Municipal Securities Disclosure, Exchange Act Release No. 34961 (Nov. 10, 1994) at note 108; 59 FR 59590 (Nov. 17, 1994).

<sup>35</sup> See National Association of Bond Lawyers, SEC Staff No-Action Letter, June 23, 1995 (NABL I), answers to questions 10 and 11, available at <https://www.sec.gov/info/municipal/nabl-1-interpretive-letter-1995-06-23.pdf>.

as in the management's discussion and analysis or the notes, would be subject to mark-up through detailed tagging as individual facts or, in the case of qualitative information, by block tagging.

The standards-body specifications for FDTA-compliant data standards—particularly the data standards “use, be consistent with, and implement applicable accounting and reporting principles”—will cause significant complexity with respect to the establishment and implementation of the Municipal Market Data Standards. Although they may be effective for establishing FDTA-compliant data standards where the underlying regulatory requirement establishes a requirement that data be produced in a manner consistent with specified accounting and reporting principles (e.g., in the corporate securities market), they falter where no such underlying regulatory requirement exists, as is the case currently with respect to the municipal securities market. Any attempt to provide for detailed requirements at the data element or data asset level, or to require adherence to a specific set of accounting or reporting principles, would need to be consistent with the generally understood constraints under the Tower Amendment, which the FDTA confirms remains in full force and effect without diminution as to how it has operated historically.<sup>36</sup> Further, the FDTA provides that its provisions shall not be construed to require the SEC or MSRB to collect or make publicly available additional information beyond information that was collected or made publicly available before enactment of the FDTA.<sup>37</sup>

The ambiguity regarding how Municipal Market Data Standards are intended to apply to information currently required to be submitted to the MSRB as documents rather than fielded data extends beyond financial statements, if such other submissions of information are not excluded by the SEC. For example, in the primary market, it is unclear whether the SEC would seek to make all or certain portions of an offering document beyond any attached financial statements subject to the Municipal Market Data Standards. Similarly, it is unclear whether the SEC would seek to make the information included within the 16 categories of continuing disclosures set out in Rule 15c2-12(b)(5)(i)(C) also subject to the Municipal Market Data Standards.<sup>38</sup> To the extent applicable to such other submissions, the manner of markup discussed above (i.e., what elements or facts, and whether detailed or block tagging would be required) would need to be addressed.

Also not addressed by the FDTA is whether information that is currently submitted as a document rather than as a set of data elements would need to continue to be made available to the public in a traditional document (e.g., PDF) form. In particular, unlike for the other federal financial regulators, neither the SEC nor the MSRB is required under the FDTA to render data subject to the Municipal Market

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<sup>36</sup> In addition, enforcement of adherence to the Municipal Market Data Standards generally would face the same issues currently faced in regard to enforcement related to submissions of municipal issuer disclosures to the MSRB under MSRB Rule G-32 and SEC Rule 15c2-12.

<sup>37</sup> FDTA Section 5826.

<sup>38</sup> These open questions also apply in regard to broker-dealer submission of certain documents relating to variable rate securities issues under MSRB Rule G-34.

Data Standards in a human-readable format.<sup>39</sup> Particularly given the retail nature of the municipal securities market, human readability would be a practical necessity, and market participants can expect that Municipal Market Data Standards, at least as applied to such document-based submissions, would incorporate such a requirement, just as the SEC has mandated iXBRL for many current corporate and fund filings to EDGAR.<sup>40</sup> Moving from PDF to other electronic forms will require readily available mechanisms to render the information in human-readable form, with the SEC currently relying on open source iXBRL viewers that normally automatically load in most web browsers.<sup>41</sup>

***Current Specifications-Based Submissions:*** Several information submission requirements under MSRB rules are fulfilled, in whole or in part, pursuant to published specifications that may meet some, but not all, aspects of the technical and access specifications (but not identifier and standards-body specifications, in many cases)<sup>42</sup> that data standards under the FDTA must meet. The most prominent specifications-based submission process consists of trade data submitted by broker-dealers to the MSRB under MSRB Rule G-14, with other examples of specifications-based submissions to the MSRB consisting of the data portions of primary market disclosure submissions under Rule G-32, variable rate securities data under Rule G-34, and municipal fund securities data under Rule G-45. However, in many cases, data that is to be submitted by broker-dealers to the MSRB under Rules G-14 and G-32 using MSRB specifications may also be submitted indirectly through a third-party system or data product that MSRB systems consume and process. In addition, data submitted by broker-dealers pursuant to MSRB specifications (or through a third-party process) under Rule G-32 and G-34 constitutes only a portion of an overall submission requirement that also includes the accompanying submission of PDF documents produced by third parties. Finally, all of these data submission requirements for which the MSRB has provided a specifications-based

