

U.S. SECURITIES AND EXCHANGE COMMISSION

MUNICIPAL SECURITIES CONFERENCE

THE ROAD AHEAD

MUNICIPAL SECURITIES DISCLOSURE IN AN
EVOLVING MARKET

Thursday, December 6, 2018

9:30 a.m.

U.S. Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

1 PARTICIPANTS:
2
3 Jay Clayton, Chairman
4 Kara Stein, Commissioner
5 Robert Jackson, Jr., Commissioner
6 Elad Roisman, Commissioner
7 Hester Peirce, Commissioner
8 Rebecca Olsen
9 Hillary Phelps
10 Ammar Rizki
11 Ann Fillingham
12 Dan Hartman
13 Jim Spiotto
14 Robin Prunty
15 Ahmed Abonamah
16 LeeAnn Gaunt
17 Kenton Tsoodle
18 John McNally
19 Peg Henry
20 Paul Maco
21 Justin Pica
22 Mark Kim
23 Nikki Griffith
24 Ernesto Lanza
25 Colin MacNaught

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3 Adam Wendell
4 Dee Wisor
5 Matt Fabian
6 Amy Johonnett
7 Patrick McCoy
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1 PROCEEDINGS
2 MS. OLSEN: Good morning. I'll give everyone a
3 minute to take their seats.
4 Welcome to all of you and thank you for coming.
5 I truly appreciate the willingness of such a diverse
6 group of municipal securities market participants to join
7 us here today so we can discuss disclosure in the
8 municipal securities market.
9 I am Rebecca Olsen, the director of the Office
10 of Municipal Securities. We have a full day planned and
11 I look forward to what I think will be a very robust
12 discussion.
13 Before I continue, I would like to note that
14 the views expressed today by the SEC Staff, including the
15 moderators, are their own and do not necessarily reflect
16 the views of the Commission, any of the commissioners or
17 any of the other members of the SEC Staff.
18 A quick overview of the day. Our first panel
19 is on financial distress and municipal securities
20 disclosure. It will be moderated by Hillary Phelps,
21 senior counsel in the Office of Municipal Securities.
22 After a short break, panel two will follow. The second
23 panel of the day is on lessons from municipal securities
24 disclosure enforcement actions. This panel will be
25 moderated by LeeAnn Gaunt, chief of the Public Finance

1 Abuse Unit in the Division of Enforcement. After panel
2 two, Commissioner Kara Stein will provide remarks.

3 We will break for lunch after Commissioner
4 Stein's remarks and reconvene at 1:35 for panel three on
5 recent developments and disclosure technology. This
6 panel will be moderated by Justin Pica, senior policy
7 adviser in the Division of Trading and Markets. Panel
8 four on what is next for disclosure will immediately
9 follow. This panel will be moderated by Adam Wendell,
10 attorney-adviser in the Office of Municipal Securities.
11 And after panel four, there will be a short break, we're
12 going to do a little furniture moving up here, and then
13 we will have the final event of the day, a roundtable
14 conversation with Commissioners Robert Jackson, Hester
15 Peirce and Elad Roisman.

16 The moderators and a number of SEC Staff have
17 put a lot of hard work into organizing today's event. I
18 hope you will join me in thanking them if you see them
19 throughout the day.

20 And with that, let me introduce Chairman
21 Clayton to make some opening remarks, after which I will
22 make a few opening remarks and we will get under way with
23 the panels.

24 CHAIRMAN CLAYTON: Thank you, everyone. Good
25 morning and welcome. I am delighted to help kick off the

1 inaugural Municipal Securities Conference although I
2 regret that, because of other meetings and commitments, I
3 am doing so from our New York office.

4 I would like to thank Rebecca Olsen and the
5 Staff at our Office of Municipal Securities for
6 organizing and hosting this conference. As you can tell
7 from Rebecca's introduction, it is a very substantive
8 agenda and it is particularly appropriate.

9 I am pleased to see the broad participation and
10 diversity of perspectives here today, including panelists
11 representing the views of investors, issuers,
12 broker-dealers, municipal advisers and the MSRB, among
13 others.

14 I wd also like to take this opportunity to
15 congratulate Rebecca, who was named director of our
16 Office of Municipal Securities in September. As you can
17 already tell from her introduction, she has deep
18 knowledge of this market and has been an exceptional
19 leader.

