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100 F Street, N.E., Washington, D.C. 20549

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Chair Gary Gensler
Adam Allogramento, Special Counsel
Commissioner Jaime Lizárraga
Commissioner Hester H. Peirce
Adam R. Wendell, Deputy Director
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Panelists:
Ahmed Abonamah, Chief Financial Officer and Director of Finance, City of Cleveland
Andrew R. Kintzinger, Counsel, Hutton Andrews Kurth LLP
Camille M. Evans, Managing Partner, Virtus LLP
Anne Ross, Principal Consultant, Muni Credit & Compliance Advisors, LLC; Industry Practices Committee Co-Chair, National Federation of Municipal Analysts (NFMA)
Moderator: Mary N. Simpkins, Senior Special Counsel SEC Office of Municipal Securities

Panelists:
Kimberly D. Magrini, Partner, Ballard Spahr LLP
J. Ben Watkins, III, Director, State of Florida Division of Bond Finance
Rachael A. Eubanks, State Treasurer, State of Michigan

Rachel Barkley, Managing Director, Loop Capital Markets LLC; Board of Governors and Executive Committee Member, National Federation of Municipal Analysts (NFMA)
Joel Black, Chair, Governmental Accounting Standards Board (GASB)

Moderator: Mark S. Elion, Senior Counsel

Panelists:
Christopher Hamel, Senior Fellow, Municipal, Market Analytics, Inc. (MMA)
Walter J. St. Onge III, Partner, Locke Lord LLP
Jamiyl Flemming, Senior Vice President Siebert Williams Shank & Co., LLC
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Moderator: Dave A. Sanchez, Director
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Panelists:
Brian Reilly, Senior Municipal Advisor & Managing Director, Ehlers, Inc.
Hillary D. Phelps, Partner, Chapman and Cutler LLP
LeeAnn G. Gaunt, SEC Division of Enforcement, Public Finance Abuse Unit
Joseph E. "Jodie" Smith, Shareholder, Maynard Nexsen PC

C O N T E N T S

P R O C E E D I N G S

INTRODUCTION

MR. ALLOGRAMENTO: Good morning. We'd like to welcome everyone here today to the Office of Municipal Securities 2023 Disclosure Conference. My name is Adam Allogramento, and I'm a special counsel in the Office of Municipal Securities. On behalf of the office, we want to thank everyone in the audience here today and we're very excited to have a robust discussion on disclosure in the municipal securities market.

Before I begin the day, we did want to give the disclaimer that all SEC speaking today are speaking in their official capacity and that they do not necessarily reflect the views of the Commission, any individual commissioner or other SEC staff.

A quick overview of the day: We're very excited that the conference will open with remarks from Chair Gary Gensler, and after his opening remarks we'll move to Panel 1, hosted by Deputy Director Adam Wendell, to talk about voluntary disclosure in the municipal securities market.

After a brief break we'll have Panel 2, hosted by Mary Simpkins, Senior Special Counsel in our office, to discuss the Financial Data Transparency Act.

After lunch, we'll reconvene to hear comments from Commissioner Jaime Lizárraga, before moving into our third panel on broad risks. After another short break, we're lucky to hear from Commissioner Hester Peirce, before moving into our final panel of the day hosted by Director Dave Sanchez, on current disclosure topics. Dave, afterwards, will give concluding remarks.

I would like to begin the conference by saying how lucky we are to have Chair Gary Gensler here today to give opening remarks. Chair Gensler has been Chair of the Commission since 2021, and please with me, thank Gary Gensler for being here. Thank you.

CHAIR GENSLER: Thank you, Adam, for those brief remarks and thank you all for being here. It's great to be back in the auditorium, by the way, and to be able to do this in hybrid fashion. And I know some of you are online and we're fortunate to have -- I don't know -- 70 or so of you here in person.

I'm going to say it a little bit differently than Adam. I'd like to start to say that these are my own thoughts as chair of the SEC. So I am speaking for one Commissioner, Adam, but not on behalf of my fellow commissioners of the staff.

Later this month -- geez, I've got my twin brother echoing back here. But the 27th of this month will mark the 90th anniversary of the Securities Act of

1933. That was the first of the federal securities laws. And when crafting the federal securities laws, Congress, Roosevelt, they understood something. They understood the importance of the bond markets. Now the focus, of course, was the 29 stock market crash and so forth but among the many terms that they included in that very first definition of security were "bond," "note," and "debenture."

With the focus of protecting investors in the bond markets, they actually came back and Congress later passed the Trust Indenture Act in 1939. It's not something that many of you in the in the municipal markets work on but it's sort of highlights the importance of the bond market in those early days. Now, one might say that the Trust Indenture Act is kind of like the Rodney Dangerfield of the securities law; important but discussed not that often. Ah, some of you are too young to remember Rodney Dangerfield.

Initially, the municipal securities markets, of course, were exempt from many of the federal securities laws, except with respect to any fraud protections. And that was true of the U.S. Treasury market as well. But things changed. Fast forward about four decades to the 1970s, New York City nearly went bankrupt. Congress came together in 1975, acted,

establishing a regulatory scheme for intermediaries in the municipal securities markets requiring broker-dealers in these markets to register, and creating the Municipal Securities Rulemaking Board.

Interestingly, it took yet another decade, 1986, for the Government Securities Act and to bring treasuries more into our remake aremid*, shared, of course, with the U.S. Department of Treasury and the like. And here, we had a little bit of a sharing with the Municipal Securities Rulemaking Board.

Based on these authorities, by 1989 the Commission adopted -- and you all know then more recently in 2018 amended -- rules around disclosure, 15c2-12. And the rule basically ensures that those that are acting as underwriters of municipal securities confirm that the issuers agree to make continuous disclosures to investors and that the disclosures are available in a manner designated by the SEC.

If I could just mention, back to the 30s, the basic bargain was investors get to decide what risk they take. We're a merit-neutral agency but there is full, fair and truthful disclosure. And that's why Roosevelt actually called the 33 Act the Truth in Securities Act. It's not exactly the same in municipals. There's a lot of reasons for that. But by 1989, based on the

authorities, underwriters of municipal securities had to confirm these various disclosures.

Further under the rules, brokers must confirm that issuers agree to make disclosures with respect to official statements, annual financial information, and you all know this wonderful list -- the 16 relevant, material events. These important disclosure rules both help protect investors and facilitate capital formation by municipal issuers.

We also, at the agency, have a role as a cop on the beat in the vast 100 trillion capital market but we also do in the municipal space as well. And we recently charged four underwriters for disclosure-related violations while offering municipal bonds.

Given that markets, technology, and business models continue to evolve, it's helpful to hear from you all at this conference today -- both in-person and in hybrid -- about ways to enhance disclosure in this part of our markets. I look forward to hearing from the panel taking, talking, and thinking about voluntary disclosures. Such disclosures can help build greater trust in our marketplace that can benefit investors, as well as lower cost of capital for the issuers.

I'm also pleased that you'll be taking up this opportunity to discuss this new bill that passed

Congress, Financial Data Transparency Act. Overseen by the SEC, the Municipal Securities Rulemaking Board maintains an important data repository for municipal markets. Again, you're probably even more familiar with it than I am. I think though that this repository, it could benefit issuers, investors, and the markets alike if we consider ways to enhance the efficient submission and processing of data in these markets. Further, it helps to ensure that the public has ready access to that data.

Before I close, I just want to sort of say just how important this 4 trillion marketplace is. It provides fundamentally, access to the markets for local governments to provide basic services for their communities. Whether it's building roads, schools, parks, bridges, hospitals, keeping the public safe, keeping the public educated, all that they do and more is facilitated by these important municipal markets.

Now, we at the SEC, we oversee the public markets for about 7,000 public companies. You all know there's about 50,000 municipal issuers, so it's quite a -- quite a difference. But even more so and more strikingly, while you see those ratios, there's nearly outstanding, 1 million municipal securities -- 1 million -- more than 30 times the number of outstanding

corporate bonds. So a lot of work, smaller issuers, less liquidity, of course.

So, we at the SEC, we benefit from your participation today, your continued engagement with our Office of Municipal Securities, and what you're discussing today about voluntary disclosures and the new act that just passed last year.

I thank you. I thank those of you that came in person. I thank those of you that are listening in online. Who do I hand it back to? Adam. Thank you.

MR. ALLOGRAMENTO: OMS would like to, again, thank you Chair Gensler for kicking off our conference. Before I turn it over to our first panel moderated by Deputy Director Adam Wendell, two points of housekeeping quickly. After the panel we will have a short break but I want to remind everyone to please come back by 11:15.

And second, we would like to have questions and answers after each panel. So if you're attending in person, please assemble at the microphone when it's time and alternatively, if you're attending via teleconference, feel free to send any questions you have to municonference2023@sec.gov, and we look forward to answering those questions if we have time.

Without further ado, Adam?

PANEL 1

MR. WENDELL: Thank you, Adam, and good morning everyone. As I was reading through my introductions of past panels I've moderated, I notice that I always use a strange sports analogy in my introduction so this time I had to come up with another one. Let's say that Chair Gensler was our lead-off man and now our panel is coming in as the number two hitter, which means we have to both drive the Chair home and also set the table for the remaining panels.

I hope we can have a wide-ranging discussion of how voluntary disclosure can be valuable to issuers of municipal securities and other market participants; what factors currently drive or impede an issuer's decision to make voluntary disclosure, including what, when, and where to disclose; and how to expand the voluntary disclosure universe.

Before we jump into our discussion, let me briefly introduce our panelists. Ahmed Abonamah is the Chief Financial Officer and Director of the Department of Finance for the city of Cleveland, Ohio. Prior to joining the city, Ahmed spent over six years here at the SEC where he served in a variety of leadership roles, including as Director of the Office of Credit Ratings and as Deputy Director of the Office of Municipal Securities. Prior to joining the SEC, Ahmed worked as a

public finance attorney at Squire Patton Boggs.

Camille Evans is the Co-Founder and Managing Partner of Virtus LLP. In addition, she serves on the board of directors of the National Association of Securities Professionals and is a fellow of the American College of Bond Counsel.

Drew Kitzinger is counsel in the Washington, D.C. office of Hunton Andrews Kurth and focuses his practice on municipal securities matters. He's a former president of the National Association of Bond Lawyers.

Ann Ross has several decades of experience in the corporate world as a buy- and sell-side analyst and as a high-yield investment banker. She established her own consulting firm in 2014, advising hedge funds, asset managers, financial guarantors, and financial technology firms, providing municipal credit analysis and modeling credit metrics, and identification of distressed credits held in portfolio. She is a past chair of the National Federation of Municipal Analysts and serves as its current co-chair of the Industry Practices Committee, member of its DEI committee. She also spent 20 years on the advisory council to GASB.

So those are our panelists, and we'll get right started with the first question that is always on everyone's mind when we talk about voluntary disclosure which is, "What is the value of voluntary disclosure?" You often hear people say that, "Nothing issuers or obligers disclose impacts pricing and it only subjects them to liability, so why do it? " Ahmed, we'll start with you as a producer of such disclosures. You're good.

MR. ABONAMAH: I'm good? Okay, great. Good morning, everyone. It's great to be back in the SEC's headquarters and speaking again at this conference. I'll also note that if you see things flying through the air, it's probably because Emily and Ben are throwing them at me, as an issuer.

So, you know, voluntary disclosure is a really expansive topic. The Office of Municipal Securities has addressed it in a variety of formats through some staff guidance over the years. And, you know, my general view as an issuer now -- which is a bit different than it was before I joined the city -- is that, you know, we produce a lot of information every month, every week.

There are reports we have to produce for city council so in our codified ordinances, the finance department has to produce a monthly financial report for city council, which, you know, provides a really interesting and helpful snapshot of our current financial condition with respect to our expenditures,

our revenues, actual to budget, et cetera.

But even outside of the financial space we do produce a lot of information, whether it be press releases or other presentations that are given to city council. And, you know, I certainly do review those with an eye toward what kind of information we're putting out into the market.

So, you know, some folks maybe in our press office or in the mayor's office might want to embellish certain facts or information. And, you know, I've made sure that in the workflow of that information being made public, that someone in the finance department lays eyes on those documents to make sure that we're not embellishing information that could, you know, in someone's eyes, be significant.

The one thing that hasn't changed about my views on voluntary disclosure is that it's very important and it's useful for the market. I think, you know, information is kind of a public utility in our space, in the securities markets more broadly. It is what allows the various actors in the market to trust each other.

And so it's really important for me in my role to get as much good information out there as we possibly can so that at a minimum -- holding pricing aside -- we

are viewed as a good citizen in the market and that we have good hygiene with respect to disclosing information, whether it's good or bad.

MR. WENDELL: Great, thank you. Ann, as a consumer of such disclosures, would you like to weigh in on the value?

MS. ROSS: Yes, thank you. I would argue that there is tremendous value in providing voluntary disclosures and we see that as equivalency to interim disclosures. It has value most particularly in between bond issuance. Obviously, it you're a frequent bond issuer, that's going to be current market that's always available to the investor to make a credit decision and to assess risk.

The voluntary disclosures certainly we saw had value during the pandemic but it's also good interim disclosure between filings of your information -- of the issuer's information to EMMA, which at best might be posted 6 months after the close of the fiscal year-end, many disclosed within 9 months, some even 360 days so this is stale information. It's getting information that tells you where you've been. You're looking in the rear view mirror. But the investment community would like to know where you're headed.

Now, we can sort that out by seeing interim

disclosures, which we understand does exist. We are not asking any issuer to reinvent the wheel or engage in special project reporting, but rather to disclose some of this interim data that they do present to other entities, whether it's state legislature or city councils, even the federal government.

The value is particularly helpful in the secondary market where you don't have updated information and you need to make an investment decision, a risk assessment, and then to understand if the price of the offering of the bonds is compensating you for that risk.

Also, it does help to bridge the gap, as I said, between the CDA filings, their legacy filings. And quite frankly, unless the bonds have been taken out of their first optional call at 10 years, which is a lengthy period of time, many of these bonds remain outstanding 15-25 years later.

And as we all know, the world has changed. There might be a different information set that is not necessary to have at hand, and the legacy CDAs do not address such information. And certainly, largely, they do not address interim filings, except of course those who for instance file budget to actual comparisons. But that's really been the extent of it.

So we see this as a great tool, an efficient tool, to get information out into the market that is as near real-time as it could possibly be. It helps inform an investor's decision and it also broadens the base of the potential buyers when they see a robust set of disclosures that are filed frequently and certainly, on time. Obviously, the late filings are quite significant.

So we see it as an effective way to get your information out. You know, Ahmed had said it's about trust, and it is. This is a trust relationship between the investor and the issuer. And the better your information is, the more current it is, all * to the benefit of the issuer.

MR. WENDELL: Great, thank you. Camille or Drew, as, you know, attorneys advising clients on these disclosures, do you have anything else you'd like to add about the value of voluntary disclosure?

MR. KITZINGER: Yeah. A couple observations that I think are consistent with what Ahmed and Ann have been offering is a preview on this topic. Two reasons I see for an increase in voluntary disclosure. The first sounds overly simplistic, but more issuers want to do voluntary disclosure. We're finding this in our practice every day -- that good issuers, issuers of all

sizes, are wanting to engage in voluntary disclosure.

Why is that? I think there are two reasons. I think issuers are becoming more comfortable with the EMMA infrastructure, if you will, with electronic submissions.

I think issuers are becoming more comfortable with the concept the special lawyering relationship they have with a disclosure counsel, a counsel that is focused on their special disclosure issues, particularly those disclosures that fall in between primary offerings.

Third, I think that there is just an awareness that in the wake of the loss of advance refundings, issuers are looking at the ability to restructure outstanding debt to obtain lower interest rates to optimalize their cash balance situation. And they're realizing that if we have to go out to existing bondholders and get consents or waivers because we can't advance-refund, better to have good, current disclosure in the total mix of information.

If we have to go out on a cash optimalization program and make tenders for outstanding bonds, easier to do, better to do, if you're in continual communication with your investors, your bondholders. So I think those are two motivating factors.

I think the flip side to all of this, which Adam mentioned in his question, was what about the concern about pricing or liability impact and we'll touch on that throughout the panel. But as a general overview, from the legal perspective, when we're talking about voluntary disclosure, I think it is safe to say that the chances of insider trading liability are unlikely. That selective disclosure to certain investors or analysts is not necessarily going to be actionable under the securities laws, so long as you're not being misleading or false in your statements. And finally, you know, the chances that a good disclosure program or policies and procedures can enhance the voluntary process, adds an extra layer of protection for the issuer.

MS. EVANS: I think the topic's been covered fairly well already but I think that one of the things I've seen a lot of issuers draw a lot of confidence in is the fact that voluntary disclosure gives them the opportunity to communicate good news to the marketplace in the interim. And I think if you have your initial document and your standard 16 notice events in 15c2-12, there's not always an opportunity to share with the marketplace the successes that you've had or also the challenges you've had, but do so in a meaningful way for

all investors to have that information.

And so I think as Ahmed mentioned earlier, you're already providing that information elsewhere within your information infrastructure. So being intentional about making voluntary disclosure of the additional information, for example changes or increases to capital improvement programs, those sorts of -- that sort of information, providing it on a voluntary basis, really creates enhanced visibility and awareness in the marketplace of what an issuer has going on.

MR. WENDELL: All right. Thanks everyone. That's good stuff. So now let's get into a little bit more of the nuts and bolts. And this first question -- or second question is really more for our issuer and counsel panelists, which is what are you putting out there as far as voluntary disclosure right now or what are you recommending to clients to do?

And how do you determine what should be voluntarily disclosed and frequency? Is it driven by specific investor analyst demands, practical factors such as, you know, as Ahmed mentioned, information that you have to produce anyway or what other -- what other factors might determine that? I think we can just go right down the line on this one.

MR. ABONAMAH: Sure. So I'd say a couple of things there. There's kind of the true voluntary disclosure that does not have any genesis from the requirements in Rule 15c2-12. And then there's other voluntary disclosure that maybe initially we're looking at through the lens of Rule 15c2-12, and maybe for a variety of reasons maybe we don't think it's material as a technical sense but we still want to put the information out.

So, you know, on the true voluntary side, a lot of it goes to the information that we're already producing for -- generally for governance purposes with city council and their oversight of the administration.

In addition to that, you know, when we're doing a primary offering, we will also -- in addition to uploading and having the POS delivered to the MSRB and posted on the EMMA system, we'll also include the rating presentation. It seems like if it's good enough for us to make our case for a rating upgrade hopefully, why not share it with our -- with the total world of potential investors out there.

Then flipping gears to the disclosures that might be implicated by Rule 15c2-12, but it's not clear that the -- say, the financial obligation is material, you know, we have -- our capital program every year says 3 to $400 million. We have a water department that serves

a 10-county region. If it enters into a $2 million loan with our state revolving fund, is that really material? Probably not. It's a pretty standard loan document.

Two million dollars doesn't really rise -- it's probably not even one-half of one percent of the total debt outstanding for the water department. Nevertheless, our position in the finance department is that we just put that up on EMMA anyway. I view that as a voluntary disclosure and so it's -- it's a way in which if we're having a discussion about a potential disclosure topic looking at the rule, the default is to just put it up.

And I think it is appropriate to view that as a voluntary disclosure because, you know, we're not certainly taking the position that each item we put on EMMA is material. And we make that clear in our filings, that we are explicitly not opining on the materiality of this item but we still think it's important to put out there.

MS. EVANS: To take your question in parts, I would say our publishing recommendations for clients are really specific to each issuer and then subset to each credit. I don't think that each issuer who has the same credit program can either produce the same information at the same time. And so with respect to content and

timing I think it has to be done on an issuer-by-issuer perspective.

And I think one of the main guiding principles we take with respect to our clients and crafting continual disclosure policies and procedures and identifying what they are going to include in voluntary disclosure is, what information can you produce with confidence on a consistent basis and on what timeframe can you produce that information?

It's great if you put out some voluntary disclosure that has updated, you know, finance or interim finance and operating data. But if you can't produce that on a regular basis, I don't know if you're really helping yourself as a municipal market participant.

Also, with respect to the different types of information provided I would say, you know, that is really, as I mentioned, very credit-specific. You know, for example, I recently saw a toll issuer who wanted to address revenue leakage, start creating voluntary disclosures about revenue assurance and different ways they were handling bad debt collections.

Another example is utilities addressing rate changes -- interim rate changes -- that were in response to changes in the market prices for access to fuel.

So I think that there are a number of different instances that will impact each credit and it's very critical for us to have those very -- and I love that Drew mentioned, you know, a candid and comfortable conversation with your disclosure counsel about what you and your team can actually produce timely and with confidence. Because I think it's very important to make sure that while we want to be as aspirational in our voluntary disclosure, we don't want to overshoot what we can actually do consistently.

MR. KITZINGER: Yeah. To follow up on that -- and I think that's a very important point about approaching voluntary disclosure from the vantage point of designing disclosure policies and procedures that are actually manageable for that particular issuer, so it's not walking itself into a late filing situation just from the get go.

You know, when I think of voluntary disclosure in terms of content and timing, I think of voluntary disclosure in a legal sense as, you know, one, that kind of voluntary disclosure that is annual periodic information that may be beyond what is required in an undertaking or by the rule.

Secondly, I always think of, you know, ad hoc investor inquiries and how the issuer will process those ad hoc inquiries from analysts or bondholders.

And third, you know, providing information, you know, that is viewed by the issuer as perhaps a material item, perhaps a material event but doesn't fit neatly into the 16 events under the rule. And so you want to design a set of policies and procedures or you want to advise your issuer client that however they approach those three, that they're doing it in a way that's going to be manageable, both as to timing and content.

And most issuers -- I'm finding most of the activity, most of the calls that come from issuer clients are not about the continuing disclosure that was agreed to in the continuing disclosure undertaking that may be more frequent than annual or may be more detailed than audited, may be more expansive an audit, but rather to how to handle the calls that come from analysts or investors.

And secondly, you know, how to deal with those events that an issuer is saying, "You know, is this material?" "Should we consider this as an event notice?" "Where does it fit?" "It's really not 1 of the 16. It's sort of an 'Other.' How do we approach that?"

And so when you're designing policies and

procedures for an issuer you're trying to say, "Okay, what is reasonable for you in way of a disclosure committee, in the way of a process, in the way of a person, a contact in your shop that really can monitor this on an ongoing basis?" Or, "What do you need to do in the way of looking to outside consultants like a dissemination agent or a disclosure counsel to assist you with them?"

MR. ABONAMAH: And I would just maybe pick up a little bit on the policies and procedures, which I neglected to cover in my initial response. We -- I came into a city that did not have disclosure policies and procedures. We are putting those in place right now.

And to the other credit topic, one of the things that we are doing -- so in the city, we have an airport, we have a water utility, a sewer utility, and a power utility all under the city of Cleveland. And those other enterprise funds are non-recourse to the general fund. However, you know, I think in conversations with some of the rating agency community, especially at, I believe, Moody's, they take a pretty wide view of what obligations they're looking at when providing a rating for an organization like ours.

And so one of the things that we're spending some time, really giving some thought to in our

procedures is, when is it -- when does it make sense to disclose an obligation of one of these other enterprise organizations under our general fund -- under our general obligation debt disclosures, on EMMA?

And, you know, because -- and I think that threshold is a little different than when we're thinking about what to disclose voluntarily with respect to the airport, for airport obligations. You know, we're really thinking about bigger picture potential obligations of the airport that even though they're not the legal obligation of the city, you know, if the airport failed, I have a hard time believing that investors wouldn't come looking for the city to make good on those obligations. And if we didn't, I also have a hard time believing that our access to the markets would remain as open as it is right now.

MS. EVANS: I just want to bring one other thing up about content and timing on voluntary disclosure. I think that one place that we see less enthusiastic voluntary disclosure is in the realm of, you know, credits that are approaching distress. I think that is a place where there is a great need -- I'm sure Ann would agree -- but I think that what I see from a practitioner's standpoint is that it is commonly in the face of we are addressing facts and circumstances

that are alerting us to the possibility that there may be some distress or some kind of default coming in the future.

And I think in those instances there's usually an analyst who's already reading the tea leaves in advance and may reach out to the issuer or to the trustee with additional questions.

And I think in those instances, it does actually serve the issuer to provide that information to -- I prefer personally, EMMA, as well -- I'm not opposed to speaking, you know, with the analyst, but I think that making sure that there is a voluntary provision of information that is, you know, you can rely on. If there's any instances of potential, you know, default or distress on the horizon, that you're aware of, I think sharing that earlier is helpful. Although some won't want to ring the bell early, I think it's valuable.

And since I have the mic, I just want to acknowledge that I'm sure there are plenty of practitioners in the marketplace who represent some of these 50,000 municipal issuers who are not of the opinion that you should be jumping into voluntary disclosure.

I don't want to, you know, rain on the parade here, but I think that there is a significant portion of the marketplace that still readily acknowledges that risk and accepts that the rules as they are currently established are the rules that everybody should be held to and are comfortable with, remaining within the four corners of that; the notice of events under 15c2-12 and the contents of your official statement.

So while I don't necessarily take that approach that no voluntary disclosure should ever be provided, I do want to say that there are practitioners who prefer to make the decision in that area.

MR. WENDELL: All right. And we will come back to that in a little bit. But before we do that, you know, we talked about content and timing. Let's talk a little bit about venue of voluntary disclosure. So again, let's start with our issuer and counsel folks and then we'll get Ann to weigh in on this one. But where do you publish or recommend that people publish your voluntary disclosures to ensure they reach investors and market participants?

MR. ABONAMAH: So I won't make any recommendations but what I -- I'll tell you what we do and it's very simple. We put information on EMMA, of course, and then on our city website, which if anyone has visited our city website, I'm sorry. It is the same -- it is the same website that was built in the year

2001, so it's Y2K-compliant and that's about it. It is not great and if you can find information, come talk to me.

We are in the process of building a new website which will have a dedicated investor relations page where we'll kind of collect all the relevant information that we make available. But right now, it's all there but it's discombobulated.

MR. KITZINGER: Yeah. So I confessed to the panel in our preparation calls that I'm very EMMA-centric. I like working with EMMA. I don't think Ernie gets enough love for creating, inventing EMMA. There are -- there are -- but seriously, you know, you look at the February 2020 statement -- the staff legal bulletin rather from Commission staff, about the applicability of anti-fraud provisions to statements made to the secondary market -- and one of the key themes in that bulletin is the total mix of information. That information is material if a reasonable investor would consider that factual information as triggering or altering the total mix of information in the market.

So I'm always thinking in legal terms, "Okay, where's the best total mix of information?" "Where's the best place to have it?" And I also think of the Harrisburg enforcement action where they were deficient

on their filings on EMMA and they had statements on their city web page or in their mayor speeches, otherwise there was inconsistency. There was unevenness.

So when it comes to venue, I always say, "The more information you can have in a central, one location, one-stop place, the more chance you're going to have one set of total mix of information that is evenly disseminated. And that means per the staff legal bulletin from 2020, that the more evenness and more accessibility you have to the total mix, the less chance that an errant fact or an inadvertent piece of factual information is going to trigger the total mix and is going to be viewed as material.

So that's a long way of saying I know that there are -- and I work with -- client issuers that have very sophisticated, very well-designed investor relations web pages or on their city of issuer web page a special investor relations tab, and they have someone monitoring that. But at the same time, I like the idea of that one EMMA-centric location to look to for the total mix of information.

