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2023 SEC Municipal Securities
Disclosure Conference

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4 Commissioner Jaime Lizárraga

5 Commissioner Hester H. Peirce

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7 SEC Office of Municipal Securities

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1 PROCEEDINGS

2 INTRODUCTION

3 MR. ALLOGRAMENTO: Good morning. We'd like to

4 welcome everyone here today to the Office of Municipal

5 Securities 2023 Disclosure Conference. My name is Adam

6 Allogramento, and I'm a special counsel in the Office of

7 Municipal Securities. On behalf of the office, we want

8 to thank everyone in the audience here today and we're

9 very excited to have a robust discussion on disclosure

10 in the municipal securities market.

11 Before I begin the day, we did want to give

12 the disclaimer that all SEC speaking today are speaking

13 in their official capacity and that they do not

14 necessarily reflect the views of the Commission, any

15 individual commissioner or other SEC staff.

16 A quick overview of the day: We're very

17 excited that the conference will open with remarks from

18 Chair Gary Gensler, and after his opening remarks we'll

19 move to Panel 1, hosted by Deputy Director Adam Wendell,

20 to talk about voluntary disclosure in the municipal

21 securities market.

22 After a brief break we'll have Panel 2, hosted

23 by Mary Simpkins, Senior Special Counsel in our office,

24 to discuss the Financial Data Transparency Act.

25 After lunch, we'll reconvene to hear comments

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

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

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

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

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

1 1933. That was the first of the federal securities
2 laws. And when crafting the federal securities laws,
3 Congress, Roosevelt, they understood something. They
4 understood the importance of the bond markets. Now the
5 focus, of course, was the 29 stock market crash and so
6 forth but among the many terms that they included in
7 that very first definition of security were "bond,"
8 "note," and "debenture."

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

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

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

5 Interestingly, it took yet another decade,
6 1986, for the Government Securities Act and to bring
7 treasuries more into our remake aremid*, shared, of
8 course, with the U.S. Department of Treasury and the
9 like. And here, we had a little bit of a sharing with
10 the Municipal Securities Rulemaking Board.

11 Based on these authorities, by 1989 the
12 Commission adopted -- and you all know then more
13 recently in 2018 amended -- rules around disclosure,
14 15c2-12. And the rule basically ensures that those that
15 are acting as underwriters of municipal securities
16 confirm that the issuers agree to make continuous
17 disclosures to investors and that the disclosures are
18 available in a manner designated by the SEC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Without further ado, Adam?

25 PANEL 1

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

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

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

1 public finance attorney at Squire Patton Boggs.

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

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

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

23 So those are our panelists, and we'll get
24 right started with the first question that is always on
25 everyone's mind when we talk about voluntary disclosure

1 which is, "What is the value of voluntary disclosure?"
2 You often hear people say that, "Nothing issuers or
3 obligers disclose impacts pricing and it only subjects
4 them to liability, so why do it?" Ahmed, we'll start
5 with you as a producer of such disclosures. You're
6 good.

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

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

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

1 our revenues, actual to budget, et cetera.

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

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

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

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

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

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

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

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

25 Now, we can sort that out by seeing interim

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

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

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

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

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

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

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

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

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

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

1 sizes, are wanting to engage in voluntary disclosure.

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

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

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

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

1 all investors to have that information.

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

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

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

25 MR. ABONAMAH: Sure. So I'd say a couple of

1 things there. There's kind of the true voluntary
2 disclosure that does not have any genesis from the
3 requirements in Rule 15c2-12. And then there's other
4 voluntary disclosure that maybe initially we're looking
5 at through the lens of Rule 15c2-12, and maybe for a
6 variety of reasons maybe we don't think it's material as
7 a technical sense but we still want to put the
8 information out.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Secondly, I always think of, you know, ad hoc
25 investor inquiries and how the issuer will process those

1 ad hoc inquiries from analysts or bondholders.
 2 And third, you know, providing information,
 3 you know, that is viewed by the issuer as perhaps a
 4 material item, perhaps a material event but doesn't fit
 5 neatly into the 16 events under the rule. And so you
 6 want to design a set of policies and procedures or you
 7 want to advise your issuer client that however they
 8 approach those three, that they're doing it in a way
 9 that's going to be manageable, both as to timing and
 10 content.

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

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

25 And so when you're designing policies and

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

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

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

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

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

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

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

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

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

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

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

24 I don't want to, you know, rain on the parade
 25 here, but I think that there is a significant portion of

1 the marketplace that still readily acknowledges that
2 risk and accepts that the rules as they are currently
3 established are the rules that everybody should be held
4 to and are comfortable with, remaining within the four
5 corners of that; the notice of events under 15c2-12 and
6 the contents of your official statement.

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

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

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

1 2001, so it's Y2K-compliant and that's about it. It is
2 not great and if you can find information, come talk to
3 me.

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

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

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

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

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

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

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

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

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

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

21 MS. ROSS: Yes, thank you. I too want to say
22 that the ideal posting of this information would be on
23 EMMA, where you have a consolidation of a wide variety
24 of information, you know, obviously with perhaps rating
25 agency reports and grades* that can help you make a

1 decision about credit and risk in a holistic fashion.
 2 You know, that being said -- and so hence,
 3 it's the one-stop shopping approach to where you can
 4 find your information. Of course, there are some
 5 excellent investor relations web pages out there and
 6 sometimes obviously there is a different information set
 7 you might find there that hasn't been posted to EMMA.
 8 For either situation, we look for
 9 accessibility, the ease of access, the ability to find
 10 what you're looking for. Sometimes it's an arduous
 11 task, whether you're using EMMA or you're using an
 12 investor website page, to find the information that
 13 you're looking for. And of course, either way we expect
 14 robust, timely disclosures. Or put another way, we're
 15 looking for more useable information. We're not simply
 16 looking for more information, we're looking for better
 17 information.
 18 I will say that there are private platforms.
 19 Much of that data does mirror what one might find on
 20 EMMA. I will say, quite frankly, that one benefit there
 21 is what I would say is organization; the aggregation of
 22 a wide set of data that is appropriately labeled.
 23 Because that's not always the case when you're looking
 24 at items on EMMA and you get that benefit, certainly,
 25 from these alternative platforms.

1 But also, interestingly enough, I'd like to
 2 share a comment that the multiplicity of informational
 3 platforms sometimes certainly can be confusing and less
 4 valuable to the analyst and the investor. And there is
 5 a concern about bifurcation of the market, which
 6 certainly the "sophisticated buyer;" the investor; you
 7 know, large platform; mutual funds; you know, ETFs and
 8 the like, and the analytical community know, honestly,
 9 where to find this, regardless of where this information
 10 is posted.
 11 But there still remains a component in the
 12 market, which is retail -- you know, where QE Public
 13 does buy individual bonds. And it's a difficult road
 14 for them to hoe to even be aware that this information
 15 exists, let alone how to dig in and find it because as I
 16 said, some platforms are easier to use than others.
 17 So I think it's a good lesson that this
 18 information be posted. Be posted to EMMA, be clearly
 19 labeled and be robust, and encouraging the issuer
 20 community to fill in those gaps between their annual CDA
 21 filings, many of which, quite frankly, have been late.
 22 To fill in the gaps with this, what I call, "interim
 23 voluntary disclosures."
 24 MS. EVANS: I think -- I want to say with
 25 respect to venue I think best practice, again, is EMMA.

1 But I find that one of the problems you have with EMMA,
 2 particularly in the realm of voluntary disclosures -- if
 3 we look back at the 2022 MSRB Fact Book. And I think
 4 that it listed approximately 4,400 of the filings were
 5 listed as other event-based disclosures from a
 6 categories perspective. That's difficult to go in and
 7 figure out what they are.
 8 And so I think that there's need for
 9 additional categories in the "Other" realm on EMMA that
 10 would be helpful to help categorize information and make
 11 it more readily available to issuers. I will say I've
 12 seen a variety of approaches. I think again, continuing
 13 disclosure, the provision of it, has everything to do
 14 with, you know, what you can maintain.
 15 And so some issuers, they are -- from an
 16 infrastructure perspective -- only really prepared to
 17 handle what's on EMMA or adding a few other documents on
 18 their issuer website. Some have a stand-alone third-
 19 part website who, you know -- third-party hosted --
 20 excuse me -- website that I find, for those who do it
 21 well, is very impactful. It can be cost-sensitive for
 22 certain issuers who are trying to figure out the best
 23 size, the best strategy, for managing their debt
 24 profile.
 25 But also I think Ann's point about it actually