20 Today's conference, which our Staff intends to
21 host annually -- Rebecca, that's more work for you going
22 forward -- marks yet another step in our continued focus
23 on this critical market. As I've said before, it is
24 difficult to overstate the importance of this market to
25 our Main Street investors and our state and local

1 governments and national infrastructure.

2 First, a few statistics that illustrate the
3 enormous size of this market. The market has over 3.853
4 trillion, that's with a T, in principal outstanding. In
5 2017 alone, there were approximately 448 billion of new
6 municipal securities issuances in the United States.
7 There are approximately 50,000 state and local issuers of
8 municipal securities, including states, counties, cities,
9 towns, villages and school districts. And it is
10 estimated that there are over one million different
11 municipal securities issuances outstanding.

12 The municipal securities market is also a
13 retail market. At the end of the second quarter of 2018,
14 Main Street investors held, through professional managed
15 products such as mutual funds and direct bond holdings,
16 over 66 percent of the market or approximately 2.6
17 trillion of outstanding municipal securities.

18 As I noted, the municipal securities market is
19 essential for our national infrastructure. Municipal
20 securities provide critical funding for public projects
21 and day-to-day government needs. More than two thirds of
22 all infrastructure projects in the United States are
23 financed by municipal bonds. And like all our markets,
24 the municipal market is ever changing.

25 For these reasons, I have long believed that

1 there should be close regulatory focus on this market. I
2 am pleased that the Commission, Commission Staff and
3 Municipal Securities Rulemaking Board have in recent
4 years completed several meaningful regulatory initiatives
5 in this space. I will name just a few.

6 In 2012, the Commission issued a landmark
7 report on the municipal securities market, which helped
8 draw much needed attention to this regulatory area and
9 served to frame many issues. In 2014, the MSRB and the
10 SEC approved new MSRB Rule G-18, which required dealers
11 to seek best execution of retail customer transactions in
12 municipal securities. In 2016, the MSRB proposed and the
13 SEC approved new MSRB rules concerning the disclosure of
14 municipal bond markups and new MSRB requirements for
15 determining the prevailing market price of a municipal
16 security. And in August of this year, the Commission
17 adopted amendments to Rule 15c2-12 to enhance
18 transparency in this market.

19 Notwithstanding these important regulatory
20 developments, as I mentioned, like all financial markets,
21 the municipal securities market is ever changing.
22 Therefore, as regulators, we strive to identify urgent
23 risks and issues, including developments in other areas
24 that affect the municipal securities market. This
25 includes staying abreast of relevant macroeconomic trends

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1 and other factors such as interest rate changes and
 2 changes in tax laws. We must also monitor the issuer
 3 community and relevant risks they are facing, including
 4 recognizing many state and local governments are
 5 contending with budget issues stemming from pension
 6 obligations and deferred capital expenditures.

7 Our Office of Municipal Securities appreciates
 8 this national, regional and local landscape is ever
 9 changing. The Staff works closely with the Commission
 10 and our Division of Risk and Economic Analysis as well as
 11 our Division of Trading and Markets and other colleagues
 12 across the agency to proactively monitor well-known and
 13 emerging risks.

14 In recognition of our important market
 15 oversight function, when I became SEC Chairman last year,
 16 one of my first initiatives was to pursue the
 17 establishment of our Fixed Income Market Structure
 18 Advisory Committee, which we refer to as FIMSAC.
 19 FIMSAC's initial focus included our municipal bond
 20 markets and the FIMSAC recently created a municipal
 21 securities transparency subcommittee.

22 Before I close, I would like to make a few
 23 comments about an aspect of our municipal securities
 24 markets that I believe can and should be improved for the
 25 benefit of our Main Street investors. That is,

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1 disclosure about the timeliness or lack thereof of
 2 municipal issuer financial information. Timely and
 3 accurate financial information is essential for investors
 4 and analysts. Without it, it is challenging, in fact
 5 very challenging, to accurately evaluate the current
 6 financial condition of a municipal issuer or any issuer
 7 for that matter. However, despite the importance of
 8 timely financial information, some municipal issuers make
 9 their financial information available significantly after
 10 the end of their fiscal year or fiscal period.