MS. EVANS: I concur. I think that if we have EMMA as our central repository we need to use EMMA. I'm very comfortable with issuers having investor relations

websites and being able to prepare -- maintain them, and provide information there. But I think that we have to honor the fact that EMMA is the place where we are telling investors that they can go find information on any available -- you know, any municipal security that's got disclosure there.

And I think that our -- I counsel our clients to make sure that while you may provide additional information, make sure that's what's required is on EMMA. And if your providing additional information it's my preference for it to also be on EMMA.

MR WENDELL: Great. Thank you. And now I'll ask Ann and then everyone else can weight in as well. But, you know, as a consumer, what are the pros and cons of EMMA versus an issuer website or a stand-alone investor relations website or some of the third-party platforms. Or maybe even any other venues, as far as finding or, you know -- and then for everyone else as far as, you know, producing and publishing the voluntary disclosures.

MS. ROSS: Yes, thank you. I too want to say that the ideal posting of this information would be on EMMA, where you have a consolidation of a wide variety of information, you know, obviously with perhaps rating agency reports and prades* that can help you make a decision about credit and risk in a holistic fashion.

You know, that being said -- and so hence, it's the one-stop shopping approach to where you can find your information. Of course, there are some excellent investor relations web pages out there and sometimes obviously there is a different information set you might find there that hasn't been posted to EMMA.

For either situation, we look for accessibility, the ease of access, the ability to find what you're looking for. Sometimes it's an arduous task, whether you're using EMMA or you're using an investor website page, to find the information that you're looking for. And of course, either way we expect robust, timely disclosures. Or put another way, we're looking for more useable information. We're not simply looking for more information, we're looking for better information.

I will say that there are private platforms. Much of that data does mirror what one might find on EMMA. I will say, quite frankly, that one benefit there is what I would say is organization; the aggregation of a wide set of data that is appropriately labeled. Because that's not always the case when you're looking at items on EMMA and you get that benefit, certainly, from these alternative platforms.

But also, interestingly enough, I'd like to share a comment that the multiplicity of informational platforms sometimes certainly can be confusing and less valuable to the analyst and the investor. And there is a concern about bifurcation of the market, which certainly the "sophisticated buyer;" the investor; you know, large platform; mutual funds; you know, ETFs and the like, and the analytical community know, honestly, where to find this, regardless of where this information is posted.

But there still remains a component in the market, which is retail -- you know, where QE Public does buy individual bonds. And it's a difficult road for them to hoe to even be aware that this information exists, let alone how to dig in and find it because as I said, some platforms are easier to use than others.

So I think it's a good lesson that this information be posted. Be posted to EMMA, be clearly labeled and be robust, and encouraging the issuer community to fill in those gaps between their annual CDA filings, many of which, quite frankly, have been late. To fill in the gaps with this, what I call, "interim voluntary disclosures."

MS. EVANS: I think -- I want to say with respect to venue I think best practice, again, is EMMA.

But I find that one of the problems you have with EMMA, particularly in the realm of voluntary disclosures -- if we look back at the 2022 MSRB Fact Book. And I think that it listed approximately 4,400 of the filings were listed as other event-based disclosures from a categories perspective. That's difficult to go in and figure out what they are.

And so I think that there's need for additional categories in the "Other" realm on EMMA that would be helpful to help categorize information and make it more readily available to issuers. I will say I've seen a variety of approaches. I think again, continuing disclosure, the provision of it, has everything to do with, you know, what you can maintain.

And so some issuers, they are -- from an infrastructure perspective -- only really prepared to handle what's on EMMA or adding a few other documents on their issuer website. Some have a stand-alone third-part website who, you know -- third-party hosted -- excuse me -- website that I find, for those who do it well, is very impactful. It can be cost-sensitive for certain issuers who are trying to figure out the best size, the best strategy, for managing their debt profile.

But also I think Ann's point about it actually

being aggregated and appropriately labeled is very significant. Because I think what we find on EMMA, unfortunately too often, is that the labels that are assigned to different documents or even to certain credits are not consistent. And so sometimes it doesn't aggregate as well as you would like for it to be.

I will say for the more sophisticated issuers who are using, you know, a stand-alone investor relations website, the ease of access of information is very, very strong. I think one of the challenges though for those who are aspiring to that place as a municipal issuer, is having the capacity in-house to manage making sure that information is being uploaded to that website, you know, in a manner consistent with what's going on EMMA. And again, that all goes back to what works for each issuer's internal infrastructure.

MR. KITZINGER: Yeah. There are a lot of technical questions that come up on voluntary disclosure from the issuer point of view, depending on the size, sophistication, amount of debt issuances an issuer has had. You know, if they have other information that they want to post on a voluntary basis, where does it go? Where's the right place for that to go? To a certain extent, that gets answered by ensuring that wherever you put it in the list of material events of "Other" on the portal, that you're pumping it out to all the relevant CUSIP numbers so at least you know the information is getting out there.

But, you know, there -- yes, EMMA has some accessibility challenges. The issuer homepage idea is not as flexible as investor relations pages on issuer sites, maybe. So there are, you know, pros and cons to it but probably the most prolific question in representing issuer clients on voluntary disclosures, "Okay, we've decided to do this and we've written it up. Now where do we put it? How do we know where to put it in the EMMA system?"

And again CUSIPs help to a certain extent but more clarity, more refinement as Camille mentioned, of expanding that "Other" category so it's more easily findable would be -- would be a helpful improvement.

MR. ABONAMAH: And that's one of the things we're hoping to solve with our investor relations page that will be on the new website. And this is selfishly -- if I type in the "city of Cleveland" in the EMMA search box, there are 10 "city of Cleveland, Ohio" options that arise. I have no clue, looking at that list where -- if I click on it, where it's going to take me. Is it going to take me to our water debt, our sewer debt?

And it can -- you know, it doesn't take a ton of time but when you're looking for something quickly, it can be a real challenge given just the way information is put in by the underwriters at the initial offering stage. And we can kind of control for that on a website that we are curating and we can organize information in a way that's more easily accessible by anyone who's looking for it.

MR WENDELL: Great, thanks. So this next question is primarily for Ann, although anyone else that would like to can weigh in. As an analyst, what would you like to see issuers producing to help you make better and more efficient decisions or recommendations in terms of the content of voluntary disclosures?

MR. KITZINGER: Ann, go easy on us here.

MS. ROSS: And, you know, it's not an inquiry, you know, that this is meant to be a bottomless pit of information that the investment community wants. As I said, it needs to be, you know, decision-useful.

And as I said, I think one of the biggest concerns is that there is an abundance of historical information that is posted on these various websites, whether it's EMMA or elsewhere. But we need to see what's the most relevant and current information, which again, if you're a frequent issuer in the bond market,

the currency of your information is probably undoubted. It's there, right?

So what we would like to see, again, is are these interim filings -- and by the way, we do appreciate it is case-by-case, right? And there will be some items in the interim voluntary disclosures that candidly, the analytical community, the investors, would like to see in perpetuity, as long as it's relevant.

Now that said, we also recognize that there's some information, if it's posted voluntarily -- once we've gotten through the challenge, the event, the success story -- that that would drop off, and that would make sense. So we do appreciate it's a case-by-case scenario. It's got to be relevant to the credit. It's got to be relevant to the individual, you know, assigning the risk quotient to all these issuers, and can come up with a peer-to-peer comparison.

I think that, you know, again as I said, we'd like to see this information posted on EMMA, you know, and we would also like to see more current information in the context of a real candid discussion of we're going to own our own story, right? I mean, so many times I fill in the blanks by, you know, looking at media reports, right? And that raises questions for the issuers, you know, and why isn't that perhaps not

disclosed in the OS if one thinks it's relevant and, you know, material?

So we would like to see a candid discussion of in the current moment. These are the challenges. We understand what they are. They are in our control or they are out of our control. And here's what we're doing about it. Obviously, you know, we're having a success here, you know, but maybe it's due to a one-off. You know, maybe it's a source of funding that will expire and it won't be available in the future so how would the issuer continue that positive forward momentum?

You know, we get the budget to actuals, which we appreciate, but we would also appreciate the projections, the forecasts, where you're going, right? As of today, what you know, known facts. So where is this going to take you out looking, you know, one, three, five years?

And we understand that that will be hopefully annually reviewed and that story might need to be changed or tweaked. But, you know, the analytical community is very forgiving if projections are not met. Just what we would then want to know is why, and what can you do about it? And that's a candid conversation and I think that's a good information set that we would hope the issuer community is comfortable with if not becoming comfortable with doing that. You know, because, you know, finance and operating statistics that are 6 to 12 months stale are not incredibly helpful.

And again, as I said, the historical data provides basis for making some assumptions about where the momentum might be moving forward with the issuer, but we clearly need a candid, current discussion. And we think some of that will be enhanced by what's already mentioned is perhaps taking a different look at the input dashboard for EMMA and coming up with an additional, if not different, set of labeling because some of it does get lost in the source.

I mean, just the other day I looked at an issuer who filed May 6th filings, 5 of which were mislabeled. Now, and again, we went back up, "Well who input that and why did they say that an audit wasn't an issue with certification, that they're in compliance with CDA commitment," right? I mean, I think that's also a fair question.

But, you know, everything winds up an "Other," because in that laundry list of potential labels, they're not yet available. And we are looking forward to the evolution of that, which we would expect is certainly ongoing at this point.

So I think that the voluntary interim disclosures will go a long way in getting past any stale CDA filings and will provide current information and hopefully, a near-term projection on what is facing the issuer by way of challenge, what their success stories are. And put that out there, rather than perhaps re-reading it, you know, in the local or national news.

You know, a lot of the risk assessments, quite frankly, in the offering statements sometimes are lacking. And I know a hot button certainly is, you know, weather events certainly, right? And but we need to know what the plans are, what the mitigants are, to the best of one's ability.

And certainly, you know, that could be handled in a variety of ways. I mean, obviously it should be in the offering statement and then again, any of the ESG-related risks that have impact on credit -- to see some of that, you know, be highlighted within the disclosures.

MR. KITZINGER: And just to dovetail with Ann's assessment of, you know, she mentioned that sometimes that time period between annual periodic filings is just not enough to show current known knowns or known unknowns, right? And, you know, staff was -- or the Commission was very helpful, I mean, during the

Covid period with that May 2020 statement that, look we're in a situation where there may be material events occurring in between annual filings that just looking to the last annual filing is too stale to begin with.

So I think there was a lot of common ground between issuers and analyst investors on trying to attain some balance of currency on that information.

MR. ABONAMAH: And I would also, you know, note, really this is about -- in my mind -- curating the story for the issuer. You know, the event notices are of course important and really helpful, but they really set the floor. That's kind of the minimum accepted disclosure that the market will tolerate to allow an issuer to continue to participate. And I think most folks want to be better than just the minimum -- minimally competent.

And I think voluntary disclosure and having good policies and procedures and really giving thought to how that story is curated -- both good and bad, right? It's not just good news that we have to put out there -- is really important to ensure that the -- everything works well,

vis-à-vis issuer, investor, underwriter issuer, and the lawyers that are involved that have to sign their various opinions to get a deal

done. These kinds of discussions both in a forum like this but also back at each issuer's organization, are really important to help make sure that we're all telling the story that we want.

I mean, a recent example -- not for securities disclosure but we're -- I live in a state where the auditor of state is the auditor of record for municipal entities. We had an issue where an employee was overpaid because of a keying error in the payroll system. We had shared that information with the auditors but it hadn't made its way to the right people and they heard about it on a TV report, which, you know, it might shock some of you that the TV report was inaccurate.

And so the next day, the auditor came in and was ready to go to blows with us about, you know, "How could this happen?" "What was going on?" "How did you guys not find this?" And it turned out that once we pointed him to the information that we had already shared, everything was fine. And it was because we took the initiative to tell our story. That we actually caught the issue. It wasn't Channel 19 and their crackpot investigative reporter that caught it.

And it really just allowed the issue that appeared to be a mountain, to just melt down into something much less than that. So it's an example of how we as at least issuers can help our own cause by being out there with information, both positive and negative, to an ultimately good effect.

MS. ROSS: If I may also add to the statements that I made earlier, we would also encourage information that's been disclosed to rating agencies and financial guarantors, be provided on EMMA, you know, consistently, so they can be in receipt of information that is not generally known to the investment community. And we would appreciate that that information be filed. We understand there's asymmetry in the disclosure and in the markets and that's not going away. But this just makes it worse when that type of information is shared with certain parties and not with others.

You know, and even the information that's provided to letter of credit-providing banks. I mean, we do see postings. Obviously, we've taken out this, you know, potential liability. Sometimes those arrangements and agreements are highly redacted. But those letter of credit-issuing banks might actually have covenants that are different from the bond covenants, particularly if they're more stringent and the issuer gets in distress.

That could cause a set of events that wouldn't

necessarily have taken place because the covenants are different with the bondholders and it could create, you know, competition for how that situation might be resolved. So that would be appreciated.

And also, you know, we do like the rating agency reports being made available. And I understand there are issues around that but, you know, they are good to have. But I would also say it's not disclosure. I mean, it's not a substitute for disclosure but it is clearly viewed as an enhancement.

MR WENDELL: All right. Thank you, everyone. So we've heard a lot of, you know, I would say speaking to the municipal community. Not we get to the part where I'm going to as our panelists to talk to me and to us as regulators.

You know, Camille, you mentioned that there are some practitioners out there who recommend no voluntary disclosure, who are, let's say, small seat conservative on voluntary disclosure. So, you know, what could make the voluntary disclosure universe bigger. I mean, I know, you know, Drew and I think Ahmed mentioned the 2020 staff legal bulletin and then the May 2020 Covid statement.

You know, is there anything that the SEC or regulators generally could do that would help you

produce or recommend or receive more voluntary disclosure in terms of, you know, liability concerns, specifically that could be addressed by regulators? And I'll open this one up to whoever wants to go first.

MS. EVANS: I just want to go out there and say I think we'd all love it if you would define "materiality." That would really just solve a lot for us so put that at the top of the list.

MR. KITZINGER: Don't hold your breath.

MS. EVANS: I mean, he asked so I had to answer. No, seriously, I think the reality is that the voluntary disclosure universe is already big and it's just the reality that we as a municipal marketplace have to accept the fact that there is a transfer of information occurring in various different places.

And I think that, you know, the reality is that -- as Drew mentioned earlier -- we are dealing with a total mix of information standard that I think the best guidance you could provide is giving issuers more comfort that if something is in fact publicly available, as in reasonable expected to reach the investors, what is that? Is it only on an investor relations website? Is it only in, you know, on EMMA?

I know that there was a 2020 guidance that provided some examples, but I think more clarity on that

as to where we can draw a bright line test of yes, this information is being available to all investors. Because I think there's a real issue with the flow of information to all investors. And with us having such a retail-centered investing base, it's important for all of that information to be available readily and obviously available to all investors.

So I would say, you know, just continue to provide additional guidance on what in fact is reasonable expected to reach an investor and what is not.

MR. KITZINGER: Yeah. I would, I think, offer this: that in terms of what additional clarity or improvements could be made, I know that our practice, our legal practice community, and other market participants keep nudging OMS, you know, "When are you going to give us a new interpretive release that replaces the '94 release?" And, "When are you going to give us more particularity on materiality?"

And I have to say that read together, the February 2020 staff legal bulletin, along with the May 2020 statement from the Commission, is almost in my mind tantamount to as good a replacement to the '94 interpretive release as staff could give us. I mean, I think you read the two together and you see -- agree or not agree -- a clear delineation of how the anti-fraud provisions apply to disclosures to the secondary market, regardless of the intended audience.

I mean, again, agree or disagree but that's the standard. Whether it's media reports or statements by elected officials or staff comments -- whether or not that was intended for the investing market -- if it's reasonably expected to reach it, it gets there.

And in turn, in the May statement, I mean, staff could not have been more upfront. We realized that when we propose expanding the universe of required disclosures like events 15 and 16, and when we encourage voluntary disclosure, that there are liability concerns. I mean, they're not unaware that there are liability concerns.

I almost hate to wade into it because it becomes a seminar onto itself. But to answer both the question of, "What additional help might we get from staff?" And also address Ann's concern about, "We'd like to see rating agency reports." We'd like to see disclosures to letter of credit banks." That always wades us into -- and I know Ann has heard this from counsels -- "Well, we can't give you that information, Reg FD," or, "We can't give you that information, insider trading."

And I think, just for a moment on the legal side, it's helpful to focus that the likelihood of insider trading in selectively or voluntarily providing information to Ann or to investors, is remote, just the way the case law has developed.

I went back to 1992, the Dick Breeden days, right? And he announced with great fanfare, "We've brought our first insider trading case in municipal bonds. It was the Kentucky authority, where they established that an official of the issuer had a duty to that issuer that had a motive to personally profit in a bond tender situation and made money through his dad's bank account. I mean it was this, you know, set of facts that can hardly be replicated. But that's unusual.

I think, you know, Bob Fifinger's treatise is about as good as it gets on insider trading that if you are an official of an issuer and you're providing information to Ann for a legitimate issuer purpose, and there's no personal motive for personal gain of profit, it's very unlikely under court standards that you're going to have an insider trading situation.

On the Reg FD concern, you know, some additional clarity from staff may be helpful on the inapplicability of Reg D to municipal securities, only

because the anti-fraud provisions which apply to issuer, do not tell issuers that it's actionable for them to selectively provide information to Ann. And it's okay to do. It's not a violation of the anti-fraud provisions to do that. It would be, perhaps a concern under Reg D if Reg D was -- if Reg FD, I'm sorry -- Reg FD -- if that were applicable to municipal securities. It's not applicable.

But yet practitioners look to Reg FD on the corporate side and they say, "Okay, there's safe harbors in that rule for reporting companies." They can have conversations with rating agencies. They can have conversations with other than municipal securities professionals that may have an incentive to trade on that information.

So the long and short of that is that when we're looking at voluntary disclosure, would it help to have some additional clarity for the practice community on not so much insider trading, but selective disclosure? That may be a topic to look at. Maybe a difficult topic.

One approach I know that the lawyers suggested a few years ago was, on selective disclosure, give us reduced standards of liability for the type of information it is. If it's fully vetted information

provided under the rule, it's a high liability standard. If it is information coming from Ahmed's staff, that might be a lesser liability standard. If it's media reports, the liability standard to the issuer is even lesser. With the bottom line being it can never be false or misleading.

I'm not sure how staff could ever try to gradate those tiers or levels. It would be impossible. LeeAnn, we'd have to give her smelling salts over in Enforcement to figure out how to assign those levels of liability. But I do think for a number of practitioners, a selective disclosure issue remains of concern and more clarity on that may be helpful.

MR. ABONAMAH: So I can hit on a few of those points, maybe say a couple things Adam might not be in a position to say, given that I'm not carrying the SEC flag any longer.

I would say with respect to the '94 release, you know, speaking for myself, when I was OMS we received a lot of requests to update the '94 guidance and I would just at least from my interpretation of the events that were transpiring when I was in the office, reading -- you're correct in that reading the February 2020 statement and the May 2020 statement really addressed the landscape in my view. And I don't -- I honestly don't know what else there is to say to the market when we're talking about broad principles of how issuers and other market participants should think about secondary market disclosure. I think it's all addressed kind of between the bulletin and the Covid statement.

And you know, with respect to, you know, to forward-looking statements, which I know are the things that give people maybe the most heartburn, you know, we couldn't -- the May 2020 statement could not have been more explicit that good faith attempts to convey forward-looking information will not be second-guessed.

And you know, that's there on purpose and is -- you know, my read of that is if someone in my shoes or someone in my staff is putting together some information about maybe what we think income tax revenue is going to look like over the next year, if that is based on real information that we have in our accounting system, you know, maybe in the last 12 months, some historical trends, and we're projecting out and it turns out those numbers are incorrect, say, because a pandemic hits and our income tax collections go down 25 percent in a year, so what? From a legal liability perspective, the projections were made in good faith at the time that they were provided. We can't control the intervening events that come into the future.

And so I think, you know, I generally, when I speak with colleagues, you know, in the state and around the country, I'm absolutely one who's encouraging folks to provide that kind of information for a lot of the reasons that Ann and others have laid out; that it can be really important.

And then on the Reg FD point, you know, that was something that we heard a lot. I hear it a lot now from unnamed lawyers that I interact with on bond deals. And if you read Reg FD it's crystal clear on its face it doesn't apply to our world. It applies to registered securities. Ours are not.

Now I think as a matter of policy, selective disclosure is problematic. It impedes an efficient and wide-ranging flow of information. Can make -- you know, put other -- some investors in a better position with respect to information than others, but because of the legal structure of our market that has no legal consequence.

And so I think this is an issue that is one where the law and policy kind of get tangled up and sometimes policy is getting confused for law. And you know, I think that's an area where the bond lawyers and the security lawyers in the market can help, you know, give better advice to their clients, better education to

their clients, and perhaps something the SEC could be, the staff could be, a little more explicit about in public.

But it's -- I felt it was a distraction when I was -- when I was at the Commission. I feel it's a bit of a distraction now when as of -- I get legal advice that is really policy advice from my attorneys.

MR. KITZINGER: Yeah, no, understood. And, you know, the legal and the policy -- I mean, clearly staff has -- I mean, going back to comments from the Office of Municipal Securities as it was at the time Reg FD was finalized, was that, you know, with respect to the municipal securities market, there's a strong policy against selective disclosure.

And the point from the legal side is that Reg FD and selective disclosure law as it has evolved for corporations, should not serve as a shield for voluntary disclosure in the municipal market. Rather, it provides analogous guidance to manage how one goes about the selective disclosure.

It goes back to disclosure roles of counsel in 2009-2010, where we said, "Look. On selective disclosure, there are going to be situations that are going to necessitate special handling, okay? And, you know, there's going to be -- if the tax-exempt status of

your securities is threatened, if you're falling off the cliff on revenues, if you're a College of New Rochelle and your tuition revenues are going right down the pipe, this is not just a matter of sitting on the information and not disclosing it. It's rather considering, okay, what is the best voluntary means to get to the Anns of the world on an equal dissemination, raw dissemination basis so the total mix of information has that?

And so I don't think -- you know, the policy and the law can come together on this, that's for sure. You know, one question I -- I mean, I credit, you know, John McNally, at Hawkins and Paul Mako, who was writing the securities law column for NABL at the time of this statement about, you know, if you take the following steps on forward-looking disclosure, we, Enforcement or we, the Commission are not going to second guess. Well, what does that mean?

And, you know, Paul and John pointed out in their respective writings how, you know, given that for continuing disclosure, disclosure to the secondary market, you're under 10b and 10b-5 and have to prove si emptor or recklessness, that's a pretty high standard. It's a rare statement. But maybe it's not so difficult to make from an enforcement point of view.

But having said that, you know, I tell issuers there are outer limits to how far you can take that comfort, that voluntary disclosure on forward-looking information or updates may not be actionable.

Municipal issuers always receive well, mention of the Cheesecake Factory and I always bring up the Cheesecake Factory enforcement action, which after staff gave the statement to corporate issuers about the more disclosure the better during Covid, and they gave us the May statement, the more disclosure about Covid the better, in December, enforcement, you know, sent a message to the market that we're not going to second guess but we can't stand by if there are false and misleading disclosures made on an 8-K or in the municipal market voluntary basis. There are limits to what we'll tolerate.

And in sympathy to Cheesecake Factory, you know, it was an awful time in the pandemic and they were probably all working remotely and it was a no-admit pace and it was a small fine. They probably made up the fine they paid to Enforcement in one night of Cheesecake sales. But the facts -- the facts in that case were they went to the market in a March filing and said, "We're a sustainable operation, pandemic notwithstanding, when the facts showed that they were losing 6 million a week, they had only 16 weeks of cash

left, and they telling private equity investors, "We need liquidity because we're in trouble." So you can't tell the market one thing and be telling on an uneven basis your liquidity providers something else.

And then in a second statement they said, you know, "We're maintaining flexibility to come up with financial answer to all our problems going forward." And at the same time they were telling landlords, "We're unable to pay April rent," okay?

And so I always point out to municipal issuers, you know, when you go out with voluntary disclosure you've got some leeway here under the anti-fraud provisions. If it's current status you're talking about, focus on the known knowns and the known unknowns. If it is future statements, forward-looking statements your making, speaks caution -- cautionary statements, risk factors. And yes, the Commission may not second-guess you but on the other hand, what you say has to be accurate. It can't be materially misleading or you end up in a Cheesecake Factory situation, okay?

MR. ABONAMAH: Yeah, I think -- I'm sorry.

MR. WENDELL: I do want to leave a little time for questions.

MR. ABONAMAH: Yeah, just one -- just one quick. I think those are -- those are terrific points.

And you know, my interpretation of that case and kind of the various statements that we're talking about is that the Commission isn't going to second-guess. However, it will test the accuracy of the reasonableness.

MR. KITZINGER: Right.

MR. ABONAMAH: And if it's reasonable then, you know, go on your merry way. If in this case you're telling your -- private equity one thing and it's 180 degrees from what you're telling the rest of the market, reasonableness is a bit of a stretch there, you know?

MS. EVANS: Before we jump to questions, I want to mention the value of training for continuing disclosure and how that it doesn't need to -- it needs to be shared broadly within municipal issuers. I think it needs to go beyond your traditional debt management team. It needs to extend to -- I mean, each issuer is their own, you know, entity and that's why you need to craft it appropriately.

But I would usually like to see disclosure training, you know, particularly on this topic with respect to voluntary disclosure, be provided to electeds and appointeds. You know, it's a challenging space to be in. I've been in the, you know, seat as the person providing the trainer and I've watched some of my clients squirm, you know, providing training to some of

their bosses.

But at the same time, I think that if you help to continue that awareness of these sensitivities that the panel's raised, the training will absolutely do its job because I think it helps people be more mindful of the fact that they are facing real-time risk if their information is not accurate.

MR. KITZINGER: Yeah. And just to briefly follow up on that -- and you know, one thing I know NABL suggested to the Commission at one point that may be worth revisiting is, revisiting the standards in the Orange County report, given the desire to increase voluntary disclosure.

MS. ROSS: I know we're running out of time but just briefly about this.

MR. WENDELL: Go ahead.

MS. ROSS: As to clarification, I've had conversations with issuers who despite those two guidance pieces and interpretations thereof, are still asking for more. You know, as I say, I'm not a lawyer but I read those statements and I thought it was quite clear, quite frankly, and should have given the issuer community the comfort they needed to move forward. Understanding again, we expect it to be accurate. We expect it to be -- you're truthful and it pertains to voluntary disclosure and projections. We get it. It's the known facts at the point of the time. You do your best and then you explain any variances.

As to Reg FD, it's interesting. If you go to nfma.org there's a resources tab. You will find NFMA statement in regards to Reg FD when it came out. And at that point in time, many doors closed to the analytical community. Issuer said, you know, they're hiding behind the skirts of Reg FD and we're pounding the table saying it's not relevant to our market. We actually produced a piece that provided the analytical community guidance on what we would say in return to being shut out from those conversations which we had prior to that.

So I think it's important that we continue to educate the market on that and that it's not helpful to any investor analyst who's trying to make a decision if they can't get the information. And by the way, I would suggest if the concern is they gave me information that didn't reach the full market at the same time, you've had that conversation. You've taken notes just like I have. Post it as a Q&A on EMMA.