1 being aggregated and appropriately labeled is very
 2 significant. Because I think what we find on EMMA,
 3 unfortunately too often, is that the labels that are
 4 assigned to different documents or even to certain
 5 credits are not consistent. And so sometimes it doesn't
 6 aggregate as well as you would like for it to be.
 7 I will say for the more sophisticated issuers
 8 who are using, you know, a stand-alone investor
 9 relations website, the ease of access of information is
 10 very, very strong. I think one of the challenges though
 11 for those who are aspiring to that place as a municipal
 12 issuer, is having the capacity in-house to manage making
 13 sure that information is being uploaded to that website,
 14 you know, in a manner consistent with what's going on
 15 EMMA. And again, that all goes back to what works for
 16 each issuer's internal infrastructure.
 17 MR. KITZINGER: Yeah. There are a lot of
 18 technical questions that come up on voluntary disclosure
 19 from the issuer point of view, depending on the size,
 20 sophistication, amount of debt issuances an issuer has
 21 had. You know, if they have other information that they
 22 want to post on a voluntary basis, where does it go?
 23 Where's the right place for that to go? To a certain
 24 extent, that gets answered by ensuring that wherever you
 25 put it in the list of material events of "Other" on the

1 portal, that you're pumping it out to all the relevant
2 CUSIP numbers so at least you know the information is
3 getting out there.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 And we understand that that will be hopefully
20 annually reviewed and that story might need to be
21 changed or tweaked. But, you know, the analytical
22 community is very forgiving if projections are not met.
23 Just what we would then want to know is why, and what
24 can you do about it? And that's a candid conversation
25 and I think that's a good information set that we would

1 hope the issuer community is comfortable with if not
 2 becoming comfortable with doing that. You know,
 3 because, you know, finance and operating statistics that
 4 are 6 to 12 months stale are not incredibly helpful.
 5 And again, as I said, the historical data
 6 provides basis for making some assumptions about where
 7 the momentum might be moving forward with the issuer,
 8 but we clearly need a candid, current discussion. And
 9 we think some of that will be enhanced by what's already
 10 mentioned is perhaps taking a different look at the
 11 input dashboard for EMMA and coming up with an
 12 additional, if not different, set of labeling because
 13 some of it does get lost in the source.
 14 I mean, just the other day I looked at an
 15 issuer who filed May 6th filings, 5 of which were
 16 mislabeled. Now, and again, we went back up, "Well who
 17 input that and why did they say that an audit wasn't an
 18 issue with certification, that they're in compliance
 19 with CDA commitment," right? I mean, I think that's
 20 also a fair question.
 21 But, you know, everything winds up an "Other,"
 22 because in that laundry list of potential labels,
 23 they're not yet available. And we are looking forward
 24 to the evolution of that, which we would expect is
 25 certainly ongoing at this point.

1 So I think that the voluntary interim
 2 disclosures will go a long way in getting past any stale
 3 CDA filings and will provide current information and
 4 hopefully, a near-term projection on what is facing the
 5 issuer by way of challenge, what their success stories
 6 are. And put that out there, rather than perhaps re-
 7 reading it, you know, in the local or national news.
 8 You know, a lot of the risk assessments, quite
 9 frankly, in the offering statements sometimes are
 10 lacking. And I know a hot button certainly is, you
 11 know, weather events certainly, right? And but we need
 12 to know what the plans are, what the mitigants are, to
 13 the best of one's ability.
 14 And certainly, you know, that could be handled
 15 in a variety of ways. I mean, obviously it should be in
 16 the offering statement and then again, any of the ESG-
 17 related risks that have impact on credit -- to see some
 18 of that, you know, be highlighted within the
 19 disclosures.
 20 MR. KITZINGER: And just to dovetail with
 21 Ann's assessment of, you know, she mentioned that
 22 sometimes that time period between annual periodic
 23 filings is just not enough to show current known knowns
 24 or known unknowns, right? And, you know, staff was --
 25 or the Commission was very helpful, I mean, during the

1 Covid period with that May 2020 statement that, look
 2 we're in a situation where there may be material events
 3 occurring in between annual filings that just looking to
 4 the last annual filing is too stale to begin with.
 5 So I think there was a lot of common ground
 6 between issuers and analyst investors on trying to
 7 attain some balance of currency on that information.
 8 MR. ABONAMAH: And I would also, you know,
 9 note, really this is about -- in my mind -- curating the
 10 story for the issuer. You know, the event notices are
 11 of course important and really helpful, but they really
 12 set the floor. That's kind of the minimum accepted
 13 disclosure that the market will tolerate to allow an
 14 issuer to continue to participate. And I think most
 15 folks want to be better than just the minimum --
 16 minimally competent.
 17 And I think voluntary disclosure and having
 18 good policies and procedures and really giving thought
 19 to how that story is curated -- both good and bad,
 20 right? It's not just good news that we have to put out
 21 there -- is really important to ensure that the --
 22 everything works well,
 23 vis-à-vis issuer, investor,
 24 underwriter issuer, and the lawyers that are involved
 25 that have to sign their various opinions to get a deal

1 done. These kinds of discussions both in a forum like
 2 this but also back at each issuer's organization, are
 3 really important to help make sure that we're all
 4 telling the story that we want.
 5 I mean, a recent example -- not for securities
 6 disclosure but we're -- I live in a state where the
 7 auditor of state is the auditor of record for municipal
 8 entities. We had an issue where an employee was
 9 overpaid because of a keying error in the payroll
 10 system. We had shared that information with the
 11 auditors but it hadn't made its way to the right people
 12 and they heard about it on a TV report, which, you know,
 13 it might shock some of you that the TV report was
 14 inaccurate.
 15 And so the next day, the auditor came in and
 16 was ready to go to blows with us about, you know, "How
 17 could this happen?" "What was going on?" "How did you
 18 guys not find this?" And it turned out that once we
 19 pointed him to the information that we had already
 20 shared, everything was fine. And it was because we took
 21 the initiative to tell our story. That we actually
 22 caught the issue. It wasn't Channel 19 and their
 23 crackpot investigative reporter that caught it.
 24 And it really just allowed the issue that
 25 appeared to be a mountain, to just melt down into

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1 something much less than that. So it's an example of
2 how we as at least issuers can help our own cause by
3 being out there with information, both positive and
4 negative, to an ultimately good effect.

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

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

25 That could cause a set of events that wouldn't

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

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

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

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

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

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

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

9 MR. KITZINGER: Don't hold your breath.

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

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

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

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

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

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

20 And I have to say that read together, the
21 February 2020 staff legal bulletin, along with the May
22 2020 statement from the Commission, is almost in my mind
23 tantamount to as good a replacement to the '94
24 interpretive release as staff could give us. I mean, I
25 think you read the two together and you see -- agree or

1 not agree -- a clear delineation of how the anti-fraud
2 provisions apply to disclosures to the secondary market,
3 regardless of the intended audience.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 I would say with respect to the '94 release,
19 you know, speaking for myself, when I was OMS we
20 received a lot of requests to update the '94 guidance
21 and I would just at least from my interpretation of the
22 events that were transpiring when I was in the office,
23 reading -- you're correct in that reading the February
24 2020 statement and the May 2020 statement really
25 addressed the landscape in my view. And I don't -- I

1 honestly don't know what else there is to say to the
 2 market when we're talking about broad principles of how
 3 issuers and other market participants should think about
 4 secondary market disclosure. I think it's all addressed
 5 kind of between the bulletin and the Covid statement.
 6 And you know, with respect to, you know, to
 7 forward-looking statements, which I know are the things
 8 that give people maybe the most heartburn, you know, we
 9 couldn't -- the May 2020 statement could not have been
 10 more explicit that good faith attempts to convey
 11 forward-looking information will not be second-guessed.
 12 And you know, that's there on purpose and is -
 13 - you know, my read of that is if someone in my shoes or
 14 someone in my staff is putting together some information
 15 about maybe what we think income tax revenue is going to
 16 look like over the next year, if that is based on real
 17 information that we have in our accounting system, you
 18 know, maybe in the last 12 months, some historical
 19 trends, and we're projecting out and it turns out those
 20 numbers are incorrect, say, because a pandemic hits and
 21 our income tax collections go down 25 percent in a year,
 22 so what? From a legal liability perspective, the
 23 projections were made in good faith at the time that
 24 they were provided. We can't control the intervening
 25 events that come into the future.