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<sup>39</sup> More broadly, unlike for the other federal financial regulators, neither the SEC nor the MSRB is required under the FDTA to make published data subject to the Municipal Market Data Standards available as an “open Government data asset” or to otherwise make it (1) freely available for download, (2) rendered in a human-readable format, and (3) accessible via application programming interface where appropriate. Compare, e.g., FDTA Section 5822. Notwithstanding, Exchange Act Section 15B(b)(3) would continue to apply, which prohibits the MSRB from charging a fee to obtain, directly from the MSRB’s website (including EMMA), documents or information submitted by issuers, obligated persons, broker-dealers, or municipal advisors, including documents submitted under MSRB or SEC rules; although the MSRB is not prohibited from charging commercially reasonable SEC-approved fees for automated subscription-based feeds or similar services or charging for other customized services.

<sup>40</sup> In the alternative, the regulators might mandate that such submissions be made in both PDF and XBRL format, although such an approach would likely be highly disfavored by many market participants.

<sup>41</sup> The European Securities and Markets Authority (ESMA), which recently implemented its own structured data mandate known as the European Single Electronic Format (ESEF) for certain securities-related filings made to ESMA member nations’ financial regulators, requires xHTML for rendering submissions in human-readable form in a web browser without the need for a viewer.

<sup>42</sup> LEIs are requested but not required for certain entities under Rule G-32, and message-based submissions of trade data under Rule G-14 adhere to International Organization for Standardization (ISO) 15022 standards.

submission process also offer a manual online data entry option, which is discussed below. The SEC will need to consider whether these submission requirements are to be made subject to Municipal Market Data Standards.

**Current Online Form-Based Submissions:** Other required information submissions currently are made primarily through data entry in online forms by broker-dealers and municipal advisors, such as registration/firm contact information under MSRB Rule A-12<sup>43</sup> and information concerning political contributions and municipal securities/advisory business under Rule G-37. The form completion process itself creates a de facto set of specifications that share some, but not all, aspects of the technical and access specifications (but not identifier and standards-body specifications)<sup>44</sup> that data standards under the FDTA must meet. The SEC will need to consider whether these submission requirements are to be made subject to Municipal Market Data Standards.

**Voluntary/Non-Rule-Based/Elective Submissions to the MSRB:** The MSRB also receives submissions through EMMA of documents in PDF format that are provided voluntarily (such as continuing disclosures not within the categories of disclosures enumerated in SEC Rule 15c2-12 submitted by municipal issuers or obligated persons), under a contractual obligation or covenant not arising under an SEC or MSRB rule, or at the election of a municipal issuer as an alternative to a required submission to the SEC (such as Form ABS-15G submitted by a municipal securitizer under SEC Rule 15Ga-1 to EMMA rather than EDGAR).

For example, a municipal issuer or obligated person that has entered into a continuing disclosure undertaking may provide to EMMA continuing disclosures other than those falling within the categories identified in Rule 15c2-12 (either because the continuing disclosure undertaking voluntarily added such additional categories beyond those mandated, or because the submitter may choose to submit a disclosure not specifically required by the continuing disclosure undertaking). In other cases, an offering may be exempt from the continuing disclosure provisions of Rule 15c2-12, but the municipal issuer or obligated person may nonetheless voluntarily agree to submit continuing disclosures to EMMA, whether consistent with the categories provided for under Rule 15c2-12 or representing different types of disclosures not enumerated under Rule 15c2-12. By way of illustration, it is not unusual in a project financing involving the construction of facilities that will be the source of repayment of the new issue for there to be a requirement—either included in a continuing disclosure undertaking or in another agreement or writing related to the offering, but not arising from any obligation under Rule 15c2-12—

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<sup>43</sup> While the FDTA does not mandate that the SEC's registration process for broker-dealers, municipal advisors, and other market professionals generally be covered by the SEC's Regulator-Specific Data Standards, the breadth of the FDTA mandate with respect to FINRA under FDTA Section 5824 is broad so that FINRA will need to assess if, for example, it will need to adopt Regulator-Specific Data Standards with respect to its members' filings with FINRA, including registration and reporting information submitted through FINRA's Central Registration Depository (CRD) system or the Investment Adviser Registration Depository (IARD) operated by FINRA on behalf of the SEC and the North American Securities Administrators Association (NASAA).