MR. WENDELL: That's excellent. Thank you. I guess we've got a couple minutes if maybe there's one question? Sure, go ahead. There's a little lever on the mic. Yeah, there you go.

AUDIENCE MEMBER: Can you hear me?

MR. WENDELL: Yes.

AUDIENCE MEMBER: Can you address the -- the '94 interpretive release was approved by the full Commission. Can you address, I guess, the relative authority of the '94 interpretive release, versus the authority of the two 2020 statements and how practitioners and issuers can rely on the two?

MR. WENDELL: So what I can say, I think, is that, you know, if you look particularly at the staff legal bulletin, there is a disclaimer on there that talks about it being the views of staff and not the views of the Commission. And obviously, we recognize there are differences there. The Covid statement was a joint statement of then-Chair Jay Clayton and Director of the Office of Municipal Securities, Rebecca Olsen, so that does have a commissioner speaking on it at the time. But there's not much more that I can tell you other than yes, we recognize those and I think the statements themselves communicate the differences and we are aware of them.

AUDIENCE MEMBER: Yeah.

MR. WENDELL: And I think on that note we are just about out of time. So I am happy to thank our panelists for joining us today and please take the next

15 minutes to go enjoy the coffee and pastries outside. Thanks.

(Recess.)

Panel 2

MR. ALLOGRAMENTO: Hi everyone. If everyone could take a moment and please return to their seats? I'll give everyone a few seconds to come back. So welcome back. We thank everyone again for their attendance and I'd like to introduce the one remaining panel that we have this morning.

And as a bit of housekeeping to remind people two quick items. The first is that when you leave for lunch after this session, to please remember to leave your guest badge with security as you exit so it will be there when you return. And to also please remember to be back promptly at 1:30 so everyone can hear Commissioner Jaime Lizárraga at that time.

Without further ado, I would like to introduce the second panel of the day, moderated by Senior Special Counsel in the Office of Municipal Securities, Mary Simpkins, and that panel will discuss the Financial Data Transparency Act. Thank you, Mary.

MS. SIMPKINS: Thank you, Adam. We are going to be discussing the Financial Data Transparency Act, the benefits and challenges of implementing the FDTA,

lessons from structured data programs in Florida and Michigan, the development of taxonomies for municipal reporting, and certain other practical considerations.

So I'm going to let each of our panelists introduce themselves briefly and talk about what they're going to talk about today.

MS. BARKLEY: Excellent. Thank you so much, Mary and thank you all for taking the time to be here. My name is Rachel Barkley. For the purposes of this presentation I'm speaking on behalf of the NFMA, the National Federation of Municipal Analysts, the immediate past-president and on the executive committee for that group. I also am a managing director at Loop Capital Markets during my daytime.

I've been in the market for about 20 years. I worked at PFM with some of you in the building. I was at Fitch Ratings and Morningstar so credit analysis has been in my blood for about 20 years or so. And I'm happy to be here. Thank you.

MR. BLACK: Good morning, everybody, and thank you for having me. My name is Joel Black. I am the chair of the Governmental Accounting Standards Board and I look forward to the discussion. And we are here as the GASB to help facilitate implementation of this act and I look forward to talking about it with all of you.

MS. EUBANKS: Hello, I'm Rachel Eubanks. I'm the state treasurer of Michigan. I've actually approached the municipal market from a couple perspectives. One, from the issuer's perspective, where I've served as state treasurer for five years. And secondly, I did serve as a financial advisor and municipal advisor and an underwriter for about 13 years for a couple different firms in the municipal industry. So I've seen a few different perspectives.

Mary, to your question about what we're looking to discuss today, I think, you know, from our perspective it really comes down to implementation and expectations around what this law is going to mean for us and how we see barriers and challenges in complying at this stage of the game.

MS. MAGRINI: Good morning, everybody. I'm Kim Magrini. I'm a partner in the Philadelphia and New York offices of Ballard Spahr. I've been there for about 12 years. My practice includes advising clients on all aspects of municipal securities, including disclosure and compliance with securities laws. And today I'll be talking a little bit about what the FDTA actually is and giving a little background to start the panel off and then get into what the practical implications may be for implementing the act.

MR. WATKINS: Ben Watkins, state of Florida, director of the Division of Bond Finance, doing our part to keep the state in debt, or out of debt as the case may be. I'm somewhere between a dinosaur and a fossil in my tenure in the business, which means old.

And I've been very involved in various industry initiatives, primarily representing the issuer community through the Government Finance Officers Association, where I've worked my way through, been recycled, and now emeritus member is, I guess, probably the best way to describe it.

MS. SIMPKINS: So we're going to kick off the panel with Kim giving us background about the Financial Data Transparency Act.

MS. MAGRINI: So the FDTA was signed into law last December as part of the National Defense Authorization Act. In short, it proposes new rules for disclosure that are meant to modernize the collection and dissemination of financial data.

This financial data is not just municipal market data. It covers everything, including corporate financial data. There's nothing really that limits the applicability to a particular type of information, a particular type of submission, or a typical type of market participant or muni market participant, so it

isn't limited to just issuers.

When we think about municipal market data, that generally means data for information posted or submitted to the MSRB. So this includes not only your traditional primary and secondary continuing disclosure information that you see from issuers related to bond deals on EMMA, but also other MSRB submissions that for example, broker-dealers may have to make under the various MSRB rules, like trade reports, political contributions, variable rate securities, market information.

So the goal of the FDTA is to make all of this data more accessible, more uniform, and more useful to the users out there who are trying to look at trends or collect data across maybe various issuers or various issues of bonds or multiple disclosures from the same issuer, for example.

I want to emphasize that the FDTA doesn't affect or change substance of disclosures or mandate the type of disclosure or what's in the disclosure, but it addresses the formatting of the disclosure. So you aren't going to see in this act any change in, you know, what you might have to submit under continuing disclosure agreement, for example. It's just related to how that data is standardized, collected, and you know,

tagged, I guess, for ease of use there.

So the FDTA prescribes the development of data collection protocols -- the standardization of formats for anything submitted to EMMA or the MSRB -- and includes things like the use of common, non-proprietary legal identifiers for entities that are required to report to the regulators. So these legal identifiers are kind of like a bar code or an EIN. It's specific to a particular entity.

There's also a concept of covered data. So this, I think, will come up later in our panel discussion as to what covered data actually is or will be or could be. But the idea is that whatever that data is, is going to be fully searchable and machine readable for ease of use. So -- and I'll be the first to admit, I'm no tech genius -- but there are ways to tag this type of data uniformly across all of these submissions so that it's easier to pull out the types of information you're looking for.

So the FDTA will also help clearly define the meaning of that data based on the underlying regulatory information collection requirements and help ensure that a data set or a group of data elements is consistently identified across submissions.

There's a note that PDFs alone don't satisfy the standards as they're going to be proposed. So what we traditionally see on EMMA that you can pull down and download as a PDF, while it may be searchable on your PDF viewer, that in itself is not necessarily going to meet the requirements of what the FDTA is going to do.

So a couple other details. The tagging and data technology is supposed to be non-proprietary and made available on an open license, so it's (video interference) to use and more easy to use. And certain mandated data standards have to be able to handle data prepped according to currently applicable counting or reporting standards.

So I will not get too much into the implementation implications at this point as we'll talk about that more a little later. But you know, proponents of the FDTA suggest it will be helpful to users to get better access to information that may allow them to make better investment decisions and improve access for various industry participants, academia, the public users, and reduce costs across the board for promoting competition to create new data collection and analytical technologies and techniques. So I think that's some of the positive goals that folks think will come out of the FDTA.

But again, the devil's always in the details

and there are, as we'll see, challenges related to how this will be implemented, particularly in the muni space because as everybody here knows, our muni industry is very different from everything else.

So, you know, there are a lot of questions that come up. I mean, what data will be covered data? To what extent will this require any change in how issuers or broker-dealers or anybody submits information to the MSRB, changes in how you to your accounting or your financial statements. Does this mean, you know, official statements are covered? We don't know yet and that's what the SEC has been mandated to develop over a period of time.

I think the FDTA sort of suggests it'll be a four-year period overall but I don't think there's any specific mandated implementation date related to the municipal markets. So, you know, there will be complex and probably some different things to work out in our industry as this evolves and we understand more about what data will be covered and what that means for implementation across the various issuers in the U.S.

In addition to that, there isn't currently certain data or collection requirements for what we're already required to report as issuers or in your municipal market participants so that's another

challenge that we'll have to address based on how the SEC would like to deal with it.

And I think that kind of sets the stage for our next discussion about what some of our issuers have been doing already and what we'll see as the challenges to getting this done.

MS. SIMPKINS: Thank you for that explanation and for talking about the timeline because we have gotten some reports that some market participants are already thinking, "Oh, do I need to go out and buy software like right now?" And keep in mind, we haven't even proposed anything yet. We're very much in the information gathering stage and we're not likely to propose joint standards with our fellow financial regulators until next year. The standards specific to the municipal market not before 2026. This is going to be a process. So there will be, you know, two rulemakings and you'll have opportunity to comment and we hope that you all do comment.

So now I'm going to turn to Rachel Barkley, who's our analyst, to tell us what uses might municipal investors and analysts have for machine-readable structured data and does the diversity of municipal issuers and credits potential limit the comparability of structured data?

MR. WATKINS: Mary, if I may before we get started -- a breach of protocol. She put me down here at the end because she thinks that way that I probably wouldn't speak up.

MS. SIMPKINS: No, it's alphabetical.

MR. WATKINS: So before -- I'd like to set the stage before we get started into the details of this whole thing and step back and take a breath and think about it from my perspective.

So I've been doing this a very, very long time and I first need to vent about something I feel very passionate about, and that's the muni space. And I think about how we came to be here and it's infuriating, quite honestly, because if I think about FDTA and what it means and stepping back, and for the industry itself.

So it's everything -- the legislative process that we find ourselves with this mandate now, there was no -- there were no hearings, no substantive debate, no consultation with the community about the people that this is going to impact, before we have to grapple with -- and I'm very sympathetic to the SEC staff.

So my point of view is, I want to talk directly to the commissioners about the impossible task that they've been given via this mandate through -- referred to as the FDTA. Because in Florida, we've been there and done this and I'm going to share my experience with what that means because I can translate to FDTA and what that really means for us.

And my view is a cynical view but probably accurate, is this process has been driven by monied special interests, not with the best interest of the muni space and the community and investors and analysts. And I think you're going to hear some of the discussion today with respect to the problems that are going to be the challenges encountered and what we have experienced in Florida, with my knowledge of the muni space.

And the conclusion that I've come to -- Kim did a fantastic job explaining it, but I do not about you guys but that sounds -- I'm here to translate to a common -- a way you can understand what this means for us. Because she explained it, it was remarkable. But when I first started hearing that it was a lot like gobbledy gook. And I had to take all of that and then reflect on the practical reality about how it impacts practitioners in the marketplace and the potential impact on the marketplace as a whole.

And that's what I want to amplify to the Commission and to staff about the impossible task, the virtually impossible task they've been given -- square peg, round hole is what I think about -- in terms of --

when I hear uniformity and standardization and then all this technology gobbled gook, it makes it very, very difficult to translate.

But the conclusion that I come to -- and I'm going to be done in a minute, Mary, I promise. But I think it helps set the stage for the discussion and so everybody can understand exactly where I'm coming from. I don't want there to be any misunderstanding about where I stand. If nothing else, you'll get a candid opinion.

But the conclusion I come to is, FDTA is a way to improve transparency and disclosure in the muni space is a ruse, and structured data is not nirvana. And I'm here to dispel the misconception that this mandate is somehow going to improve the information flow and the transparency for analysts and investors because I do not believe that is the case.

And when I think about the remarkable improvements that have been made -- thank you, Ernie -- that we've been struggling with for 20 years, is making EMMA better than where we started. When we started, we had nothing but continuing disclosure. Remember the central post office and mailing it in and relying on outside vendors in order to make that information available to the marketplace? Where the issuer

community was suffering the burdens of preparing all of this information and then sending it in to a black hole?

And it was only through industry initiatives that created a cover page and the use of CUSIPs to identify the one million securities that the Chairman accurately pointed at the outset, to find a way to find the information. And then Ernie comes up with EMMA, the industry utility. Yes, there's shortcomings. Yes, there are improvements to be made but let's work with the industry utility that we've been given and work in a collaborative to come up with solutions which are always best from the bottom up and not the top down.

So we've got a tremendous challenge and the Commission and staff in particular -- OMS is in the unenviable position of having to deliver on something that is extraordinarily challenging. You have the right people in place. Dave Sanchez, head of the Office of Municipal Securities and convening this group and convening this forum and having this opportunity to have a discussion is absolutely the right approach so thank you for that. And with that, it gives us the opportunity as a community to provide candid feedback about what this system -- what it is and what it's not.

MS. SIMPKINS: Well, thank you for your comments. Now we're going to turn to Rachel to get a

view from the analyst community.

MS. BARKLEY: I've never felt more like Taylor Swift. So analysts in general always like more disclosure. What they use something like this for is a variety. First, is state and time, looking at what drives this particular entity and credit. What are their revenues? What are their expenditures? What is their fund balance? How do you stand right today?

The other thing is looking back historically. What are the trends and what might they be able to see from that? Are you more or less vulnerable to economic cycles? That sort of thing. What is your debt burden? How has that been trending? What are your pensions? What are your fixed costs as a percentage of budget? These are all general analysis questions that the rating agencies, buy-side investors look at.

The other thing they look at is how you compare to your peers, your comparables. That can be places in your industry. That can be -- or your sector. Other higher ed -- other towns, cities, what have you. Also places in the same geographical area, places with the same rating. Places that are just coming to market the same time as you.

So these are all pivotable points that are used and, you know, back when I was an analyst at Fitch,

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that meant reading the whole OS. Reading the whole ACFER*. And you can get a lot of that but, you know, there's only so many hours in the day. So any way when you can get that information, you can have it put on a spreadsheet, and you can do some of that analysis faster is always a good thing. I will say that a lot of the buy side places, the rating agency places, they have places that do that for them. But, you know, obviously the more accessibility, the better.

So the goal of the FDTA is not -- sorry. I should say, "Is inherently something that would be beneficial if it works out the way everyone would like it to work out." The NFMA obviously would be a user of this -- the NFMA members -- so as of now, you know, we've formed a subcommittee and we would like a seat at the table. Because as people who are using these documents on a daily basis, we generally feel that if we have a voice in it, it would be more beneficial. And if we're going to go through all this effort, you want it to actually benefit the people who are using it.

With that being said, there are some potential problems. I know Ben will talk about this. I know the other Rachel -- there's only a few of us in the muni industry. It's odd that we're on the same side. But the other Rachel will be talking about her side of it.

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But from my perspective, some of the issues that we could foresee are, how much is this data going to be rolled up? Looking just at cities, for instance, their revenue streams can be very, very different, even just looking at taxes. If you roll up all taxes, that doesn't tell you very much. And then just the wide variety -- higher ed, public power, water, sewer, states, locals, airports -- trying to get something that works for all of those and gives me the data I need without rolling it up to the point where it's not useful for me, that's a tricky situation -- which again is why we would like a voice at the table.

Other issues that we could foresee are just other priorities that the NFMA has been talking about and has been asking for for a while. One example is just the timeliness of data.

I've been fortunate enough to sit on the NFMA Awards Committee now for the past two years. And one of the things we always look at when we're trying to give an award out for government disclosure is, what is a place that can produce and ACFER* in six months and has all the data we are looking for. Some of it Ann mentioned. We want to know about the environment and what you're doing about it, things of that nature.

But it's very hard sometimes to find a place

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that does that. And if I'm looking at financial data and it's 9 to 12 months old by the time I get it, that's not very useful to me. So timeliness is really key for us.

Some other issues are as people mentioned before, EMMA. I know, you know, there's multiple people working at the MSRB, but we definitely don't want improvements to EMMA to be sidetracked. As they mentioned, you know, you type in the "city of Cleveland," and you get 10 different answers and that's just the city of Cleveland. It can be more in other entities.

So even if people who are regular users of EMMA and relatively sophisticated users are having issues, are getting frustrated by EMMA, that means that, for instance, if my mom -- who owns bonds -- is going to try to look up anything else, she's not going to find it. So I think making EMMA a priority and keeping EMMA a priority. We know it's an iterative process -- but that's a big deal to us.

Other issues that we are concerned about -- we're not sure if it's going to be an issue or not -- is, if this is a big lift for places, will they just use -- access the private market? We don't know. But these are questions that I think that we should be asking.

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Again, I think the FDTA is a useful goal if it happens the way that I think it's envisioned to roll out. But those are some concerns that the NFMA has. And I know we're going to talk about some potential hiccups down the line. So for that, I'll pause but that's what we're thinking as of now. Thank you.

MS. SIMPKINS: I know from the implementation of structured data in other markets, we have heard that it has resulted in higher quality data and could potentially lower the cost of capital.

I'm going to turn to our other panelists and get their perspective on the benefits and challenges and if they would like to address those two thoughts, please feel free. So whoever would like to chime in just generally on challenges and benefits?

MS. EUBANKS: Well, I mean, I will just kind of echo many of the comments that Mr. Watkins said and I'm actually that he set the tone of, you know, kind of where many of the issuer community really is.

You know, when you think about something as big as this and has implications across our entire industry, you want to make sure that it's a problem that needs a solution, not a solution in search of a problem. And, you know, you throw the word "transparency" in there and what it means to us.

And, I mean, you know, to be in a very awkward position of saying, we're questioning this law that has transparency in it. But to say, "Okay, where is the problem that we're trying to solve?" "Okay, so we've tried to really build our relationship with our investors and provide, you know, the information that we received feedback about."

And many of the things that Rachel touched on and that Ann touched on in her session before, you know, are things like timeliness. Are things like, you know, "Hey, we'd like to see additional data related to rating reports," some additional qualitative data, in terms of what are you going to do from a planning perspective to deal with things that you can't expect. Things like climate change and other components.

And none of those things are going to be helped through this process. But it is, from our side, going to eat up a lot of time and resources to actually implement this. And I mean, I think my question is, you know, wouldn't that time and resources better be directed to the type of areas that we're just describing, versus you know, us having to convert this data to, you know, a format that we're not sure of how it's going to be used.

And on that front, you know, in the 20 years

that I've been in this industry, you know, I've seen our disclosure documents, you know, go from something very, very skinny to these very voluminous documents that, you know, probably many of you in this room and others, help us diligently compile.

And I mean, if you're boiling things down -- like a pension liability -- to a number and not thinking about, you know, the greater context around that and what's in the notes and what's the conversation around that, is that a better investment to be made? It doesn't seem like that's providing additional data for an investor to be able to make an informed decision.

So I mean, from our perspective, it's not only, you know, the content, but like is the transparency actually being accomplished and as well as, of course, the cost and the resources necessary for staff.

So, you know, this is not just impacting us at the state level -- you've got two state level issuers here -- but also anyone that issues to any of our conduit programs and any of like the local units of government that use it as well. And we all know, local units of government. You might have that same finance person who's processing disclosure, that's paying payroll, that's out fixing the copier, that's making

lunch. I mean, who knows what they're doing? And to try to, you know, layer more and more responsibilities on this person, I think there is a question about, you know, how accurately we'll be able to perform this and what are the resources around it, especially since no resources are provided in the law for any of us to accomplish it.

MR. WATKINS: So one of the things, Rachel, and I think you hit on it and I think it's a big, big issue having had the experience of going through the process, which I'll share with you in more detail later. But it's really around the granularity of the information. And maybe Joel can address this too, but at least in Florida, the information is so rolled up and summarized on the face of the financial statements, -- and let's just use debt outstanding and I'll use something I'm familiar with. City of Tallassee, 790 million in debt.

Sure you can compare yourself to all the cities using XBRL, but it really has no meaningful information for credit analysis, because there are probably seven different credits that roll up into that number. And so the information that is produced, necessarily, because of the standardization and the uniformity, is so generalized, is to be of no meaningful

value for purposes of credit analysis, and therefore investment decision-making.

So that is a huge issue that is going to be confronted. And I’m just talking about local -- the 2,300 local governments in Florida. I’m not talking about all of the other different -- basically, national in scope, and different sectors within our marketplace, which we’re all familiar with. Think housing, healthcare, nonprofits. I’m just talking about general governments, you can’t -- cities, counties, and school districts, and the uniformity associated with that, and the generalization of the information to make it available is meaningless from a credit analysis standpoint, so it misses the mark.

MS. MAGRINI: And I think -- I’d just like to follow up -- Rachel mentioned about resources to implement. I mean, to the extent you have a small local unit of government that doesn’t have the resources to do it, or may need to, you know, not have their own in-house program, but put it out to a third party. This maybe isn’t necessarily a challenge, but a question that we need to think about is, what’s the liability related to a third-party maybe tagging data or carrying out this function on behalf of the local government or issuer, whoever? To what extent does -- if the third party makes a mistake or misses something, that's that result in any liability on the issuer? So I think that's also a sort of overarching question, as we go through the process of implementing this.

MR. WATKINS: One other comment, because I've heard the argument about liquidity and efficiency in our marketplace. The higher you create, the more burdens you create for the small governments in this country to finance infrastructure, they're going to go to the alternatives. And what did that mean? They're going to go to the bank, and they're going to withdraw from participation in the -- in the public markets. And so I would argue that -- it doesn't serve to enhance liquidity. It actually going to detract from liquidity.

And the only people that will benefit in my judgment is the big get bigger, and you talk about algos and AI using to make investment decisions because large institutions want to trade in giant block sizes of baskets of securities. And I think that actually is a tremendous disadvantage and consequence of trying to use structured data in a meaningful way, and argue that going to enhance the efficiency and liquidity in the marketplace.

MS. SIMPKINS: Thank you. I think now we'll turn to lessons from structured data rollouts in Florida

and Michigan. So we'll start with Ben to provide a brief description of Florida's structured data program, what sort of information is subject to the data standards, how long did the rollout take, and how did you develop your taxonomy?

MR. WATKINS: Yeah. So by way of overview -- let me go back to one thing before I move on and put my head space in what was Florida's experience. That is the notion of an unfunded mandate. And Treasurer Eubanks hit on it, but the way that this is set up, there's absolutely no doubt about it, it's a resource suck and a resource drain. And when we talk about state and local governments, we don't have unlimited resources. We're not Washington DC. We don't have a printing press, and we really do have to balance our budget.

So there are real-world implications to federal mandates that have no tangible benefit, but do have a tremendous cost associated with them, both in terms of out-of-pocket costs, as well as resources of staff, time, effort, and energy necessary to learn the things that Kim was talking about, which was a foreign language to me when I started this. And you're asking them to tag data and the information that they put in, in the 50,000 issuers across the country is somehow

going to magically transformed into something uniform and meaningful that the data technologists can take advantage of. I don't see it.

But the unfunded mandate part of this is something that I want to be very clear and very unequivocal about, with the Commission, and with Staff, and with the MSRB, about what this really means from a practical standpoint. So, Florida -- I'm feeling like a naysayer here, and I feel like I'm dominating the conversation. Somebody please jump in. I'm going to -- I'm going to tell you about Florida's experience and then shut up for a while.

So we had -- we had a very similar set of circumstances in Florida five years ago. $500,000 in 2018 embedded in the Appropriations Act to study the feasibility of XBRL. So, a mandate. It took five years to implement. It's now up and running. And I want to explain to you from a practical standpoint what that means, and what it looks like. So, Florida already had a local government reporting system that required all local governments in Florida to send their financial statements to the CFO in the state of Florida. And it's called Logger X, not that that matters.

But -- so their financial payments, we -- and in connection with the development of that, there were

developed standard charts of accounts. And the technologists will refer to it as a taxonomy. So the hard part of this was already done. The infrastructure was in place. We had the common reporting framework for all local governments in Florida in terms of how they classified the revenues, how they classified their expenses, how they showed their assets, and how they showed their liabilities.

And that information was conveyed to the CFO's office, and that information has been available since Al Gore invented the Internet, online. So it's -- there's nothing new here, all this is is a language, a technology that's supposed to be transformative for our world. And I'm here to tell you that it's not -- that there's really no new information. There's some enhanced functionality, but that's about it.

So back to the Florida experience. So, rolling forward, five years, $2 million, it's just the face of the financial statements. No footnotes, no narratives. Just revenues, expenditures, assets, and liabilities. And you can look at them, city, county, special districts, across the board. The -- so that's the -- again, with the taxonomy already developed, that's what it was. And I have to applaud the CFO's office efforts, because they saw the dilemma of the unfunded mandate, and the way that they did that, rather than having all the local governments inputting their own data, they said, send it to us, and we'll input the data, we'll buy the XBRL license so that you 2,300 local governments within the state don't have to buy the technology. Send it to us and we'll input the data, so that you have uniformity, you have clean data going in, and so therefore you may made the right solve for that problem.

So we solved for the unfunded mandate problem. We went from a mandate to permissive, legislatively, over that period of time, having studied this issue, and actually built the system. The other thing, really, really important takeaway, we own it. We don't rent it. So we didn't hire consultants and licenses that are all out outsourced, where we're just renting space on servers with some -- a system someone else designed and runs. So it is -- it is owned and operated and run within the state. So that's another really important takeaway, is own it, don't rent it.

And the main thing, again, is, there's no new information here. It's basically an upgrade of an existing system that already works. And to that point, so, we in Florida have that opportunity to do that, because we already had the reporting system in place.

So this was just a new upgrade in the technology. No new information. Other places across the great United States don't necessarily have that -- the benefit of that. But it is important to have uniformity in the information that is input to the system in order to derive any benefit on the backside.

MS. SIMPKINS: Thank you. So now we'll move to Treasurer Eubanks just to tell us about the structured data program.

TREASURER EUBANKS: Before I dig into the Michigan program, I actually a follow-up question for Mr. Watkins. You said that all 2,300 units sent their information to the CFO's office for implementation. Did the CFOs office receive state level appropriation to -- you know, I would imagine they needed to hire a bunch more staff to have training, to buy the resources. Do you know how that was funded?

MR. WATKINS: Sorry about that, Treasurer Eubanks. I missed that. Thank you for reminding that. Five years, $2 million is what it took. But that was all because of the workaround that was created by the CFO's office relieving the local governments of the responsibility of purchasing the software. And most of the information, interestingly enough, is automated now. So the local governments can put it in on an automated

basis. And -- but to the extent that they don't have the capability of doing that, they can send that to the CFO's office, and they can do that. But it is handled within the CFO's office. And they already had the infrastructure and personnel in place.

TREASURER EUBANKS: Okay.

MR. WATKINS: To run it.

TREASURER EUBANKS: Thank you for that. I was curious about that. So, I think there is a perception that Michigan has a structured data program. We don't have one. From anything, it sounds like we're more in the infancy of the process that Ben just talked about, of starting with, you know, kind of a pilot or feasibility study, which is where we're at. So, our legislature funded a feasibility study for us to look into, you know, the usefulness and the feasibility of providing this type of data to the market.