1 And so I think, you know, I generally, when I
 2 speak with colleagues, you know, in the state and around
 3 the country, I'm absolutely one who's encouraging folks
 4 to provide that kind of information for a lot of the
 5 reasons that Ann and others have laid out; that it can
 6 be really important.
 7 And then on the Reg FD point, you know, that
 8 was something that we heard a lot. I hear it a lot now
 9 from unnamed lawyers that I interact with on bond deals.
 10 And if you read Reg FD it's crystal clear on its face it
 11 doesn't apply to our world. It applies to registered
 12 securities. Ours are not.
 13 Now I think as a matter of policy, selective
 14 disclosure is problematic. It impedes an efficient and
 15 wide-ranging flow of information. Can make -- you know,
 16 put other -- some investors in a better position with
 17 respect to information than others, but because of the
 18 legal structure of our market that has no legal
 19 consequence.
 20 And so I think this is an issue that is one
 21 where the law and policy kind of get tangled up and
 22 sometimes policy is getting confused for law. And you
 23 know, I think that's an area where the bond lawyers and
 24 the security lawyers in the market can help, you know,
 25 give better advice to their clients, better education to

1 their clients, and perhaps something the SEC could be,
 2 the staff could be, a little more explicit about in
 3 public.
 4 But it's -- I felt it was a distraction when I
 5 was -- when I was at the Commission. I feel it's a bit
 6 of a distraction now when as of -- I get legal advice
 7 that is really policy advice from my attorneys.
 8 MR. KITZINGER: Yeah, no, understood. And,
 9 you know, the legal and the policy -- I mean, clearly
 10 staff has -- I mean, going back to comments from the
 11 Office of Municipal Securities as it was at the time Reg
 12 FD was finalized, was that, you know, with respect to
 13 the municipal securities market, there's a strong policy
 14 against selective disclosure.
 15 And the point from the legal side is that Reg
 16 FD and selective disclosure law as it has evolved for
 17 corporations, should not serve as a shield for voluntary
 18 disclosure in the municipal market. Rather, it provides
 19 analogous guidance to manage how one goes about the
 20 selective disclosure.
 21 It goes back to disclosure roles of counsel in
 22 2009-2010, where we said, "Look. On selective
 23 disclosure, there are going to be situations that are
 24 going to necessitate special handling, okay? And, you
 25 know, there's going to be -- if the tax-exempt status of

1 your securities is threatened, if you're falling off the
 2 cliff on revenues, if you're a College of New Rochelle
 3 and your tuition revenues are going right down the pipe,
 4 this is not just a matter of sitting on the information
 5 and not disclosing it. It's rather considering, okay,
 6 what is the best voluntary means to get to the Anns of
 7 the world on an equal dissemination, raw dissemination
 8 basis so the total mix of information has that?
 9 And so I don't think -- you know, the policy
 10 and the law can come together on this, that's for sure.
 11 You know, one question I -- I mean, I credit, you know,
 12 John McNally, at Hawkins and Paul Mako, who was writing
 13 the securities law column for NABL at the time of this
 14 statement about, you know, if you take the following
 15 steps on forward-looking disclosure, we, Enforcement or
 16 we, the Commission are not going to second guess. Well,
 17 what does that mean?
 18 And, you know, Paul and John pointed out in
 19 their respective writings how, you know, given that for
 20 continuing disclosure, disclosure to the secondary
 21 market, you're under 10b and 10b-5 and have to prove si
 22 emptor or recklessness, that's a pretty high standard.
 23 It's a rare statement. But maybe it's not so difficult
 24 to make from an enforcement point of view.
 25 But having said that, you know, I tell issuers

1 there are outer limits to how far you can take that
 2 comfort, that voluntary disclosure on forward-looking
 3 information or updates may not be actionable.
 4 Municipal issuers always receive well, mention
 5 of the Cheesecake Factory and I always bring up the
 6 Cheesecake Factory enforcement action, which after staff
 7 gave the statement to corporate issuers about the more
 8 disclosure the better during Covid, and they gave us the
 9 May statement, the more disclosure about Covid the
 10 better, in December, enforcement, you know, sent a
 11 message to the market that we're not going to second
 12 guess but we can't stand by if there are false and
 13 misleading disclosures made on an 8-K or in the
 14 municipal market voluntary basis. There are limits to
 15 what we'll tolerate.
 16 And in sympathy to Cheesecake Factory, you
 17 know, it was an awful time in the pandemic and they were
 18 probably all working remotely and it was a no-admit pace
 19 and it was a small fine. They probably made up the fine
 20 they paid to Enforcement in one night of Cheesecake
 21 sales. But the facts -- the facts in that case were
 22 they went to the market in a March filing and said,
 23 "We're a sustainable operation, pandemic
 24 notwithstanding, when the facts showed that they were
 25 losing 6 million a week, they had only 16 weeks of cash

1 left, and they telling private equity investors, "We
 2 need liquidity because we're in trouble." So you can't
 3 tell the market one thing and be telling on an uneven
 4 basis your liquidity providers something else.
 5 And then in a second statement they said, you
 6 know, "We're maintaining flexibility to come up with
 7 financial answer to all our problems going forward."
 8 And at the same time they were telling landlords, "We're
 9 unable to pay April rent," okay?
 10 And so I always point out to municipal
 11 issuers, you know, when you go out with voluntary
 12 disclosure you've got some leeway here under the anti-
 13 fraud provisions. If it's current status you're talking
 14 about, focus on the known knowns and the known unknowns.
 15 If it is future statements, forward-looking statements
 16 your making, speaks caution -- cautionary statements,
 17 risk factors. And yes, the Commission may not second-
 18 guess you but on the other hand, what you say has to be
 19 accurate. It can't be materially misleading or you end
 20 up in a Cheesecake Factory situation, okay?
 21 MR. ABONAMAH: Yeah, I think -- I'm sorry.
 22 MR. WENDELL: I do want to leave a little time
 23 for questions.
 24 MR. ABONAMAH: Yeah, just one -- just one
 25 quick. I think those are -- those are terrific points.

1 And you know, my interpretation of that case and kind of
 2 the various statements that we're talking about is that
 3 the Commission isn't going to second-guess. However, it
 4 will test the accuracy of the reasonableness.
 5 MR. KITZINGER: Right.
 6 MR. ABONAMAH: And if it's reasonable then,
 7 you know, go on your merry way. If in this case you're
 8 telling your -- private equity one thing and it's 180
 9 degrees from what you're telling the rest of the market,
 10 reasonableness is a bit of a stretch there, you know?
 11 MS. EVANS: Before we jump to questions, I
 12 want to mention the value of training for continuing
 13 disclosure and how that it doesn't need to -- it needs
 14 to be shared broadly within municipal issuers. I think
 15 it needs to go beyond your traditional debt management
 16 team. It needs to extend to -- I mean, each issuer is
 17 their own, you know, entity and that's why you need to
 18 craft it appropriately.
 19 But I would usually like to see disclosure
 20 training, you know, particularly on this topic with
 21 respect to voluntary disclosure, be provided to electeds
 22 and appointed. You know, it's a challenging space to
 23 be in. I've been in the, you know, seat as the person
 24 providing the trainer and I've watched some of my
 25 clients squirm, you know, providing training to some of

1 their bosses.
 2 But at the same time, I think that if you help
 3 to continue that awareness of these sensitivities that
 4 the panel's raised, the training will absolutely do its
 5 job because I think it helps people be more mindful of
 6 the fact that they are facing real-time risk if their
 7 information is not accurate.
 8 MR. KITZINGER: Yeah. And just to briefly
 9 follow up on that -- and you know, one thing I know NABL
 10 suggested to the Commission at one point that may be
 11 worth revisiting is, revisiting the standards in the
 12 Orange County report, given the desire to increase
 13 voluntary disclosure.
 14 MS. ROSS: I know we're running out of time
 15 but just briefly about this.
 16 MR. WENDELL: Go ahead.
 17 MS. ROSS: As to clarification, I've had
 18 conversations with issuers who despite those two
 19 guidance pieces and interpretations thereof, are still
 20 asking for more. You know, as I say, I'm not a lawyer
 21 but I read those statements and I thought it was quite
 22 clear, quite frankly, and should have given the issuer
 23 community the comfort they needed to move forward.
 24 Understanding again, we expect it to be accurate. We
 25 expect it to be -- you're truthful and it pertains to

1 voluntary disclosure and projections. We get it. It's
 2 the known facts at the point of the time. You do your
 3 best and then you explain any variances.
 4 As to Reg FD, it's interesting. If you go to
 5 nfma.org there's a resources tab. You will find NFMA
 6 statement in regards to Reg FD when it came out. And at
 7 that point in time, many doors closed to the analytical
 8 community. Issuer said, you know, they're hiding behind
 9 the skirts of Reg FD and we're pounding the table saying
 10 it's not relevant to our market. We actually produced a
 11 piece that provided the analytical community guidance on
 12 what we would say in return to being shut out from those
 13 conversations which we had prior to that.
 14 So I think it's important that we continue to
 15 educate the market on that and that it's not helpful to
 16 any investor analyst who's trying to make a decision if
 17 they can't get the information. And by the way, I would
 18 suggest if the concern is they gave me information that
 19 didn't reach the full market at the same time, you've
 20 had that conversation. You've taken notes just like I
 21 have. Post it as a Q&A on EMMA.
 22 MR. WENDELL: That's excellent. Thank you. I
 23 guess we've got a couple minutes if maybe there's one
 24 question? Sure, go ahead. There's a little lever on
 25 the mic. Yeah, there you go.