<sup>44</sup> LEIs are requested but not required for regulated entities on Form A-12.

for the submission of monthly construction reports to EMMA, which are often prepared in PDF form by the contractor.

Voluntary, non-rule-based submissions are, by their nature, not made subject to an “underlying regulatory information collection requirement” (as provided for in the technical specifications). There is thus considerable doubt as to whether the SEC could mandate that voluntary submissions must conform to the Municipal Market Data Standards. This strongly suggests that the MSRB’s systems would need to continue to be able to receive, index, and disseminate submitted disclosures that do not use the Municipal Market Data Standards after implementation of the Municipal Market Data Standards, both as a matter of law and as a practical matter, including in particular the significant potential that requiring voluntary or other non-rule-based submissions to adhere to Municipal Market Data Standards could serve as a disincentive to making disclosures beyond the minimum required by rule.

Form ABS-15G is required for certain securitizers, including some municipal securitizers, under SEC Rule 15Ga-1 for the purpose of disclosing repurchases of assets underlying the securitizer’s asset-backed securities (“ABS”).<sup>45</sup> The primary obligation is for securitizers to submit the form to the SEC’s EDGAR system. However, SEC Regulation S-T Rule 314 permits municipal securitizers to meet this obligation by instead submitting Form ABS-15G to EMMA. Thus, municipal securitizers are not required to file the form with the MSRB but instead may elect to meet their SEC filing requirement through the MSRB. Historically, nearly all municipal securitizers that have submitted Form ABS-15G under Rule 15Ga-1, consisting predominantly of single-family housing and student loan agencies, have fulfilled their obligation by submitting the form to EMMA rather than to EDGAR. While the FDTA mandate with regard to Municipal Market Data Standards would appear to apply to submissions to the MSRB of Form ABS-15G, the FDTA does not similarly mandate that submissions of Form ABS-15G to the SEC be made subject to either the Municipal Market Data Standards or any separate Regulator-Specific Data Standards required to be established by the SEC under the statute.

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<sup>45</sup> Unlike in the case of continuing disclosures under SEC Rule 15c2-12, the obligation of a municipal securitizer to submit Form ABS-15G to EDGAR or, in the alternative, to EMMA is a direct regulatory obligation under the federal securities laws on municipal issuers that are municipal securitizers. See Exchange Act Section 15Ga-1, Dodd-Frank Act Section 943(2), SEC Rule 15Ga-1 and SEC Regulation S-T Rule 314. Only a subset of municipal securitizers engage in the type of asset repurchase activities requiring submission of Form ABS-15G, which consists of securitizations with pools of underlying assets where some assets may not conform to the requirements for being included in the pool and therefore are subject to being removed from the pool through repurchase. Many pooled securitizations do not have such repurchase obligations and therefore are not subject to Form ABS-15G reporting. In addition, as the SEC has recently observed, ABS may consist of so-called “single asset, single borrower” (SASB) transactions, which may result in many common structures for municipal securities offerings (including but not limited to conduit issues) to be treated as ABS if payments under a loan agreement or other instrument support repayment of the securities. See Prohibition Against Conflicts of Interest in Certain Securitizations, Securities Act Release No.11151 (Jan. 25, 2023), at note 31; 88 FR 9678 (Feb. 14, 2023); Robert A. Fippinger, *The Securities Law of Public Finance* (3rd ed., 2011), §4:1.2. However, unless such municipal SASB financings entail an asset repurchase obligation as described above, they will not be subject to Form ABS-15G submission requirements.

While it is likely that the SEC could, on its own volition, require that Form ABS-15G submissions to EDGAR use structured data (as it has for certain other submission requirements adopted prior to enactment of the FDTA), any divergence between data standards for such form submissions to EMMA or to EDGAR could create disincentives for using one venue over the other and create inconsistency in the character of submissions made to the two venues.

#### **Fourth Step: MSRB and Marketplace Implementation**

Although the SEC will adopt the Municipal Market Data Standards, market participants will need to modify their processes; obtain necessary software or other technology assets; identify, onboard, and train appropriate staff resources and/or engage qualified third-party contractors; and marshal initial and ongoing financial resources to ensure compliant and effective implementation of any applicable Municipal Market Data Standards for their submissions to the MSRB. In addition, the MSRB will need to engage in rulemaking to adapt its existing submission requirements to any applicable Municipal Market Data Standards. Furthermore, the MSRB will be faced with potentially significant systems development and associated rulemaking to ensure that its information systems (including EMMA) are able to accept submissions subject to the Municipal Market Data Standards and to undertake the myriad downstream data handling processes to effectively retain, display, and disseminate the submitted information in a manner that meets users' expectations and that allows for the benefits that structured data is intended to provide to the ultimate end users and the marketplace as a whole.