So, again, this is -- we've kicked off a work group. This is really a cross disciplinary workgroup. There's everything from, you know, the actual local governments themselves, to, you know, policy folks, organizations that are interested in the oversight reporting, and they're all working on, you know, kind of taking a look at how this would work, and thinking about, you know, what does this mean? You know, what is

the processes local government would have to undertake, what are the reporting burdens, how does this with their level of transparency, and if the local governments would actually able to comply with these new reporting requirements.

And another really important step that they're looking at is saying, well, what already exists? So, Michigan has a very stringent local government reporting structure to my department, the Department of Treasury. So there's a lot of data they're already reporting to the state level. Does it appear -- right now it appears that a lot of that may be duplicative. So we certainly don't want to ask local governments with their limited resources to do more than they need to do.

So the feasibility study right now is underway. We look to, you know, see some of those outcomes. But I will say, you know, the local governments reporting back to us have many of the same questions that we're raising today. What is the problem that needs to be fixed? What is the issues with current local government reporting? What kind of technical support will we provide them to help them be successful with the new standards? Are there going to be new companies that emerge so that the price of the software, you know, is actually -- there's pressure -- downward pressure on it?

I mean if we're in an industry right now where we basically only have a choice of Coke -- you know, we'd like to have Coke, Pepsi, RC Cola, Dr. Pepper, the whole thing, provide some competition. You know, who's going to provide, you know, the software licenses? Is there going to be funding for the one-time cost? And they're thinking about this also in the context of implementing the FDTA as well. If you layer that on, who's going to be responsible for all of those things? So, right now, a lot more questions and answers to that that we're looking to, to continue to figure out.

I will also say, the city of Flint, Michigan did work with one of our in-state universities, University of Michigan, to do a study about, is this actually helpful for them individually? And actually, you know, it -- they've gone through the process. I think it was a good process for them. They have posted a -- one of the their comprehensive financial statements onto their website. And then they have -- but they -- to do that, they received a grant from one of our foundations in the state of Michigan to provide that.

I think this was a good test case for them. I'm not sure that the same applies, just because you say, okay, it's good for that one community; is it good

for all communities in Michigan? I think it's a little bit too soon to tell.

MR. WATKINS: Yeah, so, Mary, the point that I was trying to make -- that I butchered it before in terms of local governments is -- and for Commission and Commission Staff, is that Florida already having a standard chart of accounts meant that you had uniformity in terms of how the information was presented in the financial statements. That benefit is not necessarily shared nationally, which means you have dissimilarities in how financial information is reported by similar entities across the country.

What does that mean? We already -- Florida already had the taxonomy built. So there's a tremendous challenge. And when I think about, well, what does that mean for the muni space, I think about the multitude of credits and the bespoke information that provided by credit -- because you all know what I'm talking about. A sales tax deal is very different from a water and sewer deal, which is very different from a GO credit, which is very different from a sports stadium, which is very different from a hospital, which is very different from an air -- and all of the information for each of the individual credits has been tailored to the needs of the credit analyst and investor community to make

informed decisions.

All of that is going to have to be agreed to on a sector by sector basis in terms of what information is important, and how to categorize it. So that's what they mean. So, when they say, "building a taxonomy," that's what we're talking about. And that is a monumental challenge. Especially given the time frames embedded in the legislation.

MS. SIMPKINS: Well, did either of you see, or do you foresee any efficiencies if you -- for example, if a department has to make multiple reports to different agencies, would structured data be an advantage because it would make it easier to not have to create multiple reports and it makes it more efficient?

TREASURER EUBANKS: Yeah, I think where you're going with that is a really important point of -- and we look at this frequently -- which is, how can we streamline the data that local units of government had to provide to the state of Michigan. And that's a common complaint that we hear from them. I don't think this needs to be done through this format. I think there's other formats that would be more effective based on kind of systems that they're already using. So I don't know that, you know, in this case, the machine-readable data would be a helpful addition.

MS. SIMPKINS: Thank you. Now we're going to move to Joel Black to talk about GASB. Is GASB preparing a proposed taxonomy for structured data that is specific to municipal securities? Does GASB expect to develop such a taxonomy? And why is GASB interested in the FDTA and structured data, generally?

MR. BLACK: Thank you. I don't want to presume that everybody in the room knows what the GASB is, or what we do, although I think most of you do. But we create and modify and maintain the accounting and financial reporting standards that are generally accepted, or GAAP, for state and local governments in the United States. And in doing that, our mission is to make sure that the users of that information -- which include those in the muni investment community, also includes citizens, also includes legislative bodies -- are getting the financial information that they need to make decisions and assess the accountability of a government.

Now, the way we have done that from a financial external financial reporting environment for many decades has been that the government prepares a really thick, big document of financial information and financial statements, and used to mail it out to everybody in the community. Now they've changed that to a big, thick PDF -- electronic paper document that is streamed out into the community in some way. And in all those situations, the users of that information would pull out manually the information they need, key it into their systems, and then be able to use it to make their decisions.

I had to, when I came onto the GASB, and was appointed a little less than three years ago, imagine that at some point that was changing. The technology in particular was going to evolve that practice in some way, and so why did that worry me? Why did I care about that for me from a GASB -- if you think about, again, our mission, which is to make sure the users are getting the right information, and we go through a robust due process dealing with preparers, listening to users, trying to balance cost-benefit of all this information, and kind of have this accumulated group of standards that says, this is the right information to prepare. And we spend a lot of time listening to all of our stakeholders to make sure that this is the right information.

Now if, in this kind of future state, this electronic state, somebody else is making decisions about what within those financial statements is the important information, then we're no longer achieving

our mission. What if somebody else says, hey, here are the right numbers out of the financial statements -- just assets and revenues and expenditures, but not the notes? Or maybe it's just these two notes are the important notes -- the financial statements -- not all the notes. We happen to think all the notes are important. That's why we require them as a part of GAAP.

So we didn't -- we wanted to see how the evolution was happening, and if it was, we wanted to make sure that we were a part of that process. Make sure that we were a part of saying, hey, this is the right information to share. Not let somebody else make those decisions on our behalf, or on the muni market community's behalf. So it took me a little while to devote some resources, to be able to kind of pay attention to that. But a little less than a year ago, we did devote some time and some staff time to do -- so they have been going out talking to different users about how their processes work. They've been talking to tech firms about the technology available -- data firms, how all of this is working, how is this evolution occurring.

And it became kind of apparent to us, and at least to me, that we needed to start working on this

rule -- this taxonomy, if that's what you want to call it, definitions, schemas -- a rule that would be technology solution agnostic. Whether it's XBRL as a solution, or whether it's some kind of scraping system that uses artificial intelligence or has a rule programmed into the tech tool to take that scraped data and produce it in a certain way, there needed to be some kind of rule, some kind of, at least from a financial statement perspective.

And so we are starting to work on that. We have kind of an architecture, you know, structure that we -- our team has kind of come up with, that we think will kind of work. And it's working towards this kind of level of granularity that Ben's talking about, right? He talks about a taxonomy as a chart of accounts, and that's what Florida did. That doesn't have to be what you do, right, to normalize that data in some way, to make it comparable.

You might have to step up a little bit and granularity, but you don't want to get to the point of, well, total assets, total liabilities, is all the information -- so the trick is to find that right level, and that's what we're kind of starting the structure on. But it takes time to do that. Our sister standard setter, the FASB, has -- you know, has a group of ten

plus people that works to maintain a GAAP taxonomy for the public corporation side on behalf of -- of the SEC, and that's what they do. And it took more people than that a lot of time to get the whole taxonomy together, to now, that group of ten people maintains it routinely.

So it is an endeavor. I happen to think that -- well -- and I say all this is what we've been working on, right? FTTA kind of came out -- it's been around for a long time, but really got steam and was enacted in kind of the middle of us doing a lot of this outreach and making some of these decisions. But in my view, all of doing is speeding up what's going to happen anyway. The technology was going to be such that it was going to disrupt our process. And I wanted us to be involved in that. FDTA is just speeding up what was going to happen anyway. And so you kind of ask, how long will it take?

It kind of depends, right? It depends on how many resources we put on it. And if the market and the Commission decides that, hey, we really want the GASB, kind of like the FASB, to work on this rule, this taxonomy, we can staff up and hire more people and have that happen sooner rather than later. It will still be a lot of time, because it depends on how many resources. If we only keep the resources we have devoted to it now, it's years to get to that process. So we're here to help, and that's kind of where we are.

MS. SIMPKINS: Thank you. I think now we'll talk about a few practical considerations. Let's start with any thoughts about what information submitted to the MSRB should be subject to the new data standards. As Kim pointed out, the MSRP collects a lot of information, primary offering documents, of course they get financial information and data, other continuing disclosures, political contributions, trade reporting, data. Did any of the panelists have thought about where the SEC should go in terms of which of this data would make most sense to put in a structured form?

TREASURER EUBANKS: I mean, I would reflect on, you know, some of the comments that we heard earlier about the EMMA system and how it was stood up, and, you know, really that there was baby steps that were taken. I mean, you know, I think it's -- you start with the very -- you know, kind of the basic foundational items. It just feels like financial statements are the ones to start with, see how that goes, and then grow it from there, see what's useful, and where the investing public would like to see additional information.

I will be honest. When you think about things like official statements, things like campaign reports, some of the other things that you referenced, I -- you

know, not being familiar with the technology, it's hard for me to envision to see how that would be translated into this type of format. So to me it feels like the financials -- if we're going to go down this path, it feels like the financial statements by the place to start.

MS. BARKLEY: And just to agree, I think financial statements makes the most sense, and then it's an iterative process. Things can go from there. But in the name of getting this right and done well, starting with something like financial statements, even starting with a sector, for instance, I think would make a lot of sense. And then going out to the other sectors. But looking at one thing, financial statements would probably be the most useful, and also something that every entity puts out hopefully once a year. Seems sort of the largest bang for the buck.

MR. WATKINS: No, you --

MR. BLACK: I mean, don't have much to say -- it -- you know, it's the parties -- probably reflective of the parties I attend and the people that I'm around, when I talk to them, they're probably thinking about financial statements. But when I talk to investors and users, they say what Rachel just said, that they tend to talk about the financial statements as with the FDTA is

talking about, even though I know that it's -- it could not be financial statements. It could just be official -- it could be, you know, any of that realm of data. But when I talk to them -- again, when they're around me maybe that's what they want to talk about, and they're not talking about official statements, the talking about financial statements. But that tends to be what they talk about. But Rachel just said it, so --

MR. WATKINS: Yeah, so, to reinforce a couple things that Joel said, one is, in our space, everybody knows that the audited financial statements are the gold standard. And that's what everyone looks to. And to Rachel's point is their biggest frustration is the timeliness of the -- of the audited financial information is a much bigger issue than the actual content. And so -- and, Joel, through his work -- and I've railed on the GASB before about, you know, how much they get into in terms of the kind of information that's reported.

But it is -- it is robust, it is agreed upon, it is standards, they're exposure drafts, there's plenty of opportunity to comment. And so they get it right. And it can be a long and arduous process, but it's agreed upon. And that's -- there's merit in that, in terms of acceptability across the marketplace. So that

makes this notion of the whole -- you know, the -- hit the easy button, that technology's going to fix it all for us -- troublesome and problematic. But the financial place -- the statements absolutely the right place to start.

And to give you an idea of order of magnitude -- so -- and timing, which is -- goes the feasibility and the position that the SEC and OMS has been put in, five years to do -- just to the face of the financial statements -- just the reporting system -- we ask the people who do this every day, who built this system for the state, how long for the footnotes to the financial statements? If you started today and worked on it full-time, how long? Two years. So that -- we're just talking about the face of the financial statements and the footnotes. We haven't even talked about all of the other content that is unique to each of the other individual credits that comprise our space.

So that's a -- it's a -- it's a big task. And I think about technology too. And this is a cautionary tale. My greatest fear in all this, in government wading into the space and setting standards and mandates is that it stifles innovation. And technology is moving so fast, by the time they get the job done that they've been tasked with doing, I will -- I will bet you any amount of money that it'll be obsolete. Because there'll be no motivation to change. And with the advent of AI, it is running so fast, and the -- the alternative technologies are available, and the private sector, if there's money to be made, they will make the investment for all the websites, because I would submit to you 99 percent of local governments across the country have a website, and their financial statements are on there.

The AI can crawl the data, and they will use artificial intelligence and algos to make the decisions that they need to make from an investment standpoint to inform decisions. So this notion that somehow this is going to -- it's a big task to create efficiencies. And I worry that the government, by wading into the space and mandating a standard, is going to freeze the design at a point in time that will not generate the benefits that are -- have been alleged to be produced by the -- by the technology.

MS. SIMPKINS: Let's briefly move to another topic. The FDTA requires that data standards include a common nonproprietary LEI, or legal entity identifier, that is available under an open license for all entities required to report. I think there are about 30,000 issuers reporting to the MSRB. A lot of issuers would

need to get these LEIs, as they call them -- are there any comments about getting LEIs?

MR. BLACK: I have a comment, in that there are -- I think in different ways -- and if you're in government finance and not necessarily debt market, but grants and things like that, there are so many kind of identifiers that local governments have created, that different agencies have caused to be created. And almost none of them seem to have some kind of structured way of -- in which they mean -- they have some meaning behind whatever the number is. And as part of -- Ben gave his probs of robust standard-setting that we go through. The reporting entity -- the financial reporting entity is something we have a lot of guidance and a lot of thought on, and it's not built on the same kind of corporate control structure that the corporate environment is built on, which a lot of LEIs are structured to be for more than corporate environment space, not necessarily the government space.

I would like for us to think about -- and we do have some thoughts that we could share about how a government structure might look, and might -- could build on a reporting entity type number that then drives down with may be additional numbers for subsections of that government, to get you down to the reportable

credit reporting units that the users care about. But then you know that if I'm down here -- and somebody earlier was talking about how at Moody's, you know, they might be looking at broader credits and not just that specific credit.

Like, not just airport authority, but should they be looking at the general funds credit worthiness, even though they're only investing in airport bonds or vice versa, that the structure would allow for -- here's, you know, number that belongs to -- I don't want to say city of Cleveland, but that's what's In my mind from an earlier session -- the city of Cleveland -- and then the city of Cleveland airport is the same number with an extension, and water -- the same number with another extension, and if you just want water, then you go to the city of Cleveland's number with the water, you get information on just the water, but you can then scroll up to a smaller number, and you get all the city of Cleveland stuff.

And I think that some way to look at this LEI structures in that way that -- it's, you know, my bias, but I think our reporting entity literature could help create boundaries around that for what is the reporting entity -- but to include component units and things like that as it goes down, would be a worthy endeavor to try

to attack in trying to achieve this --

MR. WATKINS: So they are -- so the component -- they just all wouldn't have their own number, they'd be all related somehow?

MR. BLACK: That's right.

TREASURER EUBANKS: That would make absolute sense. It would make my life easier. (Laughs).

MR. WATKINS: Well, so we already have that. We already have a common identifier system in our marketplace called CUSIPs, right? And, again, the LEI is square peg, a round hole. So we're trying to force something into an existing system that is already in place and works. And when I think about -- so it's -- I've been sort of a naysayer here, because I see so many challenges and difficulties with the mandate. But I'm -- but I'm here to say that I'm all about enhanced disclosure, and I'm all about more timely and credible information for the marketplace. And I think there's a right way and a wrong way to go about doing that.

And working with the tools, working to enhance the tools that we have, which is EMMA, is a central utility for the entire marketplace, is a much better investment of time, effort, and energy, and this whole XBRL thing is a huge resource suck, and a huge distraction from improving real transparency and enhanced disclosure for the benefit of our entire marketplace.

TREASURER EUBANKS: I was just going to make a point about the CUSIP that Ben already made, so I won't double down on that.

MS. SIMPKINS: Of course, that's a security identifier. But we have a few other topics. But if we have questions, we can take a few questions.

QUESTION: You brought up a lot of things I would like to ask about, but I realize that we don't have that much time. Just -- Ben, to correct a couple of things that you said, XBRL is not a product and does not require a license. With respect to the implementation in Florida, the team that supports Logger, now Logger X, which includes XBRL, added balance sheet support in the current year, so there was actually a doubling of the amount of information that was provided.

So, Rachel, over to you. So the F65 that Michigan has is heavily redundant with what's in the annual comprehensive financial support, and so as you correctly pointed out, we could potentially have the benefit of eliminating duplication by consolidating those two. But to the extent that there's overlap and not consolidation, you have to have the raw data in some

kind of machine-readable format in order to be able to do that kind of consolidation. So I hope you'll see that as you work through the process that you're doing with stakeholders right now, that there are benefits to machine-readable information, rather than having a PDF here, an Excel spreadsheet here, and something else there. Thanks.

MS. SIMPKINS: Any other questions, or questions from the chat?

QUESTION: Hi. I heard a lot of opposition to the FDTA. So what avenues do issuers and other stakeholders have to address those concerns to the SEC or the MSRB or whoever's involved with setting up the implementation?

MS. SIMPKINS: Well, I can point out that there are going to be two -- two role -- there's going to be a joint rulemaking and -- with our other regulators, and then probably in 2026, there's going to be a rulemaking based on the standards and the joint rulemaking that are specific to municipal market. So we will be soliciting comment, and we hope everyone will comment. Also, as part of the act, we have -- the SEC has discretion. We're not going to impose any standards that aren't feasible or practicable, that's in the act.

Also, we can tailor the standards so that they

-- to reduce the burdens on smaller issuers and other market participants, and also to avoid disruption. You know, we anticipate this is going to be a phased in process, not something that we -- is going to happen overnight. So it's going to be a long process.

QUESTION: Thank you.

MS. SIMPKINS: Any other comments? Okay, thank you.

QUESTION: And will OMS be the office within the SEC that spearheads this? Or --

MS. SIMPKINS: Well, there are a lot of offices at the SEC involved with the FDTA. Our office isn't involved with respect to the municipal market, but we have -- our office -- we have a data office -- we have a lot of people at the SEC that are involved in this process. And right now we're working with our fellow financial regulators to come up with joint standards.

QUESTION: Hello. I just wanted to address this topic about efficiency seen in other sectors. So, I am a bond attorney, and I actually went and talked to our corporate attorneys to kind of understand what it's like in the private sector, and making an EDGAR filing. And when we were comparing and contrasting, it -- the corporate attorney told us -- he explained to me how

it's filed. And when you go in and see a 10-K or 8-K, you'll see it looks like a webpage. And for decades in the private sector, filings have been made in basically text file format, not PDF format.

And I have actually worked in data science before. I went to the dark side and became a lawyer. And I realized that for our municipal sector the way we're doing these disclosures and PDFs is almost like we're riding a bicycle while the private side was driving a car. And when you try to layer on XBRL, that's like putting on performance tires. And we're trying to put performance tires on bicycle.

So my question is, what are we doing in the intermediate step just that the information getting into EMMA is in a format where you can even layer XBRL on it? Is there any intermediate step planned?

MR. BLACK: I'd like to bring -- this is, I think -- I'm not directly answering your question, but maybe indirectly answering your question. And I'm going to build on something Ben kind of talked about from -- and it's really from our experience. And Ben talked about making sure that we don't limit ourselves as part of this to a specific technology, by chance. And you were doing that really with XBRL, right, because that's what the corporate side uses, and so it's established, it's been around, there's inline XBRL.

It's workable, right? It works on one side. But to Ben's point, there is a future state that -- and XBRL requires some kind of tool or some kind of intervention at a government side to tag the data. It'll require a do it, et cetera. In our going around to firms, most users are manually inputting data. They're taking it out of the PDFs, they've got armies of people that input data, things like that. But there are firms -- and there's one large financial data firm that we saw that uses the technology, takes the PDF that comes from the government, comes from the website, government doesn't have to do anything differently.

This firm brings that PDF into their system, they have a scraping tool that scrapes 30,000 data points, that they determined are the right 30,000 data points, out, and then manipulates that information in a rule that they have taught the computer to do, and then it produces for whoever subscribes to this company's datastream, which is expensive. But it produces for them normalized data for that government. They can show the actual scraped data for that government, the actual data that's not been kind of normalized through the rule, to make it more comparable from government to government. And then if you click on the kind of actual

data that's scraped, it'll pull up the PDF and show you where it came from.

So I say that -- it's -- you know, Ben kind of talked about it as some future state, you know, in a way of, there may be more technologies out there that, you know, are different then XBRL. I will tell you they're out there now, and they're not just out there now and being tested and may be okay, and maybe really not the high quality data we need. They're being out there -- people are paying for it. It is being used. And so I hope that we as a community figure out a way to structure this project to implement this act in a way that takes advantage of that, and is the most -- creates the kind of the most efficient string of data that may not require any government to do anything, but somehow there's some intermediary somewhere where it runs through a system and it does it for us, that creates a rule that the GASB may be creates for the financial statements.

Something like that. I just -- I think there are a lot of opportunities for us to really officially build this from the ground up, because we are starting from scratch, from our tricycle, right? And let's build in a way that really makes sense for us.

QUESTION: Hi. I'm Jacqueline Knights. I'm

with the Oregon State Treasury, and I run the Debt Management Division. Ben, I did want to ask you some questions about the value of aggregating the data across all governments. Was that for the benefit of the state, or to assist the entities in presenting? Because each of those governmental units are separate units. They don't roll up, necessarily, into the state's balance sheet or income statement. So what was the goal and the value?

MR. WATKINS: So, it really is -- it's not for us in government. It's for someone else to be able to compare a similar sized city, similar sized county, so the user -- the benefit of the information is not us. It's not the government's. It's for others who are going to use the information for other purposes, and comparability across the space.

QUESTION: And in terms of your taxonomy that you developed, how did you determine -- or, what strategies did you use to determine how to make these entities, at least within your state, more comparable? Because even within the state, they're organized differently.

MR. WATKINS: Right. So two things. First, I want to disavow any knowledge of technology or anything else. And I had nothing to do with building any of

this. But I am articulated for the very talented people within the CSO -- CFO's Office who did. So, the taxonomy for us, it being financial statement information -- the -- and it actually preexisted me in terms of the standardization of the chart of accounts for cities, counties, and school districts has been in existence for 30 years. So it even proceeded my tenure.

And I don't know what the catalyst for having all of the local governments reporting on the same basis was. Presumably it was uniformity and comparability. But since it was -- it has been in place for so long and was part of the granular infrastructure -- that already existed, so it was just a simple task of tagging that information that then makes it -- the reporting system allows it to be aggregated and compared from one local government to another.

QUESTION: And do you think we run a risk when all this data is aggregated at a level where an analyst looks at it without looking at the supporting writeup -- that the information could be -- I'm a chartered financial analyst. This information could be misconstrued and used inappropriately to rate an entity?

MR. WATKINS: I would say absolutely, only by virtue of the shortcomings of what I viewed, and my quick look in preparation with this was just to go online and look. Well, what's the logical place to look? I look in the city that I'm most familiar with, the city of Tallahassee. Well, the city of Tallahassee, it $796 million of debt, total debt. Okay, fine. But what -- the issue is, well, what comprises that? And there are separate credits. One's the airport, one's the hospital, one is sales tax, one is water and sewer, one is electric utility. All of those are different. But all of those roll up into one number.

So from an analyst's perspective, not maintaining the revenue stream in the security reporting to the debt very misleading in terms of what -- you know, you have to understand the composition of the city, and you have to be able to deconstruct that debt number, because everyone is secured by something differently. So, to just look at it in total is pretty much meaningless, from a credit analyst's perspective.

QUESTION: And just lastly, just -- what is the -- from the SEC perspective and the MSRB's perspective, what is -- what is the goal that we're trying to achieve?

MS. SIMPKINS: Our goal is to implement the FDTA as Congress intended. And with that, we're already over time, and I want to be respectful of your time so that you can go have some lunch and be back here at

1:30. And I want to thank all our panelists for participating, and all of you for listening. Okay, go ahead.

QUESTION: I appreciate that. The mic on? All right. Hello, everybody. Garrett London from Unichan (phonetic). I want to talk about Ben's comment about stifling private market innovation, and Rachel's comment about the only Coca-Cola option. How do we ensure that private companies have a seat at the table when we're determining this taxonomy, when in reality private companies are not stopping their own innovation, developing their own taxonomy, side-by-side?

MS. SIMPKINS: Okay. Thank you very much. Please be back here at 1:30.

(Whereupon, at 12:36 p.m., a luncheon recess was taken.)

A F T E R N O O N S E S S I O N

MR. ALLORGAMENTO: Hi everyone. If we could just have -- everyone please come and congregate. Thank you. Welcome everyone. I hope everyone enjoyed lunch and exploring Union Station. The Office of Municipal Securities is very excited about our next speaker, Commissioner Jaime Lizárraga. He has been on the Commission since 2022, and we couldn't be more excited

to have him. Please join me in giving a warm welcome to the Commissioner.

COMMISSIONER LIZÁRRAGA: Thank you, Adam, for that kind introduction, and good afternoon everyone. I hope everyone is doing well post lunch, and has had their post lunch coffee. I'd also like to thank Dave Sanchez, Director of the Office of Municipal Securities, and SEC Chair Gary Gensler, for convening today's conferences. To all -- staff and all of today's panelists, thank you for contributing your time and expertise.

The market for municipal securities plays a critical role in US capital markets, and in our economy. State, city, local, tribal, and territorial governments and other jurisdictions depend on the securities they issue to finance their priorities: hospitals, roads, schools, affordable housing, and other infrastructure. A well functioning municipal market benefits issuers through lower borrowing costs, and the public also benefits through lower project costs and fees. The municipal securities market is primarily a retail market. Of the $4 trillion in outstanding municipal bonds at the end of 2022, 40 percent were held by individual investors. An additional 26 percent were held by mutual funds.

Protecting these retail investors and ensuring full and effective disclosure in a market as large, diverse, important, and complex as the municipal securities market is an important goal. As you covered in this morning's panel, President Biden signed into law the Financial Data and Transparency Act, or FDTA, which was included in the '22 NDAA. The FDTA was designed to update the standards for data collection and dissemination by financial regulators. The goal was to make financial data more accessible and uniform, and more usable to investors and other market participants.

It also requires the federal financial regulators to pursue interoperability across agencies to streamline compliance. This congressional mandate requires financial regulators to engage in a joint rulemaking to achieve these goals. The FDTA requires the SEC to consult market participants in establishing data standards for the municipal market. Constructive, consistent, and extensive engagement between the Commission, issuing jurisdictions, investors, and advocates can yield effective standards that provide more accessible and useful information to investors.

Congress gave the SEC and the other federal financial regulators two years to develop and publish data standards through joint rulemaking. After those standards are finalized, the SEC will have up to two more years to issue rules for municipal securities. This means that municipal issuers and other market participants may have up to four years to prepare before any data standards are adopted under FDTA are issued. Moreover, any SEC structured data rule will be subject to notice and comment rulemaking. I encourage all stakeholders in the municipal market, including investors, advocates, and issuers, to participate meaningfully and constructively in the rulemaking process.

The FDTA allows for scaling of disclosure for smaller issuers, state, local, tribal, and territorial governments, and other relevant authorities. This flexibility may address some of the concerns about cost for smaller municipal issuers. In addition to your discussions on FDTA, it is encouraging that you have panelists focused on meaningful and effective voluntary disclosures related to ESG and cybersecurity. We've seen strong demand from investors for ESG disclosures that incorporate comparability and robust metrics. In the absence of these effective disclosures, the result is inconsistency and lack of comparability.