1 AUDIENCE MEMBER: Can you hear me?
 2 MR. WENDELL: Yes.
 3 AUDIENCE MEMBER: Can you address the -- the
 4 '94 interpretive release was approved by the full
 5 Commission. Can you address, I guess, the relative
 6 authority of the '94 interpretive release, versus the
 7 authority of the two 2020 statements and how
 8 practitioners and issuers can rely on the two?
 9 MR. WENDELL: So what I can say, I think, is
 10 that, you know, if you look particularly at the staff
 11 legal bulletin, there is a disclaimer on there that
 12 talks about it being the views of staff and not the
 13 views of the Commission. And obviously, we recognize
 14 there are differences there. The Covid statement was a
 15 joint statement of then-Chair Jay Clayton and Director
 16 of the Office of Municipal Securities, Rebecca Olsen, so
 17 that does have a commissioner speaking on it at the
 18 time. But there's not much more that I can tell you
 19 other than yes, we recognize those and I think the
 20 statements themselves communicate the differences and we
 21 are aware of them.
 22 AUDIENCE MEMBER: Yeah.
 23 MR. WENDELL: And I think on that note we are
 24 just about out of time. So I am happy to thank our
 25 panelists for joining us today and please take the next

1 15 minutes to go enjoy the coffee and pastries outside.
 2 Thanks.
 3 (Recess.)
 4 Panel 2
 5 MR. ALLOGRAMENTO: Hi everyone. If everyone
 6 could take a moment and please return to their seats?
 7 I'll give everyone a few seconds to come back. So
 8 welcome back. We thank everyone again for their
 9 attendance and I'd like to introduce the one remaining
 10 panel that we have this morning.
 11 And as a bit of housekeeping to remind people
 12 two quick items. The first is that when you leave for
 13 lunch after this session, to please remember to leave
 14 your guest badge with security as you exit so it will be
 15 there when you return. And to also please remember to
 16 be back promptly at 1:30 so everyone can hear
 17 Commissioner Jaime Lizárraga at that time.
 18 Without further ado, I would like to introduce
 19 the second panel of the day, moderated by Senior Special
 20 Counsel in the Office of Municipal Securities, Mary
 21 Simpkins, and that panel will discuss the Financial Data
 22 Transparency Act. Thank you, Mary.
 23 MS. SIMPKINS: Thank you, Adam. We are going
 24 to be discussing the Financial Data Transparency Act,
 25 the benefits and challenges of implementing the FDTA,

1 lessons from structured data programs in Florida and
 2 Michigan, the development of taxonomies for municipal
 3 reporting, and certain other practical considerations.
 4 So I'm going to let each of our panelists
 5 introduce themselves briefly and talk about what they're
 6 going to talk about today.
 7 MS. BARKLEY: Excellent. Thank you so much,
 8 Mary and thank you all for taking the time to be here.
 9 My name is Rachel Barkley. For the purposes of this
 10 presentation I'm speaking on behalf of the NFMA, the
 11 National Federation of Municipal Analysts, the immediate
 12 past-president and on the executive committee for that
 13 group. I also am a managing director at Loop Capital
 14 Markets during my daytime.
 15 I've been in the market for about 20 years. I
 16 worked at PFM with some of you in the building. I was
 17 at Fitch Ratings and Morningstar so credit analysis has
 18 been in my blood for about 20 years or so. And I'm
 19 happy to be here. Thank you.
 20 MR. BLACK: Good morning, everybody, and thank
 21 you for having me. My name is Joel Black. I am the
 22 chair of the Governmental Accounting Standards Board and
 23 I look forward to the discussion. And we are here as
 24 the GASB to help facilitate implementation of this act
 25 and I look forward to talking about it with all of you.

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

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

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

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

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

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

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

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

1 isn't limited to just issuers.

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

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

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

1 tagged, I guess, for ease of use there.

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

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

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

25 There's a note that PDFs alone don't satisfy

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1 the standards as they're going to be proposed. So what
 2 we traditionally see on EMMA that you can pull down and
 3 download as a PDF, while it may be searchable on your
 4 PDF viewer, that in itself is not necessarily going to
 5 meet the requirements of what the FDTA is going to do.
 6 So a couple other details. The tagging and
 7 data technology is supposed to be non-proprietary and
 8 made available on an open license, so it's (video
 9 interference) to use and more easy to use. And certain
 10 mandated data standards have to be able to handle data
 11 prepped according to currently applicable counting or
 12 reporting standards.
 13 So I will not get too much into the
 14 implementation implications at this point as we'll talk
 15 about that more a little later. But you know,
 16 proponents of the FDTA suggest it will be helpful to
 17 users to get better access to information that may allow
 18 them to make better investment decisions and improve
 19 access for various industry participants, academia, the
 20 public users, and reduce costs across the board for
 21 promoting competition to create new data collection and
 22 analytical technologies and techniques. So I think
 23 that's some of the positive goals that folks think will
 24 come out of the FDTA.
 25 But again, the devil's always in the details

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1 and there are, as we'll see, challenges related to how
 2 this will be implemented, particularly in the muni space
 3 because as everybody here knows, our muni industry is
 4 very different from everything else.
 5 So, you know, there are a lot of questions
 6 that come up. I mean, what data will be covered data?
 7 To what extent will this require any change in how
 8 issuers or broker-dealers or anybody submits information
 9 to the MSRB, changes in how you to your accounting or
 10 your financial statements. Does this mean, you know,
 11 official statements are covered? We don't know yet and
 12 that's what the SEC has been mandated to develop over a
 13 period of time.
 14 I think the FDTA sort of suggests it'll be a
 15 four-year period overall but I don't think there's any
 16 specific mandated implementation date related to the
 17 municipal markets. So, you know, there will be complex
 18 and probably some different things to work out in our
 19 industry as this evolves and we understand more about
 20 what data will be covered and what that means for
 21 implementation across the various issuers in the U.S.
 22 In addition to that, there isn't currently
 23 certain data or collection requirements for what we're
 24 already required to report as issuers or in your
 25 municipal market participants so that's another

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1 challenge that we'll have to address based on how the
 2 SEC would like to deal with it.
 3 And I think that kind of sets the stage for
 4 our next discussion about what some of our issuers have
 5 been doing already and what we'll see as the challenges
 6 to getting this done.
 7 MS. SIMPKINS: Thank you for that explanation
 8 and for talking about the timeline because we have
 9 gotten some reports that some market participants are
 10 already thinking, "Oh, do I need to go out and buy
 11 software like right now?" And keep in mind, we haven't
 12 even proposed anything yet. We're very much in the
 13 information gathering stage and we're not likely to
 14 propose joint standards with our fellow financial
 15 regulators until next year. The standards specific to
 16 the municipal market not before 2026. This is going to
 17 be a process. So there will be, you know, two
 18 rulemakings and you'll have opportunity to comment and
 19 we hope that you all do comment.
 20 So now I'm going to turn to Rachel Barkley,
 21 who's our analyst, to tell us what uses might municipal
 22 investors and analysts have for machine-readable
 23 structured data and does the diversity of municipal
 24 issuers and credits potential limit the comparability of
 25 structured data?

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1 MR. WATKINS: Mary, if I may before we get
 2 started -- a breach of protocol. She put me down here
 3 at the end because she thinks that way that I probably
 4 wouldn't speak up.
 5 MS. SIMPKINS: No, it's alphabetical.
 6 MR. WATKINS: So before -- I'd like to set the
 7 stage before we get started into the details of this
 8 whole thing and step back and take a breath and think
 9 about it from my perspective.
 10 So I've been doing this a very, very long time
 11 and I first need to vent about something I feel very
 12 passionate about, and that's the muni space. And I
 13 think about how we came to be here and it's infuriating,
 14 quite honestly, because if I think about FDTA and what
 15 it means and stepping back, and for the industry itself.
 16 So it's everything -- the legislative process
 17 that we find ourselves with this mandate now, there was
 18 no -- there were no hearings, no substantive debate, no
 19 consultation with the community about the people that
 20 this is going to impact, before we have to grapple with
 21 -- and I'm very sympathetic to the SEC staff.
 22 So my point of view is, I want to talk
 23 directly to the commissioners about the impossible task
 24 that they've been given via this mandate through --
 25 referred to as the FDTA. Because in Florida, we've been

1 there and done this and I'm going to share my experience
2 with what that means because I can translate to FDTA and
3 what that really means for us.

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

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

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

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

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

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

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

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

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

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

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

1 view from the analyst community.

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

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

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

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

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

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

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

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

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

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

25 But it's very hard sometimes to find a place

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 So that is a huge issue that is going to be
4 confronted. And I'm just talking about local -- the
5 2,300 local governments in Florida. I'm not talking
6 about all of the other different -- basically, national
7 in scope, and different sectors within our marketplace,
8 which we're all familiar with. Think housing,
9 healthcare, nonprofits. I'm just talking about general
10 governments, you can't -- cities, counties, and school
11 districts, and the uniformity associated with that, and
12 the generalization of the information to make it
13 available is meaningless from a credit analysis
14 standpoint, so it misses the mark.

15 MS. MAGRINI: And I think -- I'd just like to
16 follow up -- Rachel mentioned about resources to
17 implement. I mean, to the extent you have a small local
18 unit of government that doesn't have the resources to do
19 it, or may need to, you know, not have their own in-
20 house program, but put it out to a third party. This
21 maybe isn't necessarily a challenge, but a question that
22 we need to think about is, what's the liability related
23 to a third-party maybe tagging data or carrying out this
24 function on behalf of the local government or issuer,
25 whoever? To what extent does -- if the third party

1 makes a mistake or misses something, that's that result
2 in any liability on the issuer? So I think that's also
3 a sort of overarching question, as we go through the
4 process of implementing this.