Some initial steps to undertake these critical implementation activities can begin in parallel with certain aspects of the regulators' adoption of the Joint Data Standards and Municipal Market Data Standards, including meaningful interface with the SEC and MSRB through formal comment processes and other formal or informal ongoing engagement to ensure that the Municipal Market Data Standards are appropriately tailored for the marketplace, and that the regulators do not proceed along a path that cannot be effectively implemented. In addition, municipal issuers, obligated persons, and other market participants can begin to familiarize themselves with existing processes, as well as third-party products and services, being used in the financial markets for making disclosures with structured data where structured data requirements are already in place.<sup>46</sup> Presumably, efforts will be undertaken by the structured data community to develop, in conjunction with municipal market participants, products and processes that can efficiently and economically address the needs of the highly diversified community of submitters that the Municipal Market Data Standards will implicate, representing a breadth of financial and technological sophistication that differs dramatically from public

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<sup>46</sup> The SEC provides information regarding the use of iXBRL at <https://www.sec.gov/structured-data/osd-inline-xbrl.html>. ESMA also provides information on the use of iXBRL, including tutorials that provide clear visual explanations of how the European Single Electronic Format (ESEF) data standards are applied to financial statement data elements intended to be understood by non-specialists, at <https://www.esma.europa.eu/issuer-disclosure/electronic-reporting#esef-educational-material>.

companies and other sophisticated filers currently required to use structured data under SEC rules.

However, many other significant steps beyond these cannot be prudently begun until, at earliest, such time as the SEC proposes for comment the Municipal Market Data Standards. Resource-intensive preparations by market participants and the MSRB, particularly those requiring more than minimal financial resources or technological changes, are not likely to be undertaken until final Municipal Market Data Standards are adopted. As a practical matter, the SEC, MSRB, and Congress must accept the necessity for a meaningful period for systems development, process enhancement, and phased market adoption to meet the requirements of the newly imposed Municipal Market Data Standards.

The municipal market likely will face a sustained period of transition in connection with EMMA operations, particularly with respect to continuing disclosures submitted by municipal issuers and obligated persons. Their obligations with respect to continuing disclosure submissions are governed by the terms of continuing disclosure undertakings entered into at the time of issuance of bonds in compliance with the provisions of SEC Rule 15c2-12 as in effect at that time, and not the provisions thereof as they may be amended from time to time unless otherwise provided in the agreements. Depending on how such agreements were drafted for issues already outstanding when the new Municipal Market Data Standards are implemented, many municipal issuers and obligated persons may take the view that the new standards do not apply to preexisting contractual arrangements but instead apply only prospectively to agreements entered into after the effective date in conjunction with future new issues. Although a somewhat analogous situation arose without appreciable dislocation when continuing disclosure submissions transitioned from paper-based submissions to PDF submissions (and then word-searchable PDF) with the launch of the EMMA continuing disclosure service in 2009, the MSRB likely will need to continue to accept nonstructured data submissions for older issues for an indeterminate period of time.

## **TIMELINE FOR MUNICIPAL MARKET DATA STANDARDS ADOPTION AND IMPLEMENTATION**

In summary, assuming no unexpected delays in the rulemaking process, the establishment of data standards under the FDTA should proceed along the following timeline:

- By June 2023, the SEC establishes corporate data quality program and submits initial report to Congress on costs and benefits of structured data in corporate disclosures;
- By June 2024, federal financial regulators publish proposed rules for comment to establish Joint Data Standards;
- By December 2024, federal financial regulators issue final Joint Rulemaking adopting Joint Data Standards;
- By mid-to-late 2026, the SEC likely publishes proposed Municipal Market Data Standards for comment; the MSRB likely publishes shortly thereafter

conforming proposed rule changes and information system enhancements for comment;

- By December 2026, Joint Data Standards become effective; the SEC issues final rule adopting Municipal Market Data Standards;
- By 2027 and thereafter, effective date(s) for Municipal Market Data Standards and associated MSRB rule changes and information system enhancements are likely.



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