Aiming for the highest quality, most investor useful information regarding ESG risk disclosures is

good for investors and for the municipal securities market. Your perspectives on best practices for cybersecurity disclosures for municipal issuers are also important. The SEC has proposed a set of cybersecurity rules. Similar to our ESG rules, these proposed rules will not apply to municipal issuers. But there is significant overlap between the emerging cyber risks these rules are designed to address and the risks facing municipal issuers -- operate in an environment where cyber incidents are growing in frequency and sophistication.

Cyberattacks and data breaches can cause irreparable and irreversible damage to individuals whose personal information is compromised and/or stolen. They may also impose significant costs on municipalities. In light of this, effective disclosures regarding cybersecurity practices protect investors, ensure that an issuer's critical systems are secure, and instill confidence that issuers have taken steps to mitigate identified cyber risks. Timely disclosures to the public regarding significant cyber security incidents and to individuals if their personal information is compromised are also critical.

Thank you again for your participation in today's conference, and for your contributions to this

important market.

MR. ALLOGRAMENTO: Thank you very much, Commissioner. We all appreciated his comments in his time. Two brief comments before we shift to the third panel. First, we do have a break after the next panel. And if everyone can remember to be back promptly at 3:15, so we can make sure to hear Commissioner Peirce's comments at that time. Without further ado, introducing panel 3. Panel 3 will be moderated by Mark Elion, Senior Counsel in our Office of Municipal Securities, and they will discuss broad risks, including ESG and cybersecurity. Without further ado, Mark.

MR. ELION: All right. Good afternoon, everyone. I'm Mark Elion, Senior Counsel at the SEC. the purpose of today's panel is to help issuers, underwriters, investors, and the market receive the best possible broad risk ESG disclosure. The panel is focused on disclosure of broad risks, which boils down to events, trends, or conditions that are of a first time, rare, or unpredictable nature, and they present material, financial, or operational challenges the municipal issuers. Think a pandemic, earthquakes, demographic shifts, the southern border, cyberattacks.

Basically, all broad risks come from impact, are categorized as or just through environmental,

social, and governance. Because the panel is focused on broad risk ESG disclosure, it will unfortunately avoid the political areas such as ESG labeling and ESG prohibitions.

Now, allow me to think and introduce the panel, which is made up of municipal finance industry experts that graciously gave much of their time. First we have Christopher Hamel. Chris is currently a senior fellow with Municipal Market Analytics, having worked for RBC Capital Markets and its predecessor firms as a banker and longtime head of its municipal operations.

We have Jamiyl Flemming, Senior Vice President at Siebert Williams Shank. He serves as the firm's sustainability specialist. Well, in this role, this firm has twice been awarded the bond buyer deal of the year award in the ESG category. He also assists municipal issuers with incorporating sustainability disclosure on non-ESG labeled financings.

Next, we have Nikolai Sklaroff. Nikolai has three decades of public finance experience, currently serving as Capital Finance Director of the San Francisco Public Utilities Commission. He also serves as the Commissioner of the California Debt and Investment Advisory Commission, and is a member of the GFOA Debt Committee.

Finally, we have Walter St. Onge. Walter is a partner in the Boston office of Lock Lord, LLP. He has served as bond counsel, disclosure counsel, and underwriter's counsel on public finance transactions for over 40 years. Walter is also a past president of NAVL. So I'm going to kick things off with my first question, and that's going to go to Nikolai. And I'm going to break my promise not to discuss labeling. So to ask Nikolai quickly to just explain ESG labeling versus ESG risk disclosure, because the Internet would lead me to believe there's a lot of confusion.

MR. SKLAROFF: Well, thank you very much, Mark. I want to thank you and the Office of Municipal Securities for the honor of joining you today. And I'm humbled to be amongst such distinguished colleagues. Before I begin -- and Mark, you mentioned, we're going to avoid politics, and I'll do the same. But still, let me preface my comments by saying the comments I'm about to share are my own and not necessarily those of the San Francisco Public Utilities Commission, the California Debt and Investment Advisory Commission, or the GFOA and its debt committee.

So, therefore freed up, let me lean for just one moment into the political aspect of this. And I think for those of us who have been in public finance

for many years, it's sad to see the state of where this dialogue is, this -- the intrusion of politics into an area which is really designed to be about facts and material information. And I think, in part, we have to blame ourselves as a bond community in being imprecise in the way we talk about this topic.

Our conferences, our publications tend to conflate labeling of bonds with disclosure on ESG. We conflate impact investing with ESG and disclosure. And I think being more precise in what we -- what we're intending to talk about is really important. I also think there's room for consensus around much of this topic. Hopefully all of us can agree that sea levels, for example, are rising. We're seeing storm impacts on all our coasts, whether it's Maine and California, New York, Florida, Texas. And I think we can all agree, hopefully, that those impacts need to be disclosed, whether people are addressing them or not, whether it's the cost of the impact or the mitigation of that impact. There are other issuers, including my issuer, that have decided to go beyond that.

But that's not what we're going to be talking about today. We're really going to be talking about the factual disclosures. For my issuer, our operations begin in the Sierra Nevadas in Yosemite National Park,

where we draw clean water and produce clean power, across the seven counties, and serve 2.7 million people, and -- at Golden Gate National Park. So I think you would hope that we would be good stewards of the environment, and, in fact, we are. And part of our mission is to protect the environment.

So for us, we've made the decision starting in 2015 that we will label bonds in green to articulate how we are using our proceeds to the market and the efforts that we're making, that our bonds are not merely green, they're climate bond certified. And that is reflective of policies adopted by the city, including our climate action plan that was first adopted in 2004, and our current plan, the mayor's plan from 2021, addresses net zero, addresses social and environmental justice.

But those are choices that we've made, and that's not part of our discussion today. We want to really focus today on disclosure, and ESG is part of that, but it's really just a frame for how we organize some of these disclosure topics.

MR. FLEMMING: If I could just add to that, Nikolai, I think that distinction between labeling and the actual risks as it relates to ESG might be the single greatest take away from today from my perspective. I say that because as we're kind of

clearing up misconceptions, a number of states for example that are among the greatest opponents of ESG actually have municipalities within them that do a robust and fantastic job as it relates to resiliency and climate change mitigation, and they actually include considerable disclosure in the documents that relates to climate risk.

An example of that, the city of Miami Beach, in their last non ESG labeled financing, had six pages of climate change, cybersecurity, and COVID relief disclosure. So I think, you know, separating the labeling from the risk is very, very key.

MR. ST. ONGE: I know we're not going to talk about the labeling anymore, but I do -- Nikolai, just one question. As you know, a number of states have passed anti-ESG legislation, and -- including -- and I've looked at the Florida legislation, and I don't know if Ben is still here to comment -- perhaps at the end -- but it does provide that the issuers are prohibited from contracting with rating agencies if their ESG assessment would have a direct and negative impact on the rating.

And I'm just curious how you would use that as an issuer, if you were subject to that kind of a rule, in part because the rating process -- you don't know the rating necessarily until the end of it. You've already committed to it. But you also probably have outstanding bonds already rated by a rating agency, so even if you declined to go forward with a particular rating agency in the future, they're likely to continue to rate you based on their prior ratings, regardless of what happened going forward.

MR. SKLAROFF: I'm going to be careful how I address this, and with respect to the broad range of interests and politics and jurisdictions represented in our audience, I would say that bans, whether they have been from the left or from the right -- and we've seen both in this arena -- have served not only to disrupt the marketplace, but have actually harmed those who are imposing the bands. But I'd prefer not to address any specific jurisdictions.

MR. ELION: So, switching gears to disclosure, Walter, how would you recommend a client go about finding and addressing these broad risks in their disclosure?

MR. ST. ONGE: Well, that's easy. Thank you, Mark, I appreciate to be part of the panel. And I'm going to repeat a few things that you've heard this morning because I think there are some common themes, frankly, in this area. Municipal issuers, as you know, are subject to the antifraud rules, which we all know

means making materiality judgments based on the particular facts and circumstances of the particular issuer. And generally known information such as climate change -- you may disagree as to how severe an impact will be, but things are changing in certain places and environments, for coastal communities for example.

But you have to assess in the context of the individual issuer to make a judgment about what is the appropriate disclosure. And one question you could ask is simply, how likely is a particular issue or concern going to change -- cause the current financial condition -- current financial results to change materially in the future. And obviously the near term outlook is much easier to predict or to know than longer term effects, which are going to be inherently somewhat more speculative. And for any issue, though, it's important to look at what process or mechanisms does the issuer have for identifying material risks of any nature, whatever the particular topic is, to ensure that the proper disclosures get made.

Is the process rigorous enough to identify new matters as they emerge, and to ensure that whatever the topic may be, whether it's climate change, cybersecurity exposures, the impact of the recent problems in the banking sector -- possible -- a more near term issue,

the impact of a debt limit problem for the United States, immigration is also having an impact in certain cities and states in this country. How are those being addressed? In other words, really, what are the disclosure controls and procedures sufficient to identify these risks and ensure that the right people who may well be aware of a lot of information a topic are able to that information up to the level of the disclosure team?

And I think if you have the right policies and procedures in place, you'll have a better opportunity to ensure that this information does become apparent. The other thing to keep in mind -- and this was mentioned again this morning -- the staff legal bulletin from February 2020, which maybe was an unfortunate timing given what happened a month later when the world turned upside down -- but it's stressed the staff's view that all information that's reasonably expected to reach the market is subject to the antifraud rules.

So, in other words, there's a lot of information already posted on issuer websites, reports that are filed between and among different governmental units on various topics, including matters such as climate change. Many states have passed laws to require steps being taken to get to a so-called net zero

emission economy within a certain time period, or reduce the emissions by some standards. And cities and towns and other governmental entities are tasked with providing reports and information on how well they are performing, and meeting those goals.

So that information is already out there. The question is, do you have the internal expertise available to then assess the vulnerabilities, to -- what are the plans for mitigating the risks? In other words, what information do you already have internally that just needs to be brought together, assessed by the disclosure team using disclosure counsel -- other advisors are going to be involved in that process to help sift through it and determine what's important for investors to know.

And I think what we're seeing -- in my experience, anyway -- is a shift away from just -- not just risk disclosure, which sometimes is more, frankly, boilerplate disclaimer that the future is uncertain and things may change and results are going to -- may well vary -- that's certainly true, but not all that helpful. But in this area we're seeing more specific discussion, as Jamiyl just mentioned, of what is being done. What plans and things have been prepared, or what programs are being put in place and identified to help address the issues. Both what are the risks, what can be done to help mitigate them, and ultimately what will be needed to protect against these effects.

And that may be significant capital expenditures largely in the future, and probably will need not just resources of the individual jurisdiction that's making the disclosure, but likely will include the resources from a state government, regional entities, other cities and towns, for example, and the federal government, indeed, in some cases. So I think you can -- you have that internal process to look at.

And then certainly there's guidance out there that's available. I know Chris will mention this in his -- later in his presentation -- the GFOA has published best practices with respect to ESG disclosures, primarily focusing on environmental and social, I think. They actually did a piece in 2020, and then more recently published these, which are very useful. And the GFOA, frankly, has been -- and I'm not a member of the GFOA, but I -- they deserve credit. They've been at the forefront of providing disclosure guidance for many, many years. If you go back and look some of the earlier SEC reports and whatnot in the 80s and 90s, some of their disclosure guidelines have been noted and recommended as sources of information that the market

should look to to at least help guide their own disclosure decisions.

MR. ELION: Great, thanks. So jump to our first fraud risk that falls under the governance part of ESG. It also seems to come up in a lot of primary disclosure. It's also been spoken about a lot today. Cybersecurity. Nikolai, can you give me your thoughts on how you approach disclosure of cybersecurity?

MR. SKLAROFF: Well, it's hard to go from a subject that's such an existential threat as climate change to cybersecurity, and then say the words, this is probably the topic that keeps me up at 3 a.m. the most. But unlike some of the other risks that we have to disclose, this is a risk where there are bad actors on the other side, maybe not even in our country, who are actively trying to do harm, and are learning and changing their methods, and -- so this is, like many of the topics we're going to talk about, a topic that is evolving even as we're talking here today.

And so my hope in all of this is that we continue to educate. I think -- I applaud you for shouting out GFOA. GFOA has done many best practices, even beyond the ESG arena, in terms of primary disclosure, secondary market disclosure, but specifically on cyber risk. I think our awareness of

this risk really manifested when the SEC published its guidance. And of course, as issuers, we're not keeping up on all of those -- guidance from the SEC, but I think our bond community -- and out west I would highlight Hawkins and Orrick put out pieces that I still refer to -- even have them with me today -- but those sorts of publications -- the GFOA and then of course our state organizations such as CDAC in California have provided tremendous guidance on this topic.

MR. FLEMMING: I'll just say quickly to add on to that, the good thing about, I think, our industry is that the vast majority of issuers that I work with already include cybersecurity disclosure in their official statement, which is fantastic. It's important, though, that we remain up to date with our efforts, given how fast technology does change, I think as Ben mentioned earlier today. As he also mentioned, we have AI to deal with today. And I would say, as an example -- to the extent that AI is used, let's just say for security purposes, at that point it's often collecting and processing large amounts of data, and if we're not protecting that information, there are serious privacy concerns there. Right?

So I think about the collection of personal information. And to the extent there's a data breach of

any sort, there's concerns about identity theft, financial fraud, and things of that nature. So it's important to keep up to date with your cyber security as well as disclose it in the documents.

MR. SKLAROFF: Yeah. And of course, as issuers in the municipal sector, we have to grapple with the fact that, first, we're dealing with lots of personal identifiable information. We all have money running through our systems. The famous bank robber, Willie Sutton, said -- was asked why he robbed banks, and that's -- because that's where the money is. And in many respects, we are a target, because we also happen to be slower because our processes in the private sector, and it tends to have older systems.

So it's really important for us to have education programs within our organizations to have the technology people part of the disclosure process to help inform not only what has happened, but the potential risks. The challenge for us, as is often cited, is that also we don't want to create roadmaps. And so that's where the tension is in our conversations of what to disclose.

MR. ST. ONGE: I was going to ask Jamiyl, what do you see -- what do you want to know from an issuer about this topic specifically? Is -- some of it's disclosure, certainly, but also I think this is a diligence matter, knowing that there's appropriate protections or systems or protocols in place, but nothing is perfect. I mean, virtually -- no one wants to assert -- make an assertion such as that, and just become a target just to prove you wrong. But what is it that you find most useful in terms of the disclosure in this topic?

MR. FLEMMING: So I think -- pardon me. From investor standpoint, I would say what's most useful, I think, is the "if" -- if you're taking care of things. I don't think it's the "how" necessarily, because I think the "how," as Nikolai noted, gives the roadmap. You may want to be very careful to not provide information to the bad actors to allow them to kind of circumvent the system. But I think the question is, if you're taking care of things, how often are you doing so, how often are you updating it and staying up to date with those advancements and evolution in technology.

MR. ST. ONGE: And I think, obviously, if you've actually experienced a breach of some sort, that may well be material and required disclosure, both for the cost of remediating the breach itself, the impact on operations if -- there's been recent ransomware attacks that have frozen city government services or email

systems and other operations, and that has an impact that ought to be disclosed. Then there's the collateral impact if personal information is breached, the potential liability for that to the extent that things happen, or the need to provide some sort of identity theft monitoring or the sort of things that private companies often provide when they suffer a breach.

But I think that's -- to me, that aspect of it is the easy part of the disclosure, in the sense that you can access what happened and describe what happened, and what the costs were, because that's maybe relatively easy to determine. The harder part is the protection going forward, and as you mentioned, I think that AI presents an extraordinarily dangerous development in this area, simply because I suspect that almost all of us have our own -- whatever organization we're part of, we all get almost daily reminders about how to protect our systems and avoid, you know, phishing emails and everything. And yet the more someone can re-create an email that does -- the common -- the common warning is, look for the red flags in the email: the bad grammar, the logo that doesn't quite match up with what you typically see.

But if someone can use AI to create a perfectly looking email that comes from whomever, Bank

of so and so, that is going to make it more likely that a breach is going to occur. I don't know what we can do or say about that, honestly. I think that almost become a matter of general knowledge, that it's a dangerous world out there.

MR. ELION: Jamiyl, I want to stick with you. Given your role on the market side of and issuance, do you view environmental risks, extreme weather, climate change, et cetera, as economic risks?

MR. FLEMMING: Sure. That's a great question. I think that ESG risks have the potential to cause financial risks as well. I'll give you example that we've seen in the past already. You look at Hurricane Sandy in New York City in 2012, which flooded approximately 17 percent of the land in New York City. It also caused $19 billion of damage, and also a loss of economic activity in the city. Think about some of our coastal town across the country, where they're affected by flooding, which can affect real estate property taxes, insurance claims, things of that nature.

Think about areas, in the South primarily, that are susceptible to heat waves and droughts. States like Louisiana, Texas, Florida et cetera. There are predictions that some of these states may have areas that are uninhabitable in 30 plus years, which sounds

insane to me, quite frankly. But a point that Walter made in one of our prior discussions was that we speak about climate change often with these kind of large-scale events, but often times it's far more subtle than that.

So, where I live currently, New York City, I think some of the three primary climate change risks, one, are -- one of extreme heat. Two is inland flooding from heavy rain. And then thirdly, coastal flooding by the rising sea level. Frankly, more die in this country from extreme heat than any other weather-related cause. So it's not all these catastrophic events that we think of so frequently. It's something like extreme heat. And I would say, frankly, often times in our community, from a social perspective, that often affects the low income the most, marginalized communities, which in turn can have a strong toll on our healthcare systems, on our housing systems. That's another way to about these things.

So as I do speak to some of the social risks also, saw a severe impact with COVID, you know, most recently, which caused an increase in unemployment, it affected our travel, a lot of volatility in the financial markets. So all of these different social and environmental risks certainly can have a financial impact. There was even a study that Moody's prepared in July of last year, and it spoke to some of the ESG risks facing the Midwest states, and I think most of which actually being affected by a population decline or stagnation.

One reason for that is the outmigration of kind of the working class age, if you will, for other opportunities in other states, which also results in kind of a shrinking working age population, which affects income diversity and development. It also causes kind of population aging, if you will, compared to other areas in the country, which can put serious pressure on kind of the government's budget, in areas like education, healthcare, social services, and pensions and whatnot. So I would say, absolutely ESG risks can potentially affect the financial markets in a serious way.

MR. ELION: Chris, what are your views on how the market is treating these risks, specifically environmental, sea level, and weather?

MR. HAMEL: Sure. And let me approach that question in the following fashion, just looking at the pricing of municipal debt, within the last week or so there was a thoughtful piece in the Wall Street Journal about the circumstances in North Fork (sic), Virginia --

highly rated credit -- and we looked at that circumstance, which fully discussed extreme weather related to climate change and what the challenges of that municipality was, and then we looked at its debt program and how its debt is pricing against other highly rated credits. For example, if we looked at how it compares to the state of Washington, a very highly rated credit as well. And we see little if any pricing differential for issuers with greater exposure to extreme weather than those that may have less exposure to extreme weather. And so our observation is, there is little if any extreme weather penalty being priced in to the municipal market.

I want to make an observation and kind of pick up on a theme of my colleagues on the panel. I'm trying in the future to expunge from my language the words "climate change." I think it's an amorphous term. It has something to do with the future. There's a political debate about it. I think we as municipal professionals are in the risk business, and risk relates to extreme weather. So going forward, I'm going to do my very best to talk about extreme weather and not use those two words which start with C's. And I think that's because there is a lot of information out there, geographically specific, about extreme weather. And my

concern is that that data makes its way into the process of due diligence as it relates to the offering of municipal securities.

And just to cite a couple of very specific examples, away from the fact that you probably should be googling extreme weather related to the geography in which you are working on a transaction, but extreme weather risk considerations are available by ZIP Code and CUSIP. There is a federal agency called FEMA which has information available for free. And you simply need to go to it and type in a ZIP Code, and it will give you a report on, I believe, it's 12 different extreme weather circumstances for that given geography.

I can't say here that that information is material to your particular transaction as it relates to whatever disclosure may or may not be appropriate. I would submit, however, that it would be a useful part of the due diligence process. And I'll be the third person who references it -- I commend the GFOA for advancing best practices, and by my way of viewing it, as someone who used to be a series 24 in the municipal industry, we have a set of best practices. Secondly, we have ways to review the possibility of extreme risk -- for example, the FEMA site that I previously mentioned. And I think those two tools need to be indebted into the procedures

of municipal departments, as they're executing transactions on behalf of their issuers --

MR. ST. ONGE: Chris, what do you make of your statement that you didn't see any pricing differential? What does that -- what does that tell us?

MS. HAMEL: Look, I -- I think that's an excellent question. I mean, it's spot on. The short answer is I don't know. The longer answer is, it could reflect an under appreciation for what risk may relate to extreme weather. Even though in the case of North Fork (sic) -- and I'm not the lawyer here, I'm the banker -- I thought North Fork's (sic) disclosure was fulsome and adequate, in terms of the circumstances. It may also mean -- and again, I like the North Fork (sic) example recommend this Wall Street Journal article to you all to read. They've actually spent about $3.5 billion dollars on resilience activities, a combination of federal money and municipal bond money, to build -- to respond to their climate -- excuse me, extreme weather risk, and create resilience so that their community can continue to operate.

You may or may not know, North Fork (sic) is home to the world's -- not the United States' -- the world's largest naval base. So there's a lot of interest in seeing that that geography -- that city continues to operate in a fashion not only important to the citizenry of that city, but, you know, the security of the nation, given the world's largest naval base is there.

MR. ST. ONGE: I don't think that I would conclude that the fact that there isn't a pricing differential means that it doesn't alter the total mix of information and therefore isn't material information. I think you may be right that it's more of a possibly -- I'm speculating entirely here -- more of a short term focus, and less of a real appreciation of the longer term risks of what happens if things aren't addressed, really. And I mean, it may be that, yes, certain impacts of this will really -- if nothing is done in a particular jurisdiction, it'll be 50, 60, 75 years before the real damage is fully apparent. But nonetheless I would be loath to say to a client, oh, don't worry, this issue is not material because nobody prices it differently.

MR. HAMEL: And if I said that, I --

MR. ST. ONGE: No, you didn't. You didn't.

MR. HAMEL: I apologize --

MR. ST. ONGE: I just --

MR. HAMEL: I actually am headed in the other direction, which is -- the point is, through the last

couple of decades, climate change was a scientific concept as to how the environment was going to change and produce consequences negative for our society. I think we've moved to the point where those consequences are observable. And that is why I'm trying to talk about extreme weather and not the CC word. That extreme weather is observable now, and there are various sources of public information, geographically specific, which if I were still a banker and a manager, I would say my procedures of my department would include reviewing that data and discussing it with the issuer, as its materiality in the form of a municipal securities offering. Is that -- that a best practices we might be able to agree on?

MR. ST. ONGE: Well, I think you have to -- each issuer has to make their materiality judgment with their disclosure team. I don't want to --

MR. HAMEL: Agree with that.

MR. ST. ONGE: But I think -- I'd almost ask for a show of hands, just how many issuers, counsel in the audience here, include now a specific section on this? We can argue about whether -- how -- is it enough disclosure, is it the right disclosure -- but a specific section that addresses these types of issues, whether it's environmental, I see energy related matters are

often put into that discussion in a couple of cases I'm aware of, as well as -- cybersecurity topic is specifically discussed now.

How many -- just curious, is that a common practice -- more common practice today than it was? I think it -- that's certainly true. But I think it's becoming much more prevalent.

MR. SKLAROFF: On your -- your last question for us, it is something that appears throughout our disclosure. It's our -- doing our capital projects, it's how it affects our operations. But, Chris, I appreciate the point you're making, and hoping to find common ground with all sides to find a way to disclose important information. I'm not ready to take the "no CC" pledge, because I do think it's important to remember that climate change and climate change risk is more than just bad weather. It is changing the way agriculture functions in parts of our country. It's changing many things that go beyond just the bad storms. So I do think we need to think a little more comprehensively about how we capture all of those impacts.

MR. HAMEL: And I appreciate the point. You know, I -- my observation about using the words "climate change" is an attempt to get away from a potentially

politically controversial term and just deal with what we as professionals are supposed to deal with, which is risk disclosure. And I'll just signal how the world is evolving. This isn't in my notes, it just keeps popping up in my search for information related to this general topic. The insurance -- there's been four or five articles in the last week -- you can Google this -- on the spiking of insurance rates for homes in the United States.

Now, what is that saying to our market? And I think that's the kind of phenomenon -- and I invite you to search out that information and read it for yourself. Insurance companies who provide home insurance are rapidly increasing their rates. What does that mean for our market? And what's that mean for how we should think about our market, if an insurance industry is concerned enough about extreme weather that they are, in multiple cases in double -- increasing their rates by double digits? And what is the implication for that in terms of the issuance of municipal bonds?

MR. FLEMMING: And just before we leave the topic of market appreciation, I'd be remiss if I didn't mention the rating agencies who are paying increased attention to the ESG space. I think on the topic of misconceptions, once again, even though they are factoring in the environmental and the social a bit more, and analyzing that more than they used to -- they kind of always looked at governance, quite frankly. You have statements from agencies such as Moody's that have said that these ESG considerations are having a low to neutral impact on their credit scores, quite frankly.

Fitch came out with a report that probably seven percent of their credit ratings are even impacted by ESG factors. Now, I've already noted in my prior response how there can be financial materiality related to these environmental and social risks, but quite frankly at this time, those considerations are having a very, very minimal impact on credit agency decision-making.

MR. ELION: So, Chris, I want to ask Walter's question to the crowd about an environmental matter of section 2 specifically. So if these environmental risks are economic risks, and have large costs, do you think that it would be helpful for investors if issuers included an environmental matters section, where relevant, obviously, in their documents to avoid missing material disclosures? And I want Walter to follow up with maybe a discussion on the importance of making particularized disclosures rather than just boilerplate.

MR. HAMEL: Okay. I want to -- I want to give

an answer that Walter would agree with. If it's material, it's supposed to be in the OS. If it's not material, it doesn't have to be in the OS, but maybe an issuer and the lawyers and bankers should be thinking about it. And that's the challenge of where we're headed on extreme weather. This isn't -- this isn't a one and done moment. The SEC could have this meeting every year to discuss extreme weather risks, and frankly, probably should. That's defining our lives for the next 20 years.

And I'd like to reference how long the timeframe is, but I also want to emphasize, as I've said, extreme risk -- extreme weather risk is apparent today. So if it is material, it is supposed to be in the offering document. In that context -- and I want Walter to correct me if I misstepped, because I was just a dumb banker, not a lawyer. Within that context, I think our industry needs to be much more alert than it is today, monitoring these circumstances, looking at the available information on climate -- on extreme weather, and making sure that is the subject of a diligent session with their client, so that collectively the team can determine whether it's material.

But to have an offering document session and not reference the potential risk of extreme weather, to

me, is not -- it's something that shouldn't occur very much going forward. Okay. Correct me.

MR. ST. ONGE: I largely agree with you. I don't -- I mean, look, obviously the minimum test for a disclosure document is to meet the legal obligation. That goes without saying. The real question is, as you said, what do you do to go beyond that to, A, just better market your bonds -- to make -- to be seen as a better credit, and one that investors are going to have confidence in, and that the issuer has a good reputation. It goes to the topic that was discussed this morning about voluntary disclosure. Those who provide voluntary disclosure on a regular basis, I think, in general -- they may not be able to quantify it in terms of the pricing of their next bond issue, but in general, are probably going to be seen more favorably by their investors and rating agencies and others, than those who don't, and in part because some of it is simply avoiding surprises. Rating agencies certainly.