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

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

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

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

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

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

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

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

13 So we had -- we had a very similar set of
14 circumstances in Florida five years ago. \$500,000 in
15 2018 embedded in the Appropriations Act to study the
16 feasibility of XBRL. So, a mandate. It took five years
17 to implement. It's now up and running. And I want to
18 explain to you from a practical standpoint what that
19 means, and what it looks like. So, Florida already had
20 a local government reporting system that required all
21 local governments in Florida to send their financial
22 statements to the CFO in the state of Florida. And it's
23 called Logger X, not that that matters.

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

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

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

17 So back to the Florida experience. So,
18 rolling forward, five years, \$2 million, it's just the
19 face of the financial statements. No footnotes, no
20 narratives. Just revenues, expenditures, assets, and
21 liabilities. And you can look at them, city, county,
22 special districts, across the board. The -- so that's
23 the -- again, with the taxonomy already developed,
24 that's what it was. And I have to applaud the CFO's
25 office efforts, because they saw the dilemma of the

1 unfunded mandate, and the way that they did that, rather
2 than having all the local governments inputting their
3 own data, they said, send it to us, and we'll input the
4 data, we'll buy the XBRL license so that you 2,300 local
5 governments within the state don't have to buy the
6 technology. Send it to us and we'll input the data, so
7 that you have uniformity, you have clean data going in,
8 and so therefore you may made the right solve for that
9 problem.

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

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

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

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

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

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

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

6 TREASURER EUBANKS: Okay.

7 MR. WATKINS: To run it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Now, the way we have done that from a
 21 financial external financial reporting environment for
 22 many decades has been that the government prepares a
 23 really thick, big document of financial information and
 24 financial statements, and used to mail it out to
 25 everybody in the community. Now they've changed that to

1 a big, thick PDF -- electronic paper document that is
2 streamed out into the community in some way. And in all
3 those situations, the users of that information would
4 pull out manually the information they need, key it into
5 their systems, and then be able to use it to make their
6 decisions.

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

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

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

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

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

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

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

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

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

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

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

1 help, and that's kind of where we are.
2 MS. SIMPKINS: Thank you. I think now we'll
3 talk about a few practical considerations. Let's start
4 with any thoughts about what information submitted to
5 the MSRB should be subject to the new data standards.

6 As Kim pointed out, the MSRP collects a lot of
7 information, primary offering documents, of course they
8 get financial information and data, other continuing
9 disclosures, political contributions, trade reporting,
10 data. Did any of the panelists have thought about where
11 the SEC should go in terms of which of this data would
12 make most sense to put in a structured form?

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

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

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

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

18 MR. WATKINS: No, you --

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

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

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

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

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

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

19 So that's a -- it's a -- it's a big task. And
20 I think about technology too. And this is a cautionary
21 tale. My greatest fear in all this, in government
22 wading into the space and setting standards and mandates
23 is that it stifles innovation. And technology is moving
24 so fast, by the time they get the job done that they've
25 been tasked with doing, I will -- I will bet you any

1 amount of money that it'll be obsolete. Because
2 there'll be no motivation to change. And with the
3 advent of AI, it is running so fast, and the -- the
4 alternative technologies are available, and the private
5 sector, if there's money to be made, they will make the
6 investment for all the websites, because I would submit
7 to you 99 percent of local governments across the
8 country have a website, and their financial statements
9 are on there.

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

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

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

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

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

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

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

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

1 to attack in trying to achieve this --

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

5 MR. BLACK: That's right.

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

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

20 And working with the tools, working to enhance
21 the tools that we have, which is EMMA, is a central
22 utility for the entire marketplace, is a much better
23 investment of time, effort, and energy, and this whole
24 XBRL thing is a huge resource suck, and a huge
25 distraction from improving real transparency and

1 enhanced disclosure for the benefit of our entire
2 marketplace.

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

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

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

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

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

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

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

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

25 Also, we can tailor the standards so that they

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

6 QUESTION: Thank you.

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

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

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

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

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

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

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

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

1 it's been around, there's inline XBRL.
 2 It's workable, right? It works on one side.
 3 But to Ben's point, there is a future state that -- and
 4 XBRL requires some kind of tool or some kind of
 5 intervention at a government side to tag the data.
 6 It'll require a do it, et cetera. In our going around
 7 to firms, most users are manually inputting data.
 8 They're taking it out of the PDFs, they've got armies of
 9 people that input data, things like that. But there are
 10 firms -- and there's one large financial data firm that
 11 we saw that uses the technology, takes the PDF that
 12 comes from the government, comes from the website,
 13 government doesn't have to do anything differently.
 14 This firm brings that PDF into their system,
 15 they have a scraping tool that scrapes 30,000 data
 16 points, that they determined are the right 30,000 data
 17 points, out, and then manipulates that information in a
 18 rule that they have taught the computer to do, and then
 19 it produces for whoever subscribes to this company's
 20 datastream, which is expensive. But it produces for
 21 them normalized data for that government. They can show
 22 the actual scraped data for that government, the actual
 23 data that's not been kind of normalized through the
 24 rule, to make it more comparable from government to
 25 government. And then if you click on the kind of actual

1 data that's scraped, it'll pull up the PDF and show you
 2 where it came from.
 3 So I say that -- it's -- you know, Ben kind of
 4 talked about it as some future state, you know, in a way
 5 of, there may be more technologies out there that, you
 6 know, are different than XBRL. I will tell you they're
 7 out there now, and they're not just out there now and
 8 being tested and may be okay, and maybe really not the
 9 high quality data we need. They're being out there --
 10 people are paying for it. It is being used. And so I
 11 hope that we as a community figure out a way to
 12 structure this project to implement this act in a way
 13 that takes advantage of that, and is the most -- creates
 14 the kind of the most efficient string of data that may
 15 not require any government to do anything, but somehow
 16 there's some intermediary somewhere where it runs
 17 through a system and it does it for us, that creates a
 18 rule that the GASB may create for the financial
 19 statements.
 20 Something like that. I just -- I think there
 21 are a lot of opportunities for us to really officially
 22 build this from the ground up, because we are starting
 23 from scratch, from our tricycle, right? And let's build
 24 in a way that really makes sense for us.
 25 QUESTION: Hi. I'm Jacqueline Knights. I'm

1 with the Oregon State Treasury, and I run the Debt
 2 Management Division. Ben, I did want to ask you some
 3 questions about the value of aggregating the data across
 4 all governments. Was that for the benefit of the state,
 5 or to assist the entities in presenting? Because each
 6 of those governmental units are separate units. They
 7 don't roll up, necessarily, into the state's balance
 8 sheet or income statement. So what was the goal and the
 9 value?
 10 MR. WATKINS: So, it really is -- it's not for
 11 us in government. It's for someone else to be able to
 12 compare a similar sized city, similar sized county, so
 13 the user -- the benefit of the information is not us.
 14 It's not the government's. It's for others who are
 15 going to use the information for other purposes, and
 16 comparability across the space.
 17 QUESTION: And in terms of your taxonomy that
 18 you developed, how did you determine -- or, what
 19 strategies did you use to determine how to make these
 20 entities, at least within your state, more comparable?
 21 Because even within the state, they're organized
 22 differently.
 23 MR. WATKINS: Right. So two things. First, I
 24 want to disavow any knowledge of technology or anything
 25 else. And I had nothing to do with building any of

1 this. But I am articulated for the very talented people
 2 within the CSO -- CFO's Office who did. So, the
 3 taxonomy for us, it being financial statement
 4 information -- the -- and it actually preexisted me in
 5 terms of the standardization of the chart of accounts
 6 for cities, counties, and school districts has been in
 7 existence for 30 years. So it even predated my tenure.
 8 And I don't know what the catalyst for having
 9 all of the local governments reporting on the same basis
 10 was. Presumably it was uniformity and comparability.
 11 But since it was -- it has been in place for so long and
 12 was part of the granular infrastructure -- that already
 13 existed, so it was just a simple task of tagging that
 14 information that then makes it -- the reporting system
 15 allows it to be aggregated and compared from one local
 16 government to another.
 17 QUESTION: And do you think we run a risk when
 18 all this data is aggregated at a level where an analyst
 19 looks at it without looking at the supporting writeup --
 20 that the information could be -- I'm a chartered
 21 financial analyst. This information could be
 22 misconstrued and used inappropriately to rate an entity?
 23 MR. WATKINS: I would say absolutely, only by
 24 virtue of the shortcomings of what I viewed, and my
 25 quick look in preparation with this was just to go

1 online and look. Well, what's the logical place to
2 look? I look in the city that I'm most familiar with,
3 the city of Tallahassee. Well, the city of Tallahassee,
4 it \$796 million of debt, total debt. Okay, fine. But
5 what -- the issue is, well, what comprises that? And
6 there are separate credits. One's the airport, one's
7 the hospital, one is sales tax, one is water and sewer,
8 one is electric utility. All of those are different.
9 But all of those roll up into one number.