You know, sometimes -- I had an issue for a client a number of years ago involving a challenge to a state law that was -- it was a constitutional challenge that ultimately got settled, but it would have had a fairly -- a very material impact on the state budget had it not been settled. And we had a -- we made a

voluntary disclosure because it was -- it was too important not to, and it wasn't going to make sense to let it -- see how it resolved, and then disclose it at the next offering. It just wasn't the way to do it. And everyone agreed this was the thing to do, and it helped keeping the rating agencies informed as it developed -- avoided what could have been a more serious problem.

I think here, you know, it's a similar issue, though, in any of these topics, whether it's extreme weather, the impacts of other social change. I mean, other issues that we've discussed as we prepared for this include the issue of affordable housing, workforce housing -- that's becoming a common topic. We're doing -- in Massachusetts we've done a number of financings for individual communities for workforce housing, particularly for summer areas that have a lot of summer tourists but they don't have -- the businesses can't get the workers, they can't afford to live near where they're supposed to work, and what can be done to address that.

Some of these topics are all things which are being addressed, and I think it's -- the disclosure -- it's not so much that it's a recent development or not. It's always been there. I mean, certain areas of the

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country have always been relatively high housing costs. That's just the nature of what it's been. But is it getting worse? As I said earlier, I think one way to look at these issues -- what's changing? What's -- are these situations getting more severe, creating more pressure, pushing -- creating the economic pressures? And these are all things which -- I don't think disclosure documents in general get into the sort of macroeconomic impacts, necessarily, of changes in -- some demographic information is provided about the aging of the population and all -- and we're seeing -- and how the post-COVID work patterns and living patterns will play out.

They also changed some of that, as we've seen, some areas of the country, people moved to, and can continue to live there and work remotely, and that's going to be just fine, and that actually changes the dynamic for where they moved to, as opposed to people having previously been more in the urban areas and all, but that's another area that we're going to see change coming. And I don't know how you can -- it's going to be hard to describe that in detail until the picture gets a little clearer, but I think at the -- right now what we would want to look for is some -- at least -- maybe it's boilerplate, but it is a risk disclosure that

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these circumstances are changing, and the impact.

There's been a flurry of articles recently about what's happening with commercial real estate in large cities, and the vacancies in buildings, and the likely turnover in leases, and what that means. And it's not just the individual owner of the building, but it's all the businesses that depend upon having a lot of workers downtown day in and day out, five days a week previously, and now it's less. It's maybe 60 percent of that if they're lucky, even if everyone's back three days a week. That still not the same, and the dry cleaners, and the local restaurants, and all of that may be affected, and what does that mean five years, ten years from now?

I don't know that anyone -- really knows that. There can be those who have ideas, but -- and that's -- I think is a much harder question to try to disclose, other than the fact that these things are changing and it's going to take time to see with the real impact is.

MR. SKLAROFF: I want to be mindful of -- while we have many attorneys and practitioners in the audience, we also have many issuers around the country who are watching, and as a colleague, I'm sympathetic to those who are wondering, wow, I'm not futurist, I don't know what the next spearphishing or other cybersecurity

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scam will be, or what the next weather event will be in my community. But I think it's -- what's most helpful is to be able to step back and consider vulnerabilities. And in some cases, periods of success, periods of prosperity can also blind us to those vulnerabilities, as economies shift, as a single employer becomes strong in a community, and those are the sorts of things that we can look to as potential risks as well.

MR. FLEMMING: I would just add to this by saying that sometimes a discussion of disclosure as it relates to risk and vulnerabilities, people view that as kind of a knock, maybe, on the credit or, you know, security, if you will -- and I think frankly disclosure of these topics offers opportunity to discuss your mitigation efforts, to your resiliency efforts, and you can actually spin these things positively. Because oftentimes if you remain silent on these issues, investors see that and it can open the door for them to say, oh, maybe nothing is being done.

Because at times they don't have the time to do their due diligence and dig deeper into what's actually being done, and as you noted earlier, Walter, a lot of municipalities are doing the work. They do have an office of sustainability that they're working on. They do produce these annual reports. They do have a

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website dedicated to these efforts. But oftentimes those things don't appear in the disclosure document. So I think it's important to, one, address what those risks are, but take that as an opportunity to speak to all the positive efforts that you're undertaking.

MR. ST. ONGE: I agree. And I think it highlights again the importance, again, of having good disclosure policies that will provide a formal process to ensure that the right disclosures be made, that there is someone assessing what's being said about this topic on our website, buried somewhere in a page that maybe no one's noticed in a long time or whatever, but it's still out there. The question is, all right, what is being done, what should we be saying about this, and what are we looking at, what are the near term and longer term things which are going to affect the outlook?

Most -- I think most general obligation bond issuers, for example, rarely provide much future looking information or forward looking information about budgets, and maybe the -- it's the current fiscal year outlook, maybe the next fiscal year in terms of a budget proposal that's been put forward to the legislature or city council or whatever, but not longer term projections, typically. I think in a revenue bond case it's more common you may see more longer term

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projections. Indeed, often there are consultant reports for toll roads and things which will have long term projections in order to show the coverage -- projected coverage, and that's a topic, for example.

And Chris, you mentioned it during our conversations, the issue of a gas tax security -- a bond. Well, that may have been a great idea ten years ago when it was first issued, and more bonds have been issued since then, but now if the government is also pushing for a change to electric vehicles, what does that mean as -- what's the revenue mix? Some of these transactions have a mix of transportation revenues. It's not just gasoline tax receipts, but other things. But not always. And it may not be clear what the impact will be in the future, or what decisions the government may make to replace that revenue.

I think it's important to remember though, that most -- almost all of these governments, they're not just using these revenues to pay debt service on bonds, but there actually funding a lot of governmental operations, which presumably they don't want to see go either, so whatever that funding source is, it's going to have to be replaced with something, and their jurisdictions are beginning to experiment with that.

MR. HAMEL: And I really appreciate Walter

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referencing another category of risks, which is this transition risk issue, as opposed to the physical risks that others, including myself, have dwelt on. You know, we're headed to a different society over the next 10 or 20 years. It is the official policy of this administration in Washington to drive us to EV usage by 2030. So I think I did check -- I think there's about $50 billion of gas tax bonds out there. At some point gas tax is not -- is going to be much less than it is today, I'll say it that way.

So we need to be thinking about what other areas of our vibrant economy may be diminished as we transition to a different economy based on a different fuel mix. I'm trying to choose my words carefully. So, what will be the value of oil company assets in the future, and how are they reflected in our tax base currently, and how might that tax base be different in 5, 10, 15, or 20 years -- which, just to remind what everybody knows, the debt we issue is long dated. And so I think that transition risk doesn't get enough attention, and that we as an industry need to spend more time thinking about it.

MR. ELION: Nikolai, I actually wanted to ask you a question as the issuer on our panel. Is there any specific place you may look for guidance on best

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practices for this ESG disclosure? Can you think of any specific approach you might follow?

MR. SKLAROFF: Yeah, I referred to some of these already, and I think we've talked a lot about the GFOA best practices. But our state organizations in California -- that would be CDAC -- have also devoted a lot of attention to this. CDAC in 2020 published a report on climate change disclosure and took a look at 170 plus OSs across the state over a three year period, and noted the important evolution that we're going through in terms of the type of disclosure, how much disclosure we're providing, and hopefully this sort of education that we're providing here today, but through our other organizations, provides that as well.

We also look, of course, to our disclosure counsel as a source of information. I don't want to get into a debate with my friends in the legal community. There are lots of different ways of organizing teams. But my preference is to have a dedicated disclosure counsel, even apart from my bond counsel, who is there from transaction to transaction and understands the organization, gets to know the people within the organization.

I think for me one of the greatest realizations, moving from an investment banking role to

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the other side of the table, I'd probably recommend that in reverse for people younger in their careers, because I would approach my investment banking a lot differently had I been an issuer first. But one of my appreciations has been how many people it takes with an organization to do disclosure properly. You know, we may casually in a financing team meeting throw out, well, you know, it would be great if we had this percentage, and a paragraph. But that may take the work of three or four people who are very far removed from bond finance, which brings up the second thing, which is, creating within an organization not only the policies but also the appreciation of what it means to be providing disclosure to the public markets.

MR. FLEMMING: I would also encourage folks, in addition to the outlets and reasons that you just noted just now, Nikolai, encourage folks to look to their peers, and to who are the market leaders in the industry. Because I think a lot can be learned by assessing what others in the industry have done. Obviously it's important to look to folks that are most relevant to you, because I think a lot of these risks -- like climate change risk for example, are very pertinent to certain areas and not others.

I attended a conference recently that was geared primarily towards CFOs, where they had a number of breakout sessions -- allowed CFOs to speak candidly about some of their experiences and what they've learned over time and they thought to be invaluable. So I would say, if you're looking for kind of standards, GFOA best practices, absolutely. But certainly look towards your peers as well, and, kind of, who's, kind of, setting the stage, and who are the market leaders.

MR. SKLAROFF: And, you know, one of the things that came out of the CDAC report was, at the time, finding people who were a mile apart, who had very different approaches to disclosing climate conditions. And while we don't want people repeating the mistakes of their peers, it can be helpful just to read overlapping jurisdiction and neighboring jurisdiction OSs.

MR. ST. ONGE: Also, you know, it was mentioned earlier, I think the second session this morning, the value of training, disclosure training, which really goes to your point, Nikolai, about how to impress upon everybody involved. And it can -- it should be a broad group. Why it's done, what the importance of it is, and I think that helps also just as another way to help generate information moving up the chain, because people become a little more sensitive to it through the training session. And maybe become

aware, wait a minute, I had a question about something.

Sometimes, as you said -- and I think -- set up for this -- you know, the disclosure team may decide something ends up on the floor. It's not material, it doesn't need to be included. But there's a discussion about it, and it's considered. And I think that's -- that, again, goes to having the right process to help that these questions, rather than individuals making their own decisions on their own experience, or worse, just simply relying on it last year's document and updating that. That's a starting place, but not the ending place.

MR. ELION: So, Jamiyl, you've been working in a lot of the social work risks through your discussion. That's really good, because those risks require the same disclosure as environmental and cyber risks of material. Can you give me a good example of something that might surprise people is a broad risk in the social category?

MR. FLEMMING: Sure. I think I'd start by, as you noted, mentioning some of the more common social risks. We've highlighted some of those today. I would say public safety is a huge social risk that I know large number of my clients grapple with. I would say affordable housing, I think Walter mentioned earlier, is another social risk that I think requires disclosure in

certain instances. But I think we've spoken to about how sometimes -- I'm going to use the phrase, apologies -- climate change can be -- that climate change can be a bit more nuanced at times, not always the hurricanes or the earthquakes or whatnot.

So can be said for social risks as well. I think maybe a year or so ago I came across an issuance that was for broadband Internet access, which I did not look at initially as a social risk. But frankly as we as a society implement telecommunications, you know, more frequently, there are areas of our country where the constituents don't have access to broadband Internet. And in certain instances it can actually be impossible for them to receive consultation from a physician with, you know, an Internet source that's lacking. So, again, similar to climate change, some of these social risks can also be a bit more nuanced, in particular, as well.

MR. ELION: Great, thanks. I know that our panel started a little early, but we actually have gone over our time. But we want to give some time for questions. So if there are any questions -- all right. Well, thank you everyone. Thank you everyone for being here.

(Whereupon, at 2:43 p.m., a recess was taken.)

MR. ALLOGRAMENTO: Welcome back. Before we get into the final panel, I would like to introduce Commissioner Hester Peirce, who has served on the Commission since 2018. Commissioner Peirce regrets that she is not able to join us today in person, but she has graciously recorded her remarks on video for us to present to you. Thank you.

COMMISSIONER PEIRCE: I'm grateful for the chance to be part of today's conference, albeit only a virtual part. Thank you to Dave Sanchez and the Office of Municipal Securities for the important work you do, including outreach events like this conference. Convening experts and people with firsthand knowledge is a good way to work through difficult issues. Roundtables like those that make up today's agenda are a tool that we should employ to think through the many complicated and consequential issues on the Commission's agenda. To all the panelists, thank you for taking part in the conference, and to those watching, thank you for your interest.

The views that I will share with you are my own and not necessarily those of the SEC or my fellow commissioners. I was thinking back recently to running cross-country in ninth grade. I used to ride my bike over to Forest Hill Park in suburban Cleveland, Ohio, where my team practiced. John D. Rockefeller, Jr. gave the 235 acre site of his family's former summer home for use as a park 85 years ago. Except for one dastardly hill, the beautiful park was a beautiful place to run.

My ninth grade self was unaware of the interesting history of the place, but as I looked into that history recently, I notice a theme: municipal securities. When Rockefeller donated it, Forest Hill Park became part of a larger park system, which, according to one source, was spurred by a bond issue in 1916. 50 years later, another bond issuance funded the construction of a community center at one end of the Forest Hill Park, where my brother played hockey. And 30 years after that, another bond issuance spurred, in the words of one observer, a bitter, bruising political battle, in which historic preservationists argue that the expansion would destroy the Rockefeller legacy.

But the municipal bonds showed up with just a bit of historical -- reminded me how municipal securities intertwine with our daily lives. How varied are the contributions they make to our lives, and thus, how careful we must be in overseeing the municipal securities markets. Bearing this context in mind, I will spend a few minutes discussing data standardization under the Federal Data Transparency Act, and in

connection with environmental, social, and governance issues. In both cases, an insistence on standardization can obscure real differences across municipal issuers.

Given that this disclosure conference is the first since the passage of the FDTA, let me start there. While I would appreciate the great value of structured data to securities analysis, I have doubts about imposing uniform data standards, which invariably require the use of regulator specified technologies. Congress made clear in the FDTA, however, that it expects the Commission and other financial regulators to require the use of structured data in financial reporting, including with respect to municipal securities, for information submitted to the municipal securities rulemaking board.

I look forward to engaging during the implementation process with market participants, particularly with municipal issuers and investors. Their participation in the process will be crucial to its success. The unique characteristics of the municipal bond market will require us to consider carefully how the structured data mandate should apply. After all, if the costs of a public municipal bond offering get too high, municipal issuers can raise funds in ways other than selling bonds, such as through the

private markets or bank financing. Moreover, because the FDTA empowers a Commission to require structured data only with respect to, "information submitted to the MSRB," our implementation of structured data requirements inadvertently could deprive investors of information, if issuers reduce their voluntary disclosures because the expense of tagging these disclosures proves to be too high.

Although broad, the statutory mandate expressly reserves the Commission's ability to tailor requirements, and we should use that authority to get the balance right. To do so, we need more than just enthusiastic hand waving about the general benefit of increased transparency. We need a frank discussion grounded in the municipal market's unique qualities, but what concrete benefit we expect structured data to produce. We need to understand what structured data will make possible that is not possible now, and how these new possibilities will advance the quality of these disclosures in ways that benefit our markets and investors.

For example, if a key benefit of structured data is in empowering analysts to aggregate data across issuers, how does that aggregation benefit participants in this specific market? Do municipal issuers face

unique costs in structuring their data? Are there tools upon which small and infrequent municipal securities issuers could rely to minimize these costs? How can the SEC best assist municipal issuers seeking to standardize their data? Will standardization of data obscure important distinctions across municipal securities or their issuers?

Only after we've had this discussion will we be ready to determine how the Commission should tailor the structured data mandates to the municipal market. For example, given the great diversity in sizes and types of municipal issuers, the commission may determine that the benefits of requiring certain issuers to use structured data are minimal, or that the costs are too high. Similarly, given the nature of the disclosures required under MSRB rule G-32 and Exchange Act rule 15c2-12, the Commission may determine that a blanket imposition of the structured data requirement to all information provided to the MSRB will not provide significant benefits to market.

Moreover, the act applies not only to information provided by municipal issuers, but also presumably to information provided to the MSRB by Commission regulated market participants, such as broker-dealers or municipal advisors, and the Commission will need to give careful thought to whether structuring this information also makes sense. Of paramount importance as we think about the scope of tailoring FDTA requirements, our focus must be on what investors need and not on data that might be useful for other purposes.

The need to focus on investors leads me right to environmental social and government, or ESG, issues. Calls for greater consideration of ESG risks by corporate and municipal issuers often come from parties other than investors. The calls for municipal issuers to make ESG risk disclosures often come from non-investors seeking to influence issuer behavior rather than investors seeking to allocate capital and understand financially material information. Many companies in their municipalities often make disclosures that are designed for these non-investor audiences, but some interested parties want ESG disclosures regardless of their financial materiality to be included in securities disclosures.

The MSRB recently dipped a toe into the ESG waters with a request for information on environmental, social, and governance practices in the municipal securities market. The comments in response were telling. The MSRB summarized one common sentiment. Regulatory action is premature. Another frequently

expressed view was that the MSRB, in issuing a request for information that might be read as suggesting that it has a role in mandating ESG disclosures had strayed outside of its mandate.

It can be tempting for regulators to attempt to brute force ESG disclosures through regulatory mandates. But allowing voluntary efforts to play out is more prudent. Voluntary efforts in helping issuers think through risks that might fall within the ESG bucket may be helpful without impinging on issuers' ability to tell the unique stories. Whether the Commission or the MSRB has anything positive to contribute at this stage seems doubtful. As the Government Finance Officers Association pointed out in its response to the MSRB's request for comment, at this early stage, imposing a uniform reporting standard would not provide meaningful assistance for investors, and would cause needless work for issuers.

The MSRB also has taken interest in green bonds and other sustainable designations for municipal securities. Here, too, despite the enthusiasm of some investors for such bonds, caution is in order. First, regulators are not well-equipped to decide what's sustainable. Even with the technical, economic, and scientific advice that they have, regulatory

prognostications about which activities are likely to be most socially beneficial are likely to be flawed.

Second, such designations can be very difficult in the municipal securities context. After all, nearly every government action is justified in terms of its public, read social, benefits. And many, if not most, physical infrastructure projects are required to undergo environmental review. Does it therefore follow that every government bond issuer should qualify for an IS rating? If not, who is in a position to make that determination? Can an environmental rating be awarded prior to a successful environmental impact review, or would it be appropriate to assign a low E rating even if that review is positive? Is a bond issuance that funds the expansion of my beloved Forest Hill Park, by nature -- no pun intended -- sustainable, or is it not sustainable, because in the words of one opponent, it would desecrate the park and constitute the worst example of park planning I've ever seen?

Third, a sustainability taxonomy for municipal securities will end up driving private capital flows, even if the taxonomy is not -- even if that taxonomy is fundamentally flawed, it will drive capital flows in the direction of those fundamental flaws. The decisions

embedded in the taxonomy will be reflected in lower financing costs for certain types of infrastructure projects, higher costs for others, and some municipal issuers might be disadvantaged because the taxonomy doesn't adequately capture the benefits of the project being funded.

Thank you for your time today. On my next run through Forest Hill Park, I will surely think of Rockefeller's generous gift and the municipal bond offerings that have enabled multiple generations to enjoy that gift. May the rest of your conference this afternoon be as enjoyable as a run the park. Thank you.

MR. ALLOGRAMENTO: We thank Commissioner Peirce for those remarks. I would now like to introduce our final panel of the day which will cover current disclosure topics in the municipal securities market. It will be moderated by Dave Sanchez, the director of our office, and will include four panelists who I will introduce now. The first is LeAnn Gaunt, who joined the SEC in 2000, and was named chief of the Enforcement Division's Public Finance Abuse Unit in 2013. This unit investigates potential violations of the federal securities laws in the area of public finance, including municipal securities.

Hillary Phelps. Hillary Phelps is a partner and member of Chapman's National Public Finance Department, where she serves as bond counsel, disclosure counsel, and underwriting counsel for a variety of tax-exempt and taxable financings throughout the country. Previously, Hillary had served as senior counsel in the SEC's OMS.

Brian Reilly. Brian is a senior municipal advisor and managing director at Ehlers. As a member of their management team, he presently leads a team of 13 registered municipal advisors and is also the president of Ehlers Investment Partners, a federally registered investment advisor, with more than $2 billion in assets under management.

Jodie Smith. Jodie is a shareholder in the public finance group at Maynard in Birmingham, Alabama, and he has over 25 years of experience and focuses on tax-advantaged finance and securities transactions, and on infrastructure transactions. Jodie now serves as the president of the National Association of Bond Lawyers.

Without further do, Dave, thank you.

MR. SANCHEZ: Thank you very much, Adam. So, in today's last session, we're going to kind of hit you guys with a smorgasbord lightning round style, talking about various current disclosure topics. We're going to start out with municipal advisor responsibilities for

disclosure. Then were going to talk about the limited offering exemption under Exchange Act rule 15c2-12. We're going to talk about a governing body of an issuer's reliance on professional staff with respect to issuers' finances. Talk about conduit issuers' responsibilities for disclosure. And if we have time, a couple of other topics.

So when folks are thinking about potential questions at the end of the day, you can cover any of these topics, but also any other current disclosure topics you think might be of interest to the Commission. So just starting with the first topic that I mentioned, which is municipal advisory responsibilities for disclosure, it's going to start out with an open question, which is -- and this is going to go, you know, purely at random to our only municipal advisor on the panel.

In your view, Brian, how does a municipal advisor's role as a fiduciary relate to its disclosure responsibilities? In particular, how would you distinguish between a municipal advisor's fiduciary duty and disclosure responsibilities as contemplated by an engagement letter?

MR. REILLY: It was kind of you to put me first in a room full of primarily lawyers, I suspect.

So at least you can hold your attention to the analysts and to the rest of the lawyers as the Q&A continues. I would say it's probably best for me to give a little sense as to the lens. I view this through -- which as primarily relates to our practice -- and that's, as an advisory firm, we work with our issuers on, I'd say, a little over -- not this year, but on a regular basis, about 300 securities -- municipal securities offerings a year.

I'd say anywhere from 80 to 85 percent of those are sold through competitive underwriting. In almost all of those cases, we are the party responsible for preparing the official statement. The rest of those are largely negotiated. And in many of those occasions we are also preparing the official statement. It does not mean that there is not underwriter's counsel involved, working directly as part of the team. And certainly as a part of our competitive issues and a bulk of the negotiated issues, there's also disclosure counsel. I'd say about a third of the entirety, there is disclosure counsel on the transaction.

So I'd also point out some of the recent guidance that has been released by the Commission, largely as relates to the obligations of municipal advisors in a competitive sale, which I think looks back

actually to some prior guidance dating back into the 90s. But in those particular circumstances, it really speaks to, you know, what primarily the diligence obligations of the underwriter are in a securities offering, but then states, in a competitive transaction the issuer has its own obligations in all circumstances, but the party that's largely responsible for producing the offering documents then steps into some degree the diligence obligations of the underwriter, which makes logical sense in a big regard. And maybe I'll also ask to -- what's the statute of limitations on securities law violations?

MR. SANCHEZ: That's LeAnn's question.

MR. REILLY: Yeah, yeah -- that's -- yeah. I'll -- whoever answers it, I'll appreciate it. But, you know, I -- Ehlers as a business has been around for almost 70 years, and so the diligence -- if you go back to, I'd say, even the 60s, I've looked at some of the official statements that we prepared -- really consisted of a tour of the local jurisdiction and taking pictures of the nicest house in that city, and then describing how beautiful a place it was to live. So I'm not sure that meets the standards of today's environment -- so we do take this seriously. And so from our perspective, stepping into that role and understanding what our obligations are -- before I hit the fiduciary duty, I'd actually probably start with the duty of care, Dave, and think about it from what our clients need. And they are going to rely on us to help them understand what their own diligence obligations are with respect to primary offering municipal securities.

So it's really an intimate part of what we would do on a day-to-day basis, even setting aside the notion that we'd be preparing the offering document. If you think about it from the fiduciary standard, you start with the notion that you're going to put their interests above your own. I mean, that's pretty much the first thing that comes into your mind. But ultimately it boils down to, as you stated, your -- the nature of your engagement. You have to do what it is you say you're going to do. So if you provide an engagement letter with the scope of work, that states on no uncertain terms that you are responsible as a firm for preparing the offering document, you had better have, I would hope, a robust system of policies and procedures in place to demonstrate the diligence that you've undertaken.

Furthermore, as I've stated, under the duty of care, the issuer, your client, is going to assume that you're going to help them out, at least to some degree,

with their diligence obligations. And I would even extend that to a negotiated offering. A lot of what we do in those transactions is really assist the issuer with the diligence requirements of the underwriter and its counsel, and help really kind of be the auxiliary staff in that regard, to the greatest degree we can.

So from our perspective, we do have what I would call a very robust system of policies and procedures, which also brings into play supervisory structure. So for those things that kind of fall out of the framework from our more day-to-day perhaps sometimes mundane life, we do a lot of general obligation and essential purpose utility revenue obligations. For those circumstances where we don't have prior practice preparing an offering document for a particular credit or structure, we shouldn't be doing that. You can't hold yourself out to be something you are not. So even if you tell somebody, we'll prepare the offering document, if you have no history of doing so is a business or as an individual, and you specifically don't have any prior experience with that particular type of obligation, the structure, the credit, et cetera, you really should not be stepping into that role.

I would also say, too, in that regard, you know, most of our -- most of our clients do not have

policies and procedures regarding participation in a primary offering security. So, again, we're looking at it from, we're an extension of them, we representing them throughout the transaction. As the preparer of the document, we really need to demonstrate to potentially an examiner that we've done our diligence, but also that the issuer can demonstrate that they've conducted the diligence necessary to put out a securities offering document.

MR. SANCHEZ: So you mentioned a couple things that are a little unique. So obviously you do mostly competitive sales, and then you also mentioned, you know, that you have engagement letters in place. But how would you feel about a situation where your engagement letter -- or some of your colleagues, where engagement letters aren't necessarily clear, but also very interesting what you mentioned -- was that issuers will often push you to help even if your engagement letter may not -- may not say that you're helping with disclosure. So how do you think that would affect your responsibilities with respect to disclosure?

MR. REILLY: I think it should almost be assumed that circumstances are going to change. From our practice, I'm trying to practical in terms of how I speak about this. I can't really think of an occasion

where we would absolutely disclaim any responsibility for assisting the issuer of preparation of the official statement. Even if we're not the preparer of record, they're going to look to us to assist them in crafting some of the language. Certainly at the outset, you may state one thing, but that may evolve over time. I think we've all been involved in transactions that really kind of change shape and form due to a number of situations, whether it be circumstances of the issuer market, circumstances, et cetera.

If you change your role and the nature of the engagement changes, you should be amending your scope of work so that it properly identifies, in what capacity will you be participating in preparation of the offering document. You know, if there is -- if there are too many -- there are certain things you can't disclaim. Just because you stated, you know, in the official statement -- I mean, if you are functionally helping along the way -- and there is obviously a record of that -- what you're doing and practice is not mirroring your scope of work.

But in any event, you should be amending, from our perspective, your scope of engagement to reflect what you are providing, and also so that your duties align with what you've stated in your client agreement.

MR. SANCHEZ: I don't know, Jodie, Hillary, LeAnn, if you have any thoughts about what was mentioned --

MR. SMITH: I would -- I'm sure there's some in the audience, and perhaps online as well, that are saying, hold on, I thought lawyers drafted official statements. Talk a little bit about -- and I think there's variability from region to region about who sort of takes the pen on offering documents. Talk a little bit -- Brian, you mentioned that disclosure counsel is involved in some of your deals where y'all are drafting the offering document. What role does disclosure counsel play in those deals?

MR. REILLY: So, disclosure counsel is typically going to engage in their own diligence. We become, to some degree, a part of that on behalf of the issuer. We will also participate in the diligence call with disclosure counsel. If there is not disclosure counsel, we will hold a diligence call. It won't matter that exactly, because were not lawyers. But were trying to at least put in place a structure by which the issuer and ourselves as a preparer can -- can demonstrate what's occurred, to best ensure the representations and the statements made in the official statement.

When disclosure counsel is involved, I would

say the robustness of the diligence certainly increases. There are certain things that, as -- we're not attorneys, and so we're not going to hold ourselves out as such. And if things rise to the level of needing legal guidance on -- whether it be how you craft language around risk factors, things of that nature, that are little more sensitive, I certainly don't want our team venturing into that realm. And it's actually very nice to have the legal team around you that can assist in that regard.

They're looking at things that we don't always -- you know, a review of any litigation that might be outstanding, things of those major, or giving guidance on if there is, how to potentially speak to any litigation that might be outstanding. At the end, they're certainly going to provide a diligence file, and essentially a reliance or 10b-5 letter to the issuer for their files as well. We have not, as a firm, gone to the extent of engaging disclosure counsel on our own. We can rely on certain things from the issuer's disclosure counsel, but certainly it's not an attorney-client relationship for the advisory firm.

MR. SMITH: Are y'all typically asked to give some sort of 10b-5 certification with respect to the disclosure y'all prepared? Usually when I have been

asked to take the pen, I'm also asked to give some sort of 10b-5 negative assurance letter in connection with closing. Sort, how does that play out with y'alls role as the primary drafter?

MR. REILLY: Yup. From our perspective, no, that is not the case. I also want to characterize it as, when we're preparing the documents -- I don't want to call everything we do vanilla, for the most part -- but there -- I thought it was very well said in the last panel, don't live in a silo. Right? Go out to NABL, and look at guidance on, you know, crafting disclosure for certain credit. NFMA has white papers or other guidance. There are other transactions in the marketplace that you can certainly go and look at the disclosures that are made. So if you're not in a place where you're kind of on top of your game and regularly reviewing what's in the market, it's probably not an area of your business that you want to do a whole lot with, and maybe just let it sit on the shelf.

MS. PHELPS: I just wanted to add, just because it's a general point, I think this is an interesting topic, and I was, you know, I guess, surprised to see it on the list, just only because it's something that isn't really talked about a lot. It wasn't something that came up in the context of the

municipal advisor roles, in terms -- in the -- in the adopting release. It wasn't really -- it's not discussed in the MSRB rule G42. And anything that exists with respect to this topic is, you know, pre MA rule, pre Dodd-Frank. There's -- I think there's a footnote in the 1988 release to this topic. There's a couple enforcement actions, again, that predate the MA rule.

So it's just an interesting topic, and I don't know that all municipal advisors are necessarily thinking about it, in terms of their liability that exists when they're involved with preparing the offering document.

MR. REILLY: Is that a warning?

MS. PHELPS: No. It's just a thought that -- it probably warrants further discussion and maybe some guidance if it is something that's, you know --

MR. REILLY: I would say, we're -- you know, the size of our firm lends itself to being able to put in place systems of process at the staff level, rising up to the advisory level. If things are kind of out of the normal character, there's a supervisory structure in place to make certain that we work with our regulated MAs so that they're not operating, kind of -- I won't say in the shadows, but they're doing things that potentially they shouldn't. Ultimately that -- you know, that's going to implement our clients, the issuers. It's their disclosure document even though we're assisting with it. So we want to hold them in the highest regard and make sure that the disclosures that they're sending forth are materially accurate and free of omissions.

MS. PHELPS: That wasn't meant to be, like, you're going to get in trouble. It was meant to be that I think that it's a topic that warrants potentially some guidance if it is something that's going to, you know, be under the -- you know, the SEC is going to be concerned about it. So -- and to guide your obligation.

MR. SANCHEZ: So Hillary anticipated my next question, which was, you know, one, I'm happy that our panel got to throw back to the oldest SEC Commission of the day, to 1988, and a footnote, no less. But, you know, is there anything you want to see from us, Brian or anybody else, with respect to municipal advisory roles and disclosure? Or, you know, it's okay to say nothing.

MR. REILLY: Nothing specific to the MA rule. I would only bring up the same things that would probably have been said throughout the course of the day. You know, I'm happy to be surrounded by lawyers

all the time, and so we rely on them quite heavily in terms of providing direction on crafting certain statements and just, you know, being -- it's always a team effort, right? And ultimately we're surrounding the issuer with our advice and guidance in making sure they're in the proper place.

There are always occasions where there's going to be a lack of guidance, and a lot of that revolves around materiality. And so sometimes our role is to kind of rein in the issuer to some degree, and try to help them understand, if you're saying certain things, you may be committing yourself to continuing to say them for a very long period of time, and perhaps that's not the best approach.

MR. SANCHEZ: Okay. Does anyone have any final thoughts on this topic?

MR. SMITH: I was just curious, how do you go about drafting, Brian? I mean, when I work with younger lawyers, my sort of point is, you could draft it freehand from scratch, you could start with a form, you could start from precedent. I'm assuming y'all are typically starting from some sort of precedent, a comparable GO, if you haven't worked with that issuer before, or the last GO deal for them if you have worked with them before.

MR. REILLY: So we have a template that we would typically use depending upon the credit and potentially the structure. Largely the credit. We go through essentially a diligence process with the issuer, through, say, a questionnaire. A lot of it is know your client, to be honest. And so if you have a good understanding of your client, who they are, you know, what circumstances they're under, you can help them understand their own risk profile to a large degree. But working off templates, having a very, to a large degree, rigid but also sometimes flexible process and set of policies and procedures, we engage with underwriters regularly, newer in the market, nearly, on average, every day.

And so listening to what the desks have to say -- it might come up later during our Q&A, but we also have a dissemination agent practice, and, you know, we have over 1,000 clients in that regard. So the things related to, say, lookbacks to compliance with CDAs, we have staff that are extremely capable in that regard -- understand the rules. And so we can help look back at compliance aspects, contemplate potential language. If we need guidance, obviously we will get the attorneys involved if it's something a little bit out of the ordinary, or it's at least questionable.

Invariably, you will get a compliance department at a dealer who will tell their underwriting desk, if you want to buy this deal, we see this, there's a little hair on the continuing disclosure, and if you want to purchase it, you need to contact the MA that's doing the competitive sale and tell them that we see this. If we are the winning bid, we want this language in there. And if not, then we're out.

MR. SMITH: I ask one last question?

MR. SANCHEZ: Absolutely.

MR. SMITH: More for LeAnn, the -- you mentioned your engagement letter, and sort of scope of services. And I think there -- most lawyers, I mean, typically with -- bond counsel may have certain sections of an offering document that it takes ownership of. That's permissible, LeAnn, right? I mean, if you've got a clearly defined engagement letter that says, we're not doing disclosure -- because, in my experience, the MAs that I typically deal with in the markets I'm working in, they don't -- they sort of -- like Monty Python and the Holy Grail, they run away from disclosure. So -- and -- but it is permissible for those MAs to say, we're not taking a role in disclosure.

MS. GAUNT: Yeah, I mean, I think at least our experience has been that some contracts do try to carve out, you know, what we're going to do. And I would emphasize, I think Brian's point is a really good one, that documenting the engagement in a timely fashion -- I mean, one thing I think we're seeing, as an aside, is some MAs aren't doing that in a timely fashion. They're doing it kind of halfway through the engagement, or what have you. And it's just a -- that's just a real mess. And there's really no reason for it.

So in addition to documenting it in a timely fashion, you know, documenting it clearly, and then, you know, God forbid you find yourself in an enforcement environment, we're obviously going to be looking at the engagement letter. But that would not be the end of the story. And I think that goes a little bit maybe to Dave's point that -- you know, to the extent you've carved it out, or you've somehow, you know, disclaimed that -- you know, that any intent to provide advice on disclosure, we will then look to see whether you actually did. Because I think that pulled you back into the -- into the fiduciary duty, and so it's probably the starting place, and Brian's point is well taken. Either, you know, keep those parameters and respect them, or update your -- update your agreement.

MR. REILLY: And I should probably supplement with, when it comes to things like the taxing matters

section, we are relying on bond counsel to provide that language that's in their purview. Security largely is developed through statutory language as well on many occasions, and again, in some of the authorization and the proceedings that occur before issuance and sale of the transaction, some of those things, we rely on the bond attorneys to provide us with proper language, allow them to review and comment. And they can review and comment on the whole thing, and to whatever degree we'll certainly take their input. But we are working with the other finance team members to incorporate their bodies of expertise into the offering document, where that is not in our wheelhouse.

MR. SANCHEZ: So, before we move onto the next topic, I just want to ask one more follow-up question from a factual perspective, and keep you on the hot seat, Brian. Do you notice a difference in municipal advisor participation in primary market disclosure versus secondary market disclosure? For example, you said there was an expectation for you to be involved while producing a primary offering document. Do you have that same expectation with respect to secondary market disclosure, and what you see generally in the market?

MR. REILLY: I suppose that would be the

difference between, like, and endangered species and an extinct species. We're probably unique to some degree in the amount of offering documents we prepare. I know there are others, and I thought the point was well made. It is geographical, and it's just historical practice, right, and so, you know, I've been doing this for about 20 years. The firm was doing that, and in that market that's commonplace in the markets we operate, other than a handful of states where we don't, and we don't draft the documents.

As far as secondary disclosure, again, it is, to some degree, geographic, and there's been a very consistent practice over time in the markets where we operate, that the municipal -- have also had dissemination agent practices. Now, that's more of a ministerial duty, in -- from my perspective, and that you have a set of requirements set out in the CDA. We're really helping the issuer comply, right, we're intaking information from them, putting it into the format that is required of the EMMA system, and posting it out there.

Periodically -- there was a big discussion on voluntary disclosures -- will have our clients ask us about those things. My first response is typically, let's get the lawyers on the phone to talk through this

and hash through it. But a lot of that has to do with threshold of materiality by large, but we're not, you know, the end all be all in that regard. So we definitely see fewer municipal advisors working in the context of continuing disclosure, as you do in primary disclosure.

MR. SANCHEZ: Great. Okay. So we're going to switch topics.

MS. PHELPS: Can I say just one thing, Dave?

MR. SANCHEZ: Oh, absolutely.

MS. PHELPS: I was just going to say that I -- with respect to the secondary market disclosure, that I think that there is even more of -- there's a greater chance of something going wrong there, with respect to those disclosures, because you have less lawyers at the table nitpicking everything. And so, you know, with voluntary disclosures, of course, there's some that are very rout. You know, you notify of a change in rating or a change in the trustee. But if you have something where you're presenting financial information or budgetary information or something like that, it's not necessarily enough just to throw that up on EMMA.

You may need to be asking some questions about, you know, since the -- this is as of this date. Is there anything that's happened since as of that date?

Is there anything in the future that could make this misleading, just by throwing it up on EMMA? So I think in some cases, you know, to your point, like, you know, calling the lawyers, it can be useful where it's things that are maybe -- you know, it's not straightforward necessarily, to avoid any issuer liability for their secondary market disclosures.

MR. SANCHEZ: Okay. So recently the Division of Enforcement has brought actions against multiple dealers for violating Exchange Act rule 15c2-12's limited offering exemption. I'm going to first have LeAnn talk a little bit about those cases, and then we'll have a little bit of discussion about its impact on the market.

MS. PHELPS: Thanks, Dave. And actually, Chair Gensler reference these in his remarks at the outset. So, starting last September, the Commission took enforcement action against six underwriters for violating Exchange Act rule 15c2-12. Those cases involved the misuse of what is commonly referred to as the limited offering exemption. And maybe everybody here knows what that is, but I actually didn't know what it was until not that long ago. And for the benefit of folks who don't, you know, highest level, everybody here knows, obviously, municipal issuers are exempt from

standard registration and reporting provisions of the securities laws, and that 15c2-12 creates similar reporting requirements by indirectly imposing disclosure requirements on underwriters -- directly on underwriters to indirectly impose them on issuers.

Well, 15c2-12's focus is on offerings that involve, generally, offerings to the general public and securities that are likely to be actively traded on the secondary market. And so there is a sense that some offerings are not going to be offered to the general public, and maybe are going to be actively traded, and so there's a -- there's an exemption written into 15c2-12 called the limited offering exemption, for offerings which are going to be offered to a smaller number of people, where they're intended to be held and not actively traded in the secondary market.

If you will bear with me, I will read -- I will read you the requirements of that rule. So, the offering exemption applies to primary offerings of municipal securities. If the offerings are sold and authorized denominations of $100,000 or more -- so that's a pretty high minimum denom -- and to no more than 35 persons -- so that's your limited group of purchasers -- not a general public offering -- each of whom -- each of the 35 -- each of whom, the underwriter

reasonably believes, has two qualities: one, has such knowledge and experience in financial -- in business matters that it is capable of evaluating the merits and risks of the prospective investment. So, a sense that the purchaser is sophisticated. And, two, is not purchasing for more than one account, or with a view to distributing the securities. So, purchasing them, essentially, for their own account, and to hold them and not to resell them.

So the Commission -- so, in our enforcement actions we found that the underwriters at issue -- the six underwriters at issue -- had used the limited offering exemption, but that they had not taken steps to form that reasonable belief that the securities were being sold to that specific limited group of investors. Our case is focused on sales to broker-dealers, who typically are buying on behalf of somebody else, and therefore are going to be reselling, and to investment advisors with separately managed accounts. And those, again, are typically going to be sold into separately managed accounts.

And so, in each case, we found that the underwriters had sold the bonds to those two groups of people -- two groups of purchasers -- and did not inquire or otherwise determine if the broker-dealers or

the investment advisers were purchasing the securities for their own account, or whether they were purchasing them for more than one account or for distribution. They also failed to ascertain for whom the broker-dealers and investment advisors were purchasing the securities -- so, who were the customers or the clients who were going to be the downstream purchasers.

Because they didn't make that inquiry, they were unable to form a reasonable belief that the broker-dealers and investment advisors were purchasing the securities for investors who possess the necessary knowledge and experience to evaluate the investments. And so the Commission found that those six firms were therefore not -- those firms were not entitled to rely on the exemption, and the investors should have been provided with the disclosure documents that are required by 15c2-12, and that the firms therefore violated rule 15c2-12.

And so we've brought six cases. Five of them settled in administrative proceedings, in which each of the firms agreed to censures, cease and desist orders, disgorgement, and prejudgment interest, and civil penalties. And then one matter is in in litigation, and is pending in the Southern District of New York.

MR. SANCHEZ: So, I'll put this question to

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Hillary first. In your view, what has been the impact of these enforcement actions on disclosure practices, especially as it relates to how firms monitor compliance with the limited offerings exemption, after these actions?

MS. PHELPS: Yeah, I tend to think of this both in terms of, like, my role as underwriter's counsel, and as bond counsel. With respect to underwriter's counsel -- so, I think that these cases are really looking at a type of transaction where, honestly, I don't know that they were underwriter's counsel involved, or -- nor would they need to have been. They're -- I don't think that their investor letters -- different than the typical limited offering that I work on, where there is often some disclosure, maybe some form of a continuing disclosure agreement, and there isn't a very tight investor letter.

I will say that, in talking to some of my clients, I understand that, you know, their policies and procedures internally have definitely tightened up with respect to this matter. We're seeing more kind of involvement of internal council and oversight with these types of deals. Kind of very similar kind of reaction, like, kind of post MCDC, where you -- you know, the SEC is looking very carefully at a very specific issue.

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I'll say that the transactions I work on, as I noted, often have some kind of offering document. So I think that we're going to see a move to just -- let's just fully comply with 15c2-12 in terms of the offering document and the continuing disclosure. We're already kind of three quarters of the way there anyway. For various reasons we have not historically complied, and we haven't had to comply, because we have, you know, gotten an investor letter with all of the representations in there. So I think we could see some of that.

From kind of looking at -- from the other side of things, which is an interesting perspective, because of course 15c2-12 doesn't apply directly to issuers in municipal securities, I do think that there is a little bit of consternation from the issuer community and their counsel with respect to these cases, to the extent that they're selling securities where their investor letters have not been obtained, but there has been a representation made by the underwriter of the bonds. If they are going to meet the requirements of 15c2-12 with respect to, you know, determining that the investors are sophisticated and they're going to -- they're going to hold them for their own account -- and so, you know, issuers are thinking, wait a second, should I really be

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having my securities out in the market with limited disclosure that could end up potentially in the hands of someone they're not supposed to end up in?

Even though that's really not -- it's not their responsibility, at the same time I think there is some nervousness that they could get, you know, pulled into something, or they could be looked unfavorably in the market if, you know, something -- if they ended up in the wrong hands. So I think in that sense, I think there will be at least a minimum of, like, a hard requirement of an investor letter in those types of deals going forward. And I would imagine, too, that a lot of the banks are requiring them anyway now. But, so, there's kind of -- there's a lot going on.

And, you know, kind of -- it's kind of -- it's a tricky issue to think about as a lawyer, in terms of, there's certain things I can do to help my clients ensure that they are meeting the requirements of 15c2 -- of the limited offering exemption. But there are certain things internally that are happening with respect to monitoring and making sure that they're actually -- they're identifying these investors as sophisticated. We can -- you know, we'll get them to sign off on the letter, but are there certain steps -- additional steps that need to be taken to kind of, you

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know, solidify that expectation that they are who they say they are?

MR. SMITH: So, LeAnn, were there investment letters on any of these that were settled? Or --

MS. GAUNT: I'm going to be limited in what I can say, because one of the matters is still in litigation. But the public documents make it clear that the underwriters took no steps -- from which you can draw what inference you'd like.

MS. PHELPS: And I guess the other thing, too, kind of, Jodie, talking about investor -- that is not the -- there is nowhere that says anywhere in any of the SEC guidance that investor letters -- that you need one, or that is enough to get you where you need to be. I think it's just been historically used -- seen as a good tool to create a paper trail, and to get those representations. But I do think that questions are raised, you know, because there are kind of certain statements made, and the settlements that there might -- further investigation may need to be made beyond just an investment letter, which, you know --

MR. SMITH: Yeah, that's sort of the way I was going, is it sufficient to get an investment letter?

MS. GAUNT: You know, again, I'm not in a position to answer a hypothetical, but I -- you know, what -- all I can really say is that in this -- in these situations where no inquiry was made, you know -- and an investment letter I think would be a -- kind of an inquiry -- that isn't sufficient. And so -- but, you know, I do think Hillary's point is a good one. I mean, I am aware of a thing called investor letters, and I am aware of other kinds of methods that firms use. But, you know, there is -- I don't think we're saying that there is one way to do it. I think, you know -- I think the reasonable belief is our standard here. It's written right into the rule. And so, you know, I think it behooves underwriters to think about, what is the basis for my reasonable belief, and, you know, I think some policies and procedures around that to make it -- to make it clear what you've done, that you've been reasonable and diligent in forming that belief would be beneficial.

MR. SANCHEZ: And so, for example, in the public documents you saw some references to some of the bonds were sold to broker-dealer firms. So if you have an investor letter, even from a broker-dealer firm, I mean, Hillary, would you ask further questions about that?

MS. PHELPS: I would, yes. I mean, I think that's -- you get very few, like, actual details in the

settlements. And when you see, like, broker dealer -- that was problematic, I would want to know where they're -- you know, where they're -- if they're -- you know, it just gets further reassurances that they're not going to be -- I mean, and the thing -- it's tricky too, because you are allowed to trade these securities. Things happen. And so -- you know, because there is, you know, some discussion about, you know, should we be looking at EMMA to see what happens to these securities after they're sold, and how many days is too few days to not satisfy the requirement?

And, you know, as we know, in our economy, and change very quickly in our market. So there could be a very valid reason for why these securities were sold very quickly. So that's kind of a tricky proposition. I guess if you see a real pattern of a specific investor, you know, over time, really -- you know, that maybe that's -- you know, selling them right away, maybe that's an indication that you can't make that reasonable determination. But I think that's a hard question. But I -- with respect to the broker-dealer question, yes, I would ask for further information.

MR. SANCHEZ: So, Hillary, you had mentioned, you know, issue or concern about the enforcement action, and I want to see if folks have noticed these

enforcement actions having impacts on any other non-dealer participants in the market, either issuers, investors, or any other party.

MS. PHELPS: Yeah, I kind of alluded to that in my earlier answer, but I do think that, you know, as I said, again, we firmly believe and we know for a fact that 15c2-12 is not directly applied to issuers. That being said, an issuer does not want, you know, a limited disclosure or no disclosure out there with respect to a security that ends up in, like, the wrong hands. And so they don't want to get brought into these -- you know, a bad situation. So I think they're just thinking more carefully about this than maybe they have in the past, given these enforcement actions. I think at a minimum, as I said, an investor letter, in some cases, maybe it's -- it just depends on how conservative your bond counsel is, you know?

We were actually -- you know, for example, we have to -- if you're not going to give us an investor letter, then we need full disclosure, we need a full continuing disclosure agreement, or if there's something in between. But I think it's -- again, I think it really depends on your -- your counsel is, and kind of what -- how they feel about it, as part of it.

MR. REILLY: As somebody representing issuers,

you know, what about the traveling letters? Is that maybe more appropriate? Where, you know, transactionally, you need to continue to ensure -- of course any of my clients would be disappointed and probably not too happy that their name is out there in the sphere, even though it's really no fault of their own, but would something like that assist with that type of, say, reputational damage?

MS. PHELPS: I think it would. I think that I historically have noted that investors are very reluctant to sign traveling letters. They just don't want the responsibility of having to get them signed going forward, and have to track that over the life of the bonds, is kind of an undertaking. But I think that, yes, that could be a solution, it's just that it's a tricky one.

MR. SMITH: I guess the -- just stepping back, I mean, most of these securities that we're talking about, there'll be some exceptions, but most of these are exempt securities under the 33 Act. So but for the limitation that, you know, there has to be an expectation to hold these securities -- I mean, they could be traded in the market without some sort of transaction exemption under section 4 of the 33 Act.

MS. GAUNT: That's exactly right. I mean, there's no -- there is no restriction on them. They're not -- I mean, the assessment about whether they're being purchased by someone with an intent to sell is an assessment that's made at the moment of -- at the time of the sale. And I think Hillary is exactly right, there -- that that's the concern, you know -- they're not compelled to hold them to maturity. And in certain cases, I'm sure people do seldom.

But the point is, we're trying to avoid an indirect general distribution kind of undermining the concept that this is a limited offering intended to be for a small number of people, and that's why they're getting the benefit less disclosure or no disclosure -- less or no disclosure.

MS. PHELPS: I will say, like, instead of the -- I was just thinking about this. Instead of a traveling investor letter, I have seen it and I've done this, where you draft -- and there's an offering document typically involved in this, where basically the investor agrees that they will not trade them to anyone other than an accredited investor or a QIB, in the future, which is a little bit easier of an ask, because you're not asking them to fill out paperwork. It's just asking them to restrict they're selling to in the future.

So I think that that is -- you know, that that's been received well, generally. I mean, I guess some investors might not -- you know, if they didn't want to agree to it they just wouldn't buy the bonds. But I have seen that as a way to kind of limit the market of where these bonds had in the future.

MR. REILLY: I would also say -- and, just, again, if I'm giving my client advice, increasing the minimum denomination size would typically assist in that regard. But, you know, inflation's biting into that for sure.

MR. SANCHEZ: All right. So any final thoughts from the panel on this particular topic? Hillary, you caught me with the last second buzz-in -- the last one. So -- no? No additional thoughts? All right. We've talked about some disclosure responsibilities for municipal advisors. Also for broker-dealers. And now we're going to switch to talking about the issue with respect to issuers. And this is the governing body of an issuer's reliance on professional staff with respect to their finances and their disclosure documents.

And so I was happy earlier today to hear a throwback to the '96 Orange County report. In 1996, the Commission issued a report of investigation with respect

to the conduct of individual members of the Orange County Board of Supervisors. And at the same time, the Commission announced several actions against the former county treasurer and assistant treasurer, as well as cease and desist proceedings against the county and some related entities. All this was related to the Orange County bankruptcy in the early 90s.

So this report -- this Orange County report, the Commission issued a report to emphasize the responsibilities under the federal securities laws of individual local government officials who authorized the issuance of municipal securities and related disclosure documents. The report is available on the Office of Municipal Securities website, as well as a number of other forms. It's very easy to find using your favorite search engine.

But I think it's helpful to revisit this report, you know, kind of on the theme of, what is already out there, what information has the Commission already provided that is useful to practitioners? This doesn't foreclose us from providing additional guidance, but what information is already out there that people can use now? It's important to revisit this report, because it includes a number of specific facts as you read through it, that I think really provide some

additional touch points for practitioners to look at, and to help explain why these supervisors in this particular circumstance fell short of fulfilling their responsibilities.

But also, importantly, the report acknowledges that every municipality's situation is different, and doesn't dictate specific ways for similar officials to fulfill their duties. Related to that, in 2007, the director of the Division of Enforcement at that time gave a speech, also available on our website and other forms, called, "Lessons Learned," from San Diego. Both of these things are very helpful in elucidating what responsibilities are. When I was in private practice, I gave disclosure guidance all the time. And I noticed that a lot of times, issuer officials had a very distorted view of what the responsibility might be. You know, the prevailing view was, every single person has to read the official statement cover to cover, including financial statements, notes, et cetera.

So I'm going to throw this to you, Jodie, first. What do you think are the government bodies -- or governing bodies' practical responsibilities regarding the preparation and review of disclosure materials?

MR. SMITH: Sure. Thanks, Dave. And I'm

going to start this with some very practical advice, and then maybe we can back up and talk a little bit about how to interpret Orange County and San Diego and other actions. But there is a very helpful analysis of this in the American Bar Association, and the National Association of Bond Lawyers published a publication called, “Disclosure Roles of Counsel,” about a decade or so ago. And it had a very helpful, I thought, sort of four-part test here, which was, as a public official -- and whether that’s -- whether you’re talking about somebody in the executive branch, mayor, or you’re talking about a member of the governing body like a city councilmember, four questions you can ask yourself.

You know, have we adopted disclosure procedures? And if we have, am I satisfied that such procedures have been reasonably designed to produce accurate and reliable information? Second question, do I have a reasonable basis to have confidence in the integrity and competence of the financing team that has prepared the offering materials? That would be in-house staff, in-house financial staff, in-house counsel, outside counsel, et cetera. Third question, do I know anything that would cause me to question the accuracy of the disclosures, or that would indicate that they are misleading? And then fourthly, do I know of any

potentially material issues that should be brought to the attention of the financing team, or for which I would like further explanation?