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

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

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

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

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

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

15 (Whereupon, at 12:36 p.m., a luncheon
16 recess was taken.)
17

18 AFTERNOON SESSION

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

1 to have him. Please join me in giving a warm welcome to
2 the Commissioner.
3 COMMISSIONER LIZÁRRAGA: Thank you, Adam, for
4 that kind introduction, and good afternoon everyone. I
5 hope everyone is doing well post lunch, and has had
6 their post lunch coffee. I'd also like to thank Dave
7 Sanchez, Director of the Office of Municipal Securities,
8 and SEC Chair Gary Gensler, for convening today's
9 conferences. To all -- staff and all of today's
10 panelists, thank you for contributing your time and
11 expertise.

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

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

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

23 Congress gave the SEC and the other federal
24 financial regulators two years to develop and publish
25 data standards through joint rulemaking. After those

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1 standards are finalized, the SEC will have up to two
 2 more years to issue rules for municipal securities.
 3 This means that municipal issuers and other market
 4 participants may have up to four years to prepare before
 5 any data standards are adopted under FDTA are issued.
 6 Moreover, any SEC structured data rule will be subject
 7 to notice and comment rulemaking. I encourage all
 8 stakeholders in the municipal market, including
 9 investors, advocates, and issuers, to participate
 10 meaningfully and constructively in the rulemaking
 11 process.

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

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

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

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

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

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1 important market.

2 MR. ALLOGRAMENTO: Thank you very much,
 3 Commissioner. We all appreciated his comments in his
 4 time. Two brief comments before we shift to the third
 5 panel. First, we do have a break after the next panel.
 6 And if everyone can remember to be back promptly at
 7 3:15, so we can make sure to hear Commissioner Peirce's
 8 comments at that time. Without further ado, introducing
 9 panel 3. Panel 3 will be moderated by Mark Elion,
 10 Senior Counsel in our Office of Municipal Securities,
 11 and they will discuss broad risks, including ESG and
 12 cybersecurity. Without further ado, Mark.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 So for us, we've made the decision starting in
8 2015 that we will label bonds in green to articulate how
9 we are using our proceeds to the market and the efforts
10 that we're making, that our bonds are not merely green,
11 they're climate bond certified. And that is reflective
12 of policies adopted by the city, including our climate
13 action plan that was first adopted in 2004, and our
14 current plan, the mayor's plan from 2021, addresses net
15 zero, addresses social and environmental justice.

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

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

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

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

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

22 And I'm just curious how you would use that as
23 an issuer, if you were subject to that kind of a rule,
24 in part because the rating process -- you don't know the
25 rating necessarily until the end of it. You've already

1 committed to it. But you also probably have outstanding
2 bonds already rated by a rating agency, so even if you
3 declined to go forward with a particular rating agency
4 in the future, they're likely to continue to rate you
5 based on their prior ratings, regardless of what
6 happened going forward.

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

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

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

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

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

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

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

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

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

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

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

16 And I think what we're seeing -- in my
17 experience, anyway -- is a shift away from just -- not
18 just risk disclosure, which sometimes is more, frankly,
19 boilerplate disclaimer that the future is uncertain and
20 things may change and results are going to -- may well
21 vary -- that's certainly true, but not all that helpful.
22 But in this area we're seeing more specific discussion,
23 as Jamiyl just mentioned, of what is being done. What
24 plans and things have been prepared, or what programs
25 are being put in place and identified to help address

1 the issues. Both what are the risks, what can be done
2 to help mitigate them, and ultimately what will be
3 needed to protect against these effects.

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

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

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

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

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

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

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

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

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

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

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

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

23 MR. ST. ONGE: I was going to ask Jamiyl, what
24 do you see -- what do you want to know from an issuer
25 about this topic specifically? Is -- some of it's

1 disclosure, certainly, but also I think this is a
2 diligence matter, knowing that there's appropriate
3 protections or systems or protocols in place, but
4 nothing is perfect. I mean, virtually -- no one wants
5 to assert -- make an assertion such as that, and just
6 become a target just to prove you wrong. But what is it
7 that you find most useful in terms of the disclosure in
8 this topic?

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

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

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

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

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

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

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

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

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

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

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

20 So as I do speak to some of the social risks
21 also, saw a severe impact with COVID, you know, most
22 recently, which caused an increase in unemployment, it
23 affected our travel, a lot of volatility in the
24 financial markets. So all of these different social and
25 environmental risks certainly can have a financial

1 impact. There was even a study that Moody's prepared in
2 July of last year, and it spoke to some of the ESG risks
3 facing the Midwest states, and I think most of which
4 actually being affected by a population decline or
5 stagnation.

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

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

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

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

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

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

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

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

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

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

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

22 You may or may not know, North Fork (sic) is
23 home to the world's -- not the United States' -- the
24 world's largest naval base. So there's a lot of
25 interest in seeing that that geography -- that city

1 continues to operate in a fashion not only important to
2 the citizenry of that city, but, you know, the security
3 of the nation, given the world's largest naval base is
4 there.

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

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

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

22 MR. HAMEL: I apologize --

23 MR. ST. ONGE: I just --

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

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

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

18 MR. HAMEL: Agree with that.

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

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

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

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

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

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

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

21 MR. FLEMMING: And just before we leave the
22 topic of market appreciation, I'd be remiss if I didn't
23 mention the rating agencies who are paying increased
24 attention to the ESG space. I think on the topic of
25 misconceptions, once again, even though they are

1 factoring in the environmental and the social a bit
2 more, and analyzing that more than they used to -- they
3 kind of always looked at governance, quite frankly. You
4 have statements from agencies such as Moody's that have
5 said that these ESG considerations are having a low to
6 neutral impact on their credit scores, quite frankly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 projections. Indeed, often there are consultant reports
 2 for toll roads and things which will have long term
 3 projections in order to show the coverage -- projected
 4 coverage, and that's a topic, for example.
 5 And Chris, you mentioned it during our
 6 conversations, the issue of a gas tax security -- a
 7 bond. Well, that may have been a great idea ten years
 8 ago when it was first issued, and more bonds have been
 9 issued since then, but now if the government is also
 10 pushing for a change to electric vehicles, what does
 11 that mean as -- what's the revenue mix? Some of these
 12 transactions have a mix of transportation revenues.
 13 It's not just gasoline tax receipts, but other things.
 14 But not always. And it may not be clear what the impact
 15 will be in the future, or what decisions the government
 16 may make to replace that revenue.
 17 I think it's important to remember though,
 18 that most -- almost all of these governments, they're
 19 not just using these revenues to pay debt service on
 20 bonds, but there actually funding a lot of governmental
 21 operations, which presumably they don't want to see go
 22 either, so whatever that funding source is, it's going
 23 to have to be replaced with something, and their
 24 jurisdictions are beginning to experiment with that.
 25 MR. HAMEL: And I really appreciate Walter

1 referencing another category of risks, which is this
 2 transition risk issue, as opposed to the physical risks
 3 that others, including myself, have dwelt on. You know,
 4 we're headed to a different society over the next 10 or
 5 20 years. It is the official policy of this
 6 administration in Washington to drive us to EV usage by
 7 2030. So I think I did check -- I think there's about
 8 \$50 billion of gas tax bonds out there. At some point
 9 gas tax is not -- is going to be much less than it is
 10 today, I'll say it that way.
 11 So we need to be thinking about what other
 12 areas of our vibrant economy may be diminished as we
 13 transition to a different economy based on a different
 14 fuel mix. I'm trying to choose my words carefully. So,
 15 what will be the value of oil company assets in the
 16 future, and how are they reflected in our tax base
 17 currently, and how might that tax base be different in
 18 5, 10, 15, or 20 years -- which, just to remind what
 19 everybody knows, the debt we issue is long dated. And
 20 so I think that transition risk doesn't get enough
 21 attention, and that we as an industry need to spend more
 22 time thinking about it.
 23 MR. ELION: Nikolai, I actually wanted to ask
 24 you a question as the issuer on our panel. Is there any
 25 specific place you may look for guidance on best

1 practices for this ESG disclosure? Can you think of any
 2 specific approach you might follow?
 3 MR. SKLAROFF: Yeah, I referred to some of
 4 these already, and I think we've talked a lot about the
 5 GFOA best practices. But our state organizations in
 6 California -- that would be CDAC -- have also devoted a
 7 lot of attention to this. CDAC in 2020 published a
 8 report on climate change disclosure and took a look at
 9 170 plus OSs across the state over a three year period,
 10 and noted the important evolution that we're going
 11 through in terms of the type of disclosure, how much
 12 disclosure we're providing, and hopefully this sort of
 13 education that we're providing here today, but through
 14 our other organizations, provides that as well.
 15 We also look, of course, to our disclosure
 16 counsel as a source of information. I don't want to get
 17 into a debate with my friends in the legal community.
 18 There are lots of different ways of organizing teams.
 19 But my preference is to have a dedicated disclosure
 20 counsel, even apart from my bond counsel, who is there
 21 from transaction to transaction and understands the
 22 organization, gets to know the people within the
 23 organization.
 24 I think for me one of the greatest
 25 realizations, moving from an investment banking role to

1 the other side of the table, I'd probably recommend that
 2 in reverse for people younger in their careers, because
 3 I would approach my investment banking a lot differently
 4 had I been an issuer first. But one of my appreciations
 5 has been how many people it takes with an organization
 6 to do disclosure properly. You know, we may casually in
 7 a financing team meeting throw out, well, you know, it
 8 would be great if we had this percentage, and a
 9 paragraph. But that may take the work of three or four
 10 people who are very far removed from bond finance, which
 11 brings up the second thing, which is, creating within an
 12 organization not only the policies but also the
 13 appreciation of what it means to be providing disclosure
 14 to the public markets.
 15 MR. FLEMMING: I would also encourage folks,
 16 in addition to the outlets and reasons that you just
 17 noted just now, Nikolai, encourage folks to look to
 18 their peers, and to who are the market leaders in the
 19 industry. Because I think a lot can be learned by
 20 assessing what others in the industry have done.
 21 Obviously it's important to look to folks that are most
 22 relevant to you, because I think a lot of these risks --
 23 like climate change risk for example, are very pertinent
 24 to certain areas and not others.
 25 I attended a conference recently that was

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

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

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

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

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

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

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

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

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

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

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

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

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

21 The views that I will share with you are my
22 own and not necessarily those of the SEC or my fellow
23 commissioners. I was thinking back recently to running
24 cross-country in ninth grade. I used to ride my bike
25 over to Forest Hill Park in suburban Cleveland, Ohio,

1 where my team practiced. John D. Rockefeller, Jr. gave
2 the 235 acre site of his family’s former summer home for
3 use as a park 85 years ago. Except for one dastardly
4 hill, the beautiful park was a beautiful place to run.

5 My ninth grade self was unaware of the
6 interesting history of the place, but as I looked into
7 that history recently, I notice a theme: municipal
8 securities. When Rockefeller donated it, Forest Hill
9 Park became part of a larger park system, which,
10 according to one source, was spurred by a bond issue in
11 1916. 50 years later, another bond issuance funded the
12 construction of a community center at one end of the
13 Forest Hill Park, where my brother played hockey. And
14 30 years after that, another bond issuance spurred, in
15 the words of one observer, a bitter, bruising political
16 battle, in which historic preservationists argue that
17 the expansion would destroy the Rockefeller legacy.

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

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

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

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

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

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

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

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

8 Only after we’ve had this discussion will we
9 be ready to determine how the Commission should tailor
10 the structured data mandates to the municipal market.
11 For example, given the great diversity in sizes and
12 types of municipal issuers, the commission may determine
13 that the benefits of requiring certain issuers to use
14 structured data are minimal, or that the costs are too
15 high. Similarly, given the nature of the disclosures
16 required under MSRB rule G-32 and Exchange Act rule
17 15c2-12, the Commission may determine that a blanket
18 imposition of the structured data requirement to all
19 information provided to the MSRB will not provide
20 significant benefits to market.

21 Moreover, the act applies not only to
22 information provided by municipal issuers, but also
23 presumably to information provided to the MSRB by
24 Commission regulated market participants, such as
25 broker-dealers or municipal advisors, and the Commission

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1 will need to give careful thought to whether structuring
 2 this information also makes sense. Of paramount
 3 importance as we think about the scope of tailoring FDTA
 4 requirements, our focus must be on what investors need
 5 and not on data that might be useful for other purposes.
 6 The need to focus on investors leads me right
 7 to environmental social and government, or ESG, issues.
 8 Calls for greater consideration of ESG risks by
 9 corporate and municipal issuers often come from parties
 10 other than investors. The calls for municipal issuers
 11 to make ESG risk disclosures often come from non-
 12 investors seeking to influence issuer behavior rather
 13 than investors seeking to allocate capital and
 14 understand financially material information. Many
 15 companies in their municipalities often make disclosures
 16 that are designed for these non-investor audiences, but
 17 some interested parties want ESG disclosures regardless
 18 of their financial materiality to be included in
 19 securities disclosures.
 20 The MSRB recently dipped a toe into the ESG
 21 waters with a request for information on environmental,
 22 social, and governance practices in the municipal
 23 securities market. The comments in response were
 24 telling. The MSRB summarized one common sentiment.
 25 Regulatory action is premature. Another frequently

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1 expressed view was that the MSRB, in issuing a request
 2 for information that might be read as suggesting that it
 3 has a role in mandating ESG disclosures had strayed
 4 outside of its mandate.
 5 It can be tempting for regulators to attempt
 6 to brute force ESG disclosures through regulatory
 7 mandates. But allowing voluntary efforts to play out is
 8 more prudent. Voluntary efforts in helping issuers
 9 think through risks that might fall within the ESG
 10 bucket may be helpful without impinging on issuers'
 11 ability to tell the unique stories. Whether the
 12 Commission or the MSRB has anything positive to
 13 contribute at this stage seems doubtful. As the
 14 Government Finance Officers Association pointed out in
 15 its response to the MSRB's request for comment, at this
 16 early stage, imposing a uniform reporting standard would
 17 not provide meaningful assistance for investors, and
 18 would cause needless work for issuers.
 19 The MSRB also has taken interest in green
 20 bonds and other sustainable designations for municipal
 21 securities. Here, too, despite the enthusiasm of some
 22 investors for such bonds, caution is in order. First,
 23 regulators are not well-equipped to decide what's
 24 sustainable. Even with the technical, economic, and
 25 scientific advice that they have, regulatory

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1 prognostications about which activities are likely to be
 2 most socially beneficial are likely to be flawed.
 3 Second, such designations can be very
 4 difficult in the municipal securities context. After
 5 all, nearly every government action is justified in
 6 terms of its public, read social, benefits. And many,
 7 if not most, physical infrastructure projects are
 8 required to undergo environmental review. Does it
 9 therefore follow that every government bond issuer
 10 should qualify for an IS rating? If not, who is in a
 11 position to make that determination? Can an
 12 environmental rating be awarded prior to a successful
 13 environmental impact review, or would it be appropriate
 14 to assign a low E rating even if that review is
 15 positive? Is a bond issuance that funds the expansion
 16 of my beloved Forest Hill Park, by nature -- no pun
 17 intended -- sustainable, or is it not sustainable,
 18 because in the words of one opponent, it would desecrate
 19 the park and constitute the worst example of park
 20 planning I've ever seen?
 21 Third, a sustainability taxonomy for municipal
 22 securities will end up driving private capital flows,
 23 even if the taxonomy is not -- even if that taxonomy is
 24 fundamentally flawed, it will drive capital flows in the
 25 direction of those fundamental flaws. The decisions

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1 embedded in the taxonomy will be reflected in lower
 2 financing costs for certain types of infrastructure
 3 projects, higher costs for others, and some municipal
 4 issuers might be disadvantaged because the taxonomy
 5 doesn't adequately capture the benefits of the project
 6 being funded.
 7 Thank you for your time today. On my next run
 8 through Forest Hill Park, I will surely think of
 9 Rockefeller's generous gift and the municipal bond
 10 offerings that have enabled multiple generations to
 11 enjoy that gift. May the rest of your conference this
 12 afternoon be as enjoyable as a run the park. Thank you.
 13 MR. ALLOGRAMENTO: We thank Commissioner
 14 Peirce for those remarks. I would now like to introduce
 15 our final panel of the day which will cover current
 16 disclosure topics in the municipal securities market.
 17 It will be moderated by Dave Sanchez, the director of
 18 our office, and will include four panelists who I will
 19 introduce now. The first is LeAnn Gaunt, who joined the
 20 SEC in 2000, and was named chief of the Enforcement
 21 Division's Public Finance Abuse Unit in 2013. This unit
 22 investigates potential violations of the federal
 23 securities laws in the area of public finance, including
 24 municipal securities.
 25 Hillary Phelps. Hillary Phelps is a partner

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

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

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

20 Without further do, Dave, thank you.

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

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

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

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

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

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

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

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

1 actually to some prior guidance dating back into the
2 90s. But in those particular circumstances, it really
3 speaks to, you know, what primarily the diligence
4 obligations of the underwriter are in a securities
5 offering, but then states, in a competitive transaction
6 the issuer has its own obligations in all circumstances,
7 but the party that's largely responsible for producing
8 the offering documents then steps into some degree the
9 diligence obligations of the underwriter, which makes
10 logical sense in a big regard. And maybe I'll also ask
11 to -- what's the statute of limitations on securities
12 law violations?