And I -- revisiting the -- you know, when you look at some of the materials on San Diego, for example, the crux of that enforcement activity related to some pension and retiree healthcare benefits, and just the costs that the city of San Diego was going to face there, and it was pretty well known. And so that -- I guess the Enforcement Division’s view was that it was very known and it was sort of a red flag. It should have been something you should have asked about.

When you look at Orange County, it struck me that -- I know that the Enforcement Division has brought cases against states -- the state of New Jersey, state of Kentucky, others before -- but I don’t think they’ve ever gone after the governing body of, like, the state of Kentucky, state of North Carolina. It would be one thing -- governing body, something like the North Carolina General Assembly or the Alabama Legislature -- very different -- the Board of Supervisors, I believe, was the governing body of -- in Orange County, and it struck me, sort of looking back at the Orange County report, Dave, that they -- there seem to be sort of a mix of legislative responsibilities as well as executive

responsibilities with the Orange County Board of Supervisors.

And so, I guess, where I’m going with all of this is, I think the degree of the responsibility of a governing body member, I think it’s going to turn a lot on how much control they actually have over the disclosure process. I know that there have been a number of enforcement actions against executive members of an issuer, whether that’s -- you know, is a mayor, in the -- in the context -- I think Allen Park, multiple finance directors, et cetera. And that’s where I think often there is -- where all the action goes on within an issuer in the drafting of disclosure. I mean -- and going back to my four principles, I -- you know, my view is that if you have comfort that you’ve put process in place, and you know of no red flags, I think it’s permissible for a governing body to largely delegate responsibilities for preparation of disclosure to the staff and the professionals that the issuer has hired.

MR. SANCHEZ: Just -- to that point, like -- one of the interesting things about Orange County, right, was that the Board of Supervisors had unique information about the risk being taken by the county treasurer. So that’s not the case all the time. But it’s something to keep in mind. I know in the earlier

panel it was stated that you never know how many people go into producing one number in an official statement. So it was very clear in this particular context. And why I think it was -- very helpful as guidance is that this County Board of Supervisors had particular information about this particular risk that other folks in the county would not have had.

And then, secondly, that they were supposed to be receiving a special monthly report from the treasurer regarding county investments, and they hadn’t received it in three years. But that didn’t -- they had not raised a question of, why weren’t we receiving this report. So those two facts were to me really helpful and really illustrative of kind of unique things that a governing body might have within their -- within their unique structure that would make them want to address that and raise questions that they might not otherwise raise.

MR. REILLY: If I could embellish on that last point you made, Dave, in light of what Jodie described in terms of policies and procedures, delegation of authority -- it should be a facts and circumstances situation, right? If all of the personnel, the staff that you have delegated authority to all of a sudden turn over, right, and they don’t really have the history that would put them in a strong position to provide a reasonable basis for the information, perhaps you want to be a little more involved in that particular transaction.

Of course you're not going to know every detail, but you will have at least demonstrated, hey, I reviewed the document. And through that, maybe you pick out a few things that you just go, this doesn't seem quite right to me. To your point -- I haven't seen that information before, how come I haven't? You know, and you're just going to start to do -- you're going to have, like, a mental thought exercise around any questions you may be potentially required to ask in that particular circumstance. So just because, you know, I guess a good point of emphasis is, don't be a robot. Right? Live in the moment and understand the situation around you.

MS. PHELPS: I was just going to say -- and this point has been made on other panels, but this is -- a lot of this is rooted in training, and just making boards aware of this responsibility, one, that it's not -- kind of to your original point, Dave -- that they have to read the document cover to cover. But they do have a responsibility to speak up and say, okay, we're issuing these bonds. What about this piece of

litigation is happening that's not covered by insurance? Like, is that going to affect anything here? Is this -- you know, things like that, just to raise questions.

But they have to know that they need to raise those questions. And you have very varying levels of sophistication with respect to these matters on boards, particularly with the smaller issuers, which make up the majority of the issuers in our -- you know, in our public finance universe, who -- you know, they -- they're just, you know, regular people living their lives, and they're volunteering to be on these -- on their school boards or whatever, and so they need to be prompted that this is -- you know, you have some responsibility here to speak up.

And so I think -- you know, and again -- but I agree with everything -- with Jodie and what Brian said, that, you know, if you can have some -- you have good confidence in your team, and you've got strong disclosure policies and procedures in place, which should be approved by of the board. They should be aware of them. You should take some comfort in that as a --

MR. SMITH: And I guess, as a practical matter, when do we think a governing body member raises that red flag? I mean, it's -- I mean, most cities are

going to have to -- it's going to have to go before the city council to approve a deal. Is it in that city council meeting, maybe they get there materials -- pre-counsel materials -- they're like, hey, I see we've got this bond deal, you know, on approval for next Tuesday. They raise it with the city attorney, city attorney raises -- bond council -- I mean, what have you seen, Hillary?

MS. PHELPS: I mean, I think it could happen it really any level, and maybe it depends on the sensitivity of the issue. And either a mistake has been made, but they don't -- a mistake has been made by the person who did put the disclosure together, they don't want to embarrass them, or maybe it's something that -- I mean, I think having it on the public record is always a good thing, you know, to have it out there, but I raise this, you know, let's make sure it makes its way into the offering document. So I think it just -- it just really -- it really depends.

MR. SMITH: Yeah, because in my experience with -- you know, at the state level, it's going to be somebody like the state treasurer, state finance director, that's going to be on rating calls, on due diligence calls, things like that. You know, probably unlikely that a member of the Alabama legislature is

going to be on the ratings call. And same with, you know, going down to the local level of government, it's typically going to be finance director, mayor, very seldom, in my experience at least, is it going to be city council president or somebody like that, unless --

And those -- and I mention those -- those are junctures where a lot of these issues often get raised. I mean, as a bond lawyer, I always, if not invited, try to insert myself into the rating call process, just because inevitably I hear something on those calls -- they're like, you didn't mention that when we were going through the OS the other day. So --

MS. PHELPS: Yeah, I think these questions are much more trickier with the bigger issuers, where -- the smaller issuers often the staff has a really good feel for kind of everything that's going on. Like, in the community, for example, if there's someone moving in, or a big taxpayer moving out, they're aware of that, and, you know, maybe -- they may have gotten notice of it -- received notice of it before anyone on the board has.

So -- whereas, with these -- the big issuers, state level, it's -- there's so many complicated issues going on that could affect the issuance of the bonds. It's a much harder question.

MR. SANCHEZ: So, kind of related to that, you know, factual questions, but you mentioned with smaller issuers, the staff might be aware. But do you see an issue with sort of staff delegating responsibility to their attorney or to the municipal advisor? Like, hey, we hired you guys, you guys take care of this document, we don't need to worry about it?

MS. PHELPS: Yes.

MS. GAUNT: Yes.

MR. SANCHEZ: And how do you feel about that?

MS. GAUNT: Channel my inner Ben Watkins. That is not okay. (Laughs). I mean, from my perspective, the issuer is -- at the end of the day, the issuer is -- it's the issuer's document. You can have all the professional advisors in the world. That's great. And you should use them. And, you know, but it's the issuer's document, and we're going to hold you to a standard of -- in the -- tying this back to the legal standards, in an offering context, a minimum of reasonableness -- due care -- non-negligence. And so if you haven't acted -- if you have acted without due care, or have acted unreasonably, or you have acted negligently, even with all of the assistance of professional advisors, that that would be a problem.

MR. SMITH: And in any sort of processional advisor, I mean, you're -- I mentioned, I started my

four points with, you know, good disclosure policies -- I mean, any good disclosure policy, there's -- it's -- even if the lawyer or the FA is the primary drafter of the official statement, there is -- your -- good policies are going to drive you to have conversations about things. You're going to have due diligence questions that are going to raise these sorts of things.

So even when there is a lot of delegations of these responsibilities, I mean, it's not being prepared by the professional in a vacuum. There's hopefully, with good process in place, interaction.

MR. REILLY: From my perspective, I guess two things would be -- throughout the course of an engagement, you know, I'm going to be producing things that really memorialize not just the relationship but the transaction on behalf of the issuer. And if what happened doesn't reflect that, probably have a problem somewhere embedded in the paper trail. I think the practical aspect, too, is if -- even if I have a discussion with an attorney, we come to agreement on, say, a path forward, if I can't go to my client and convey to them my point of view and they say, yup, that makes sense, thank you for taking care of that, let's do that, probably not doing a very good job in the first place.

So, you know, you want them to be able to be informed and make a decision. It's not up to everybody around them. And -- but that's not just a regulatory thing. It's a cultural thing, I would suspect, too, in many of the shops where we all work.

MR. SANCHEZ: So kind of moving on to a related point, is with respect to conduit issuers. So a lot of -- a lot of times, obviously disclosure materials and -- offerings mostly related to the third party conduit borrower. But what are the disclosure responsibilities of conduit issuers? You know, and they just put their stamp on it and forget about it?

MR. SMITH: They can't just do that. Again, I think the practice in the conduit area -- and this was, you know, for those of -- I'm sure most of y'all know what conduit dealers, but this would be your typical nonprofit healthcare hospital system that issues through a special care facility's authority, or something like that. I do believe, again, much of the disclosure is going to -- the responsibilities, again, are going to turn on control of content, sort of like they do in -- when we were talking about the governing body responsibilities, and the content here -- I mean, your issuer is going to have statutory powers to do conduit debt for healthcare issuers, or things like that.

There's certain things that are clearly within its responsibility, knowing what its state law powers are. But, you know, what the, you know, healthcare receivables are for a hospital or something like that, the issuers is not going to know that. And, I mean, I know we're going to get to it in a minute, but -- Dave, I mean, I think that there -- with appropriate disclaimers -- and I think a number of the -- you know, the Enforcement Division's actions have sort of reinforced this. I mean, I think that in conduit deals, the conduit borrower is sort of viewed as the party in control of the disclosure.

And I think things that can be done to reinforce that would be appropriate disclaimers, where the issuer says, you know, the -- all the information in appendix A about the hospital system came from the hospital system. And, you know, only the information under, like, the authority section or litigation regarding the issuer section is, you know -- has come from us. I mean, that said, I mean, I think that -- to my point about, you can't just turn the other way, I mean it's -- this got to be comfort by the conduit issuer that a good job is being done.

And I mean, some of the things that I've seen over time that help it get that level of comfort would

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be maybe being -- knowing the disclosure counsel for the conduit borrowers involved that is looking at that disclosure, being sure that 10b-5 negative assurance is being provided by disclosure counsel -- perhaps even being an addressee of that 10b-5 negative assurance. I've seen a number of conduit issuers have different policies as between rated debt and non-rated debt, and sort of rationing up the game if it's non-rated debt, including things like increasing the minimum denominations for buyers, limiting the sale to either, you know, qualified institutional buyers or accredited investors, you know, more sophisticated investors, things like that.

So -- and just, you know, hitting on some of -- I mean, looking back at some of the case law on this, or some of the enforcement actions, I mean, one particular enforcement action where it seems to me that the Rhode Island Commerce Corporation, the 38 Studios, it was a conduit deal, but I think there was much more state of Rhode Island involvement in the offering than would be typical in, like, a hospital financing. But, you know, a number of the other ones -- city of South Miami, the public health trust, you know, you had a -- Miami-Dade County was the issuer, but the focus in the enforcement action was on the hospital.

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It was mentioned earlier today, the college in New Rochelle, which, that was actually in the secondary of the continuing disclosure area, total focus on the nonprofit college conduit borrower versus the -- I think it was the New Rochelle Industrial Development Authority was the issuer. I think I even had to google that to find out who the issuer was. Maybe it was mentioned in the enforcement action.

MS. GAUNT: Yeah, I mean -- and we -- I think there have been many enforcement actions where the -- the responder -- or the defendant is the -- is the borrower. And very, very few involving the conduit issuer. Yeah.

MR. SANCHEZ: I don't know, Hillary, if you have any other best practices. Jodie, you mentioned a couple in your rundown.

MS. PHELPS: I don't. I agree with what Jodie said there. Yeah.

MR. SANCHEZ: Okay. So, anything else on this particular topic with respect to either of the issuer topics we raised? Going once, twice, three times. So, we're going to move to the recent Exchange Act rule amendments on financial obligations. In 2019, the Commission amended Exchange Act rule 15c2-12 to include additional events that must be reported, including

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certain financial obligations of the issuer or other obligated person.

So, Hillary -- I'll put this one to you first. How have entities applied the concept of materiality in their decision on whether to disclose incurrence of a financial obligation? I know we heard some comment on that earlier today. Any additional thoughts?

MS. PHELPS: Sure. I think just the kind of give another shout out to NABL and GFOA, who did a really -- I think an exceptional job when the rule -- and OMS too, did -- when the amendments were finalized, in kind of educating the issuer community and the attorneys about the rule, and what a financial obligation was, and in turn a lot of disclosure policies and procedures were updated to, you know, kind of list out, like, you know, what is a financial obligation, in terms of, like, the types of things that we, you know, as a governmental issuer, are authorized to even enter into.

I think with respect to materiality, you'll see with some of the bigger issuers, you'll have a threshold written into the policy. With some of the smaller issuers, everything seems to be material sometimes, just because of the size of their balance sheet and the things that they are kind of nonmaterial

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or may not even be a financial obligation -- some kind of a lease obligation.

So let's say, you know, kind of the -- I don't get so many questions these days about, what is material and what is not. I do think that there are -- a number of issuers have taken the stance that, really, we're just going to put everything up on EMMA, like, every direct placement we enter into, every line of credit, and I think that, you know, a lot of times the bond lawyers are involved in those transactions, and so can kind of give a little reminder that, you know, you should consider whether or not this is a reportable event.

And I think there -- that's happened for a number of reasons. One, it's just easy, you know, you have the document -- you don't have to summarize it. You can just put the document up -- up onto EMMA. I think another reason it's seen as a -- kind of a credit positive in terms of the -- or just an investor relations kind of tactic to, you know, keep as much information free flowing up on EMMA, between your investors and you, kind of to the point -- the discussion of voluntary disclosures earlier.

I also think that, you know, this -- you know, this -- MCDC continues in terms of, we are -- on every

-- you know, every, you know, public offering, there is a very intensive continuing disclosure, you know, review of historical continued disclosure filings. And I don't know that issuers really want to get into it with bankers who say they can see it on -- and their audit, you entered into this -- you know, whatever it is, this financial obligation -- why didn't you disclose it two years ago? And you could say, well, we determined it wasn't material.

And sometimes -- sometimes that's, you know, the -- that explanation gets you somewhere, sometimes it doesn't. And so just to avoid that argument, or that discussion, it's just you to put it up on EMMA. So I think that there's kind of a number of reasons why, you know, we may see sort of setting aside the materiality discussion in favor of just putting it up on EMMA. Of course, there's always some risk to that, because every time you put something up on, EMMA, you are speaking to the market, so you want to make sure that what's going up there is accurate and complete.

The -- kind of -- the question I get a lot, though, with respect materiality isn't in terms of the materiality of the financial obligation itself, it's with respect to what terms are material in the agreement. And that is in connection with often the

banks, where the direct placement does not want certain terms put up on EMMA for public consumption, because they think it's, you know, anti-competitive, it's giving away -- kind of inside baseball.

And so actually the adopting release does kind of provide some helpful guidance as to what should go on the notice, but it's always -- the question is always not about those things. It's about these other things that are a little bit out of left field. So I find myself having a lot of discussions about, you know, what can be redacted did and what cannot be. It -- what can be kept in.

MR. SMITH: Hillary, are you seeing summaries, documents themselves, both -- I'm typically seen just the documents, maybe with a cover sheet.

MS. PHELPS: That's what I typically see too. And I think that's the safest route that we would advise, because, you know, you can always leave something -- I mean, you could do the summary with the full document attached to it, but, again, it's -- I agree -- I have the same experience as you do, Jodie.

MR. SANCHEZ: And so, also with respect to sort of putting everything upon EMMA, are you seeing distinctions being made between credits as with discussed earlier today, or are you just blasting out to

all your CUSIPs and --

MS. PHELPS: I mean, I'm not necessarily the one who's typically putting them up, so, you know, I think both -- I do, you know, sometimes get questions about, you know, we have -- this is a -- you know, like, a loan is backed with water revenues or something. Does it need to go up on my GO CUSIPs? In most circumstances, no. And again, there's some brief discussion of that in the adopting release. That being said, it's sometimes just easier, I think, for people to click the box for all the CUSIPs and just put it up there. And I -- you know, they're not -- I don't think anyone's -- no one's saying that this is material to those outstanding public offering, but just for ease, it's being blasted out to everyone.

MR. REILLY: I would say, sometimes as well, you find -- it's circumstantial, right? So there may be some states where not only is there a moral obligation with an absence or insufficiency of revenues, but there may be something a little more -- with a little more teeth on it, that would almost require you to, say, levy taxes for an insufficiency. And so, yes, it becomes just -- let's not think so hard about it sometimes. Let's just get it out and let the market decide what's material. But I do also understand that we are kind of

littering EMMA with a lot of stuff that's probably not. But it only takes one time for someone to do something that they thought was immaterial and it winds up someone else's subjective determination indicated that it was.

MS. PHELPS: I think I -- I mentioned this to you, Dave, in our prep call, but when we were, you know, in the middle of the -- you know, drafting these amendments, back when I worked at the SEC, we had a lot of investors come in and talk to us and asked us to remove the materiality requirement from the amendments. And so we were under, you know, the impression -- the investors, they want to see everything, and they'll sort it out on their own, as -- and get -- you know, work through it.

So kind as to my point of, we -- a lot of my clients see this as a good investor relations tool. I always am kind of reminded of those conversations where -- I don't think investors are so concerned with littering EMMA. They'll take everything.

MR. SANCHEZ: But are you also seeing that distinction between -- filed between voluntary and, you know, specifically into the enumerated categories, or just under enumerated category?

MS. PHELPS: I typically see them filed under the enumerated categories. If we determine it's a financial obligation, it would go under one of the enumerated -- well, it's going to be 50 -- I don't know that I've seen a 16 yet, but -- personally, but -- I mean, I've seen them up on EMMA because I look periodically, because it's interesting -- I mean, very nerdily interesting. So -- but, yeah.

MR. REILLY: And the only other thing I'd add to this topic would be -- and is probably a bright line distinction between, say, conduit borrowers who are really corporate entities to some degree, even though they may be tax-exempt, versus governmental issuers with respect to redaction. And that becomes more of a timeliness issue. Whether or not you even can -- I mean, you just -- you know, if a company just entered into an agreement with the public entity, you could easily make the argument, everything in there is in the public domain and therefore what is the point of attempting to redact anything?

There may be some ability to redact things that would be deemed trade secrets. You should have asked for that in advance, I would argue. So you still have the ten day requirement that you need to comply with, and so, giving the opportunity for redaction could put you in peril in that regard. But conduit borrowers maybe -- probably need to be a little bit more

sensitive, just because they're operating more -- most likely like a business, and they want to maintain good business relations with their lenders.

MR. SMITH: I would say, just a practice pointer, you know, banks have gotten -- are aware that their documents might be going up on a EMMA, and there often are covenants about the process for posting those on EMMA, and so, be sure as you work with your issuer clients that you're reading that language and complying with it, so as not to have some sort of breach in contract action.

MR. REILLY: And I would say, as the issuer, you have the ability to push back, so you don't have to just take what you're given.

MR. SANCHEZ: So I have, like, one more question for the panel. So if anyone has any questions and you want to step to the mic, now would be a good time to do so. But I'm going to put this next question to the panel. In recent years, forward refunding's were attractive to both issuers looking for savings, and investors seeking incremental yield in a low rate environment. Obviously that's slowed down a little bit.

But, Jodie, what do you think is the most challenging aspect of disclosure and forward refundings?

MR. SMITH: Sure. And given our limited time,

I just want to point out that the National Association of Bond Lawyers is in the process of publishing an FAQ on forwards, and, as Dave said, this area has slowed down a bit lately. But, I mean, it -- the disclosure issues related to forwards, you know, were a function of the extremely long executory period you have between signing the BPA and, you know, and actually settlement. And is -- I'm sure most of you in the audience know, you know, typically you're going to have signing of the BPA, a sort of soft closing and then settlement, and, you know, some of the closing deliverables are delivered at the soft closing.

You know, bonds and the bond opinion typically are delivered at settlement. And then, you know, especially if you've got an extremely long forward period, is what termination rights either bond buyers or underwriters might have under BPAs, and other contracts related to the bond purchase agreement and things like that. So I would say that dealing with things that can happen, and they will happen between the signing of the BPA and the settlement on the bonds, and how you allocate that risk -- and I think importantly as well, I mean, typically there's going to be very detailed disclosure in the offering document about what termination rights underwriter bond buyers have. So --

MR. SANCHEZ: And so, you know, the first panel today was asking for all kinds of things from the Commission. So, anything that you would like to see in the context of forward refundings that we could do -- say that would be helpful?

MR. SMITH: No.

MR. REILLY: We'll send a letter.

MR. SANCHEZ: Question? Yeah, there's a button to slide -- there you go --

QUESTION: Thank you. Again, I work with issuers throughout the state. Recently I had an MA that was doing the documents -- the bond documents. And we had disclosure counsel. What I find in that instance is that not enough folks are paying attention to the documents, and as you said, it's ultimately the responsibility of the issuer, the discloser. So we had to step in on one occasion and say, look, it's over. We're going to get underwriters counsel to do the documents.

Because the MA is not always aware of legal activities of the state. The laws may change. The practices in the industry may change. Just -- there's so much that -- so much movement. And from a state level perspective, cutting costs by $25,000, I say, it's just not worth the increased liability and risk. And one of the reasons we were able to come to that determination was because there was actually information missing, until the final document was ready to go out and get signed off, and it just so happens that, you know, the bell went off, and then, you know, we put that in.

But the issuer caught it, and we -- the issuer caught it -- and we decided we wanted counsel to represent us on our documents. At the same time, we have the issue with smaller governments who are also trying to cut costs, and their financings may be a lot smaller than the state's financing, and they can't afford that incremental cost. And not only they not afford the incremental cost, but they don't have this stability of personnel to oversee these processes, which is actually, in the state of Oregon, it's a great concern to us, because we oversee and manage their debt in terms of -- serve as a repository for their --

And so in certain instances, we have to approve their obligations. So it's really an interesting situation for the smaller governments. I mean, I definitely think on a state level there should be no circumstances except maybe in, you know, certain private placements, where the MA is doing the documents. It's -- we've put in legislation to try to enforce

having local governments use the right professionals. But we can't -- it's not enforceable. It's just -- they get to check a box. Right? Did I include -- in the underwriter's counsel, did I include an MA?

And so as the sort of paternal entity that reviews these documents, we end up just checking a box. No real authority to enforce anything. But I do think, I guess -- that was long-winded -- from my perspective, it's -- the question is to the MA. Do you really think that is a rational risk to take, for you to take on the disclosure responsibility -- I was on the banking side before, and I thought SEC always had the banking community responsible, but I guess I just wanted to direct that question to the MA.

MR. REILLY: I give you my favorite answer. It depends. It may --

MR. SMITH: You sound like a lawyer.

MR. REILLY: Yeah. Yeah. In many circumstances we don't draft the official statement. So, I mean, our clients are very disparate in nature. So we work with communities from 1,000 to over 500,000 in population. And so some of them, what they want to put out into the marketplace in terms of disclosure may not mirror kind of the template that we have. And that's okay. We also don't need to draft the document.

We can be a meaningful part of, you know, crafting the official statement, and provide value without being the preparer of it. There's nothing inherently wrong with that.

We do take a risk based approach. We even -- you know, there are clients that we work with, say, on general obligation debt. But we're very comfortable being the preparer of that document, because we have a high level of knowledge in that space. We have the experience, we have the team sufficient to look out into the universe of comparable transactions, and ensure that we're providing a requisite level of disclosure. They may do other things, say, more development related, where we don't, and we don't want to be in that position.

And so we want to make sure we're conducting business in a fashion with our clients that's representative of our level of expertise, and not hold ourselves out to be something we're not. I would never proclaim that we happen to be domiciled -- I do -- I do work -- I'm in Minnesota. I would never want to do the official statement for the state of Minnesota or any of its agencies. That is just something that we're not equipped for.

In other circumstances, I'd feel very

confident in our team and the level of diligence that we undertake, and our ability to prepare a document that is accepted by not just the underwriting community and the investor community, but would meet all of the disclosure requirements and regulations that we all generally have to live and abide by.

MR. SANCHEZ: Thank you. So, any final thoughts from anyone on the panel?

MR. SMITH: Thanks for the invitation. This is -- this has been great. I think that the whole day has been fantastic, to be back together in person, and talk about all these issues. Thanks for organizing this, Dave.

MR. SANCHEZ: Thank you. And so that concludes our last panel. I want to thank all of our panelists today and the folks in the audience for -- discussion all day long. If the folks up here can bear with me for a second, I'm just going to recap a little bit of the day. I was very happy this morning to hear continued embrace of voluntary disclosure by the market, and all suggestions for practical improvement as well as additional Commission guidance.

I think we are very invested and have been happy to see the improvements of voluntary disclosure, investors and issuers kind of coming together on what they want, and I think that's been very helpful, and that's kind of averted the need for more prescriptive regulation in this market. So I think that's been helpful. And I'm happy to see that kind of move along.

With respect to the FDTA, we realize that there are a lot of issues to consider. Today was, you know, some of the issues that we need to consider, but there are a lot of other viewpoints to hear, and we encourage significant feedback from the market throughout the process. Some folks earlier today were asking how their voices can be heard, and the answer is for you to reach out directly to our office and request a meeting.

OMS is tasked with drafting the municipal market provisions, and we enthusiastically welcome input. So please reach out to us. Don't be shy. Everyone does have a seat at the table. And then also, really encouraged in the last panel to see some very fast evolution of the understanding in the muni market on ESG and cyber issues, spurred on by the best practices produced by issuers for the market, for fellow issuers and for the market. And also, you know, the kind of laser-like focus on facts and risks, as they relate to particular securities and particular offerings.

So I want to thank this panel again for covering a wide range of topics so expertly. Before we all depart for the day, I want to once again thank everyone who attended today, both in person and online, as well as all the dedicated folks of the SEC who helped put this conference together. The Office of Municipal Securities continues to be very interested in engaging with market participants with respect to all the issues we raised today, as well as other topics and issues to the municipal market.

I know for some of the issues we discussed today, especially the FDTA, this is just the beginning of the discussion. So, again, please don't hesitate to reach out to our office if you want to continue the discussion. So this officially wraps up the conference. Thank you all again for your attendance and participation.

(Whereupon, at 4:50 p.m., the conference was adjourned.)

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PROOFREADER'S CERTIFICATE

In the Matter of: MUNI DISCLOSURE CONFERENCE

Date: Wednesday, May 10, 2023

Location: Washington, D.C.

This is to certify that I, Christine Boyce, (the undersigned), do hereby certify that the foregoing transcript is a complete, true and accurate transcription of all matters contained on the recorded proceedings of the meeting.

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(Proofreader's Name) 5-16-2023

REPORTER'S CERTIFICATE

I, Lisa Sirard, reporter, hereby certify that the foregoing transcript is a complete, true, and accurate transcript of the meeting indicated, held on Wednesday, May 10, 2023, in the matter of MUNI DISCLOSURE CONFERENCE.

I further certify that this proceeding was recorded by me, and the foregoing transcript has been prepared under my direction.

5-16-2023

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