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

14 MR. REILLY: Yeah, yeah -- that's -- yeah.
15 I'll -- whoever answers it, I'll appreciate it. But,
16 you know, I -- Ehlers as a business has been around for
17 almost 70 years, and so the diligence -- if you go back
18 to, I'd say, even the 60s, I've looked at some of the
19 official statements that we prepared -- really consisted
20 of a tour of the local jurisdiction and taking pictures
21 of the nicest house in that city, and then describing
22 how beautiful a place it was to live. So I'm not sure
23 that meets the standards of today's environment -- so we
24 do take this seriously. And so from our perspective,
25 stepping into that role and understanding what our

1 obligations are -- before I hit the fiduciary duty, I'd
2 actually probably start with the duty of care, Dave, and
3 think about it from what our clients need. And they are
4 going to rely on us to help them understand what their
5 own diligence obligations are with respect to primary
6 offering municipal securities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 When disclosure counsel is involved, I would

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

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

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

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

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

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

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

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

14 MR. REILLY: Is that a warning?

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

18 MR. REILLY: I would say, we're -- you know,
19 the size of our firm lends itself to being able to put
20 in place systems of process at the staff level, rising
21 up to the advisory level. If things are kind of out of
22 the normal character, there's a supervisory structure in
23 place to make certain that we work with our regulated
24 MAs so that they're not operating, kind of -- I won't
25 say in the shadows, but they're doing things that

1 potentially they shouldn't. Ultimately that -- you
2 know, that's going to implement our clients, the
3 issuers. It's their disclosure document even though
4 we're assisting with it. So we want to hold them in the
5 highest regard and make sure that the disclosures that
6 they're sending forth are materially accurate and free
7 of omissions.

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

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

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

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

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

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

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

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

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

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

9 MR. SMITH: I ask one last question?

10 MR. SANCHEZ: Absolutely.

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

24 MS. GAUNT: Yeah, I mean, I think at least our
25 experience has been that some contracts do try to carve

1 out, you know, what we're going to do. And I would
2 emphasize, I think Brian's point is a really good one,
3 that documenting the engagement in a timely fashion -- I
4 mean, one thing I think we're seeing, as an aside, is
5 some MAs aren't doing that in a timely fashion. They're
6 doing it kind of halfway through the engagement, or what
7 have you. And it's just a -- that's just a real mess.
8 And there's really no reason for it.

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

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

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

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

25 MR. REILLY: I suppose that would be the

1 difference between, like, and endangered species and an
2 extinct species. We're probably unique to some degree
3 in the amount of offering documents we prepare. I know
4 there are others, and I thought the point was well made.
5 It is geographical, and it's just historical practice,
6 right, and so, you know, I've been doing this for about
7 20 years. The firm was doing that, and in that market
8 that's commonplace in the markets we operate, other than
9 a handful of states where we don't, and we don't draft
10 the documents.

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

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

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

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

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

10 MR. SANCHEZ: Oh, absolutely.

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

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

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

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

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

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

6 Well, 15c2-12's focus is on offerings that
7 involve, generally, offerings to the general public and
8 securities that are likely to be actively traded on the
9 secondary market. And so there is a sense that some
10 offerings are not going to be offered to the general
11 public, and maybe are going to be actively traded, and
12 so there's a -- there's an exemption written into 15c2-
13 12 called the limited offering exemption, for offerings
14 which are going to be offered to a smaller number of
15 people, where they're intended to be held and not
16 actively traded in the secondary market.

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

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

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

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

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

8 Because they didn't make that inquiry, they
9 were unable to form a reasonable belief that the broker-
10 dealers and investment advisors were purchasing the
11 securities for investors who possess the necessary
12 knowledge and experience to evaluate the investments.
13 And so the Commission found that those six firms were
14 therefore not -- those firms were not entitled to rely
15 on the exemption, and the investors should have been
16 provided with the disclosure documents that are required
17 by 15c2-12, and that the firms therefore violated rule
18 15c2-12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 MS. GAUNT: You know, again, I'm not in a
25 position to answer a hypothetical, but I -- you know,

1 what -- all I can really say is that in this -- in these
2 situations where no inquiry was made, you know -- and an
3 investment letter I think would be a -- kind of an
4 inquiry -- that isn't sufficient. And so -- but, you
5 know, I do think Hillary's point is a good one. I mean,
6 I am aware of a thing called investor letters, and I am
7 aware of other kinds of methods that firms use. But,
8 you know, there is -- I don't think we're saying that
9 there is one way to do it. I think, you know -- I think
10 the reasonable belief is our standard here. It's
11 written right into the rule. And so, you know, I think
12 it behooves underwriters to think about, what is the
13 basis for my reasonable belief, and, you know, I think
14 some policies and procedures around that to make it --
15 to make it clear what you've done, that you've been
16 reasonable and diligent in forming that belief would be
17 beneficial.

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

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

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

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

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

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

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

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

25 MR. REILLY: As somebody representing issuers,

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

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

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

25 MS. GAUNT: That's exactly right. I mean,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 responsibilities with the Orange County Board of
 2 Supervisors.

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

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

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

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

19 MR. REILLY: If I could embellish on that last
 20 point you made, Dave, in light of what Jodie described
 21 in terms of policies and procedures, delegation of
 22 authority -- it should be a facts and circumstances
 23 situation, right? If all of the personnel, the staff
 24 that you have delegated authority to all of a sudden
 25 turn over, right, and they don't really have the history

1 that would put them in a strong position to provide a
2 reasonable basis for the information, perhaps you want
3 to be a little more involved in that particular
4 transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 MR. SANCHEZ: So, kind of related to that, you

1 know, factual questions, but you mentioned with smaller
2 issuers, the staff might be aware. But do you see an
3 issue with sort of staff delegating responsibility to
4 their attorney or to the municipal advisor? Like, hey,
5 we hired you guys, you guys take care of this document,
6 we don't need to worry about it?

7 MS. PHELPS: Yes.

8 MS. GAUNT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 certain financial obligations of the issuer or other
2 obligated person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 MS. PHELPS: I typically see them filed under
25 the enumerated categories. If we determine it's a

1 financial obligation, it would go under one of the
2 enumerated -- well, it's going to be 50 -- I don't know
3 that I've seen a 16 yet, but -- personally, but -- I
4 mean, I've seen them up on EMMA because I look
5 periodically, because it's interesting -- I mean, very
6 nerdily interesting. So -- but, yeah.

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

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

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

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

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

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

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

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

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

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

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

6 MR. SMITH: No.

7 MR. REILLY: We'll send a letter.

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

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

20 Because the MA is not always aware of legal
21 activities of the state. The laws may change. The
22 practices in the industry may change. Just -- there's
23 so much that -- so much movement. And from a state
24 level perspective, cutting costs by \$25,000, I say, it's
25 just not worth the increased liability and risk. And

1 one of the reasons we were able to come to that
2 determination was because there was actually information
3 missing, until the final document was ready to go out
4 and get signed off, and it just so happens that, you
5 know, the bell went off, and then, you know, we put that
6 in.

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

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

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

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

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

17 MR. SMITH: You sound like a lawyer.

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

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

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

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

25 In other circumstances, I'd feel very

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

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

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

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

23 I think we are very invested and have been
24 happy to see the improvements of voluntary disclosure,
25 investors and issuers kind of coming together on what

1 they want, and I think that's been very helpful, and
2 that's kind of averted the need for more prescriptive
3 regulation in this market. So I think that's been
4 helpful. And I'm happy to see that kind of move along.

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

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

1 So I want to thank this panel again for
2 covering a wide range of topics so expertly. Before we
3 all depart for the day, I want to once again thank
4 everyone who attended today, both in person and online,
5 as well as all the dedicated folks of the SEC who helped
6 put this conference together. The Office of Municipal
7 Securities continues to be very interested in engaging
8 with market participants with respect to all the issues
9 we raised today, as well as other topics and issues to
10 the municipal market.

11 I know for some of the issues we discussed
12 today, especially the FDTA, this is just the beginning
13 of the discussion. So, again, please don't hesitate to
14 reach out to our office if you want to continue the
15 discussion. So this officially wraps up the conference.
16 Thank you all again for your attendance and
17 participation.

18 (Whereupon, at 4:50 p.m., the conference was
19 adjourned.)

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1 PROOFREADER'S CERTIFICATE

2
3 In the Matter of: MUNI DISCLOSURE CONFERENCE
4

5
6 Date: Wednesday, May 10, 2023

7 Location: Washington, D.C.
8

9 This is to certify that I, Christine Boyce,
10 (the undersigned), do hereby certify that the foregoing
11 transcript is a complete, true and accurate
12 transcription of all matters contained on the recorded
13 proceedings of the meeting.
14

15
16 _____
17 (Proofreader's Name) 5-16-2023
18
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1 REPORTER'S CERTIFICATE

2
3 I, Lisa Sirard, reporter, hereby certify that
4 the foregoing transcript is a complete, true, and
5 accurate transcript of the meeting indicated, held on
6 Wednesday, May 10, 2023, in the matter of
7 MUNI DISCLOSURE CONFERENCE.

8 I further certify that this proceeding was recorded by
9 me, and the foregoing transcript has been prepared under
10 my direction.
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