11 A few more stats. In the secondary market,
 12 MSRB data shows that issuers who file either annual
 13 financial information or who file audited financial
 14 statements within 12 months of the end of their fiscal
 15 year do so an average of 188 and 200 days after that year
 16 end. If we take a broader view and consider all
 17 submissions of annual financial information and audited
 18 financial statements to the MSRB's EMMA system, the
 19 average time between the end of the issuer's fiscal year
 20 and the date of submission to the EMMA increases to 276
 21 days and 349 days after the end of the fiscal year. I'll
 22 say this the way I would say it to a Main Street
 23 investor. Reviewed financial information can be as much
 24 as 18 months or more dated.

25 Congress intentionally chose not to make a

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1 federal regulatory registration regime governing
 2 municipal issuers. Statutory provisions known as the
 3 Tower Amendment expressly limit the SEC's and the MSRB's
 4 authority to require municipal issuers to file any
 5 document with the MSRB or the SEC prior to the sale of
 6 municipal securities by the issuer. Therefore, the
 7 Commission's investor protection efforts in this market
 8 have focused primarily on regulation of broker-dealers
 9 and municipal advisers.

10 To be clear, I believe that there are potential
 11 steps that the SEC and the MSRB can take that would be
 12 wholly consistent with the words and spirit of the Tower
 13 Amendment to improve transparency around the age and type
 14 of available financial information. Accordingly, I have
 15 asked our Office of Municipal Securities to work with the
 16 MSRB and other stakeholders to explore potential
 17 regulatory approaches in this space. I've asked staff to
 18 explore with the MSRB ways in which broker-dealers,
 19 whether acting as an underwriter in a primary offering or
 20 recommending a transaction in the secondary market can
 21 increase transparency concerning the timeliness and scope
 22 of issuer financial information. I have also asked Staff
 23 to work with the MSRB to examine whether there is a role
 24 for the MSRB's EMMA system in facilitating greater
 25 transparency regarding the age of issuer financial

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1 information.

2 To summarize, my broad view is that providing
 3 greater clarity regarding existing municipal financial
 4 disclosure practices will provide investors and the
 5 market with better access to valuable information. This
 6 transparency, consequent adjustments in issuer
 7 preferences, may also incentivize some issuers to make
 8 financial disclosure on a more timely and consistent
 9 basis.

10 In closing, I would like to express my
 11 appreciation to the panelists and everyone in attendance.
 12 I hope you have a productive conference. Thank you very
 13 much.

14 MS. OLSEN: Thank you, Chairman Clayton. Let
 15 me just add a few things.

16 Our goals today are, one, to assess the current
 17 state of disclosure in the municipal securities market;
 18 two, discuss what if any changes in disclosure practices
 19 are needed to meet the needs of investors in a changing
 20 market landscape; and, three, consider whether there are
 21 any opportunities for regulatory improvements to
 22 facilitate such changes and disclosure practices.

23 Before we start, a few brief thoughts to guide
 24 our discussion. As you know, unlike corporate securities
 25 which are generally subject to registration and reporting

1 requirements under the federal securities laws, municipal
2 securities are exempt from such reporting and
3 registration requirements. In the absence of these
4 requirements, the Commission's investor protection
5 efforts in the municipal securities market have been
6 accomplished primarily through regulation of
7 broker-dealers and municipal securities dealers including
8 through Exchange Act Rule 15c2-12, Commission
9 interpretations, enforcement of the antifraud provisions
10 of the federal securities laws and Commission oversight
11 of the MSRB.

12 Though I hope that today's discussions will
13 yield creative and outside-the-box ideas for ensuring
14 that municipal securities disclosure continues to evolve
15 as needed to reflect a changing market landscape, I
16 encourage today's panelists and all of you to keep the
17 Commission's traditional investor protection tools in
18 mind.

19 A few minutes ago, Chairman Clayton noted the
20 significant role that retail investors play in the
21 municipal securities market, holding directly or
22 indirectly over two thirds of the market. Therefore, I
23 believe that it's important whether we consider such Main
24 Street investors or their advisers have timely access to
25 current material information needed to make informed

1 investment decisions. I would like to spend a moment on
2 this topic. I would like to spend a moment on this
3 topic.

4 While the Commission's authority with respect
5 to the municipal securities market is more limited than
6 in other sectors of the capital markets, the Office of
7 Municipal Securities recognized that investors in
8 municipal securities, like investors in other sectors of
9 the capital markets, rely on timely access to current
10 material information to make informed investment
11 decisions. As I stated earlier, one of the goals of
12 today's discussion is to identify whether there are any
13 opportunities for regulatory improvements to aid evolving
14 disclosure practices. I believe that this work is
15 essential because, at the end of the day, the true
16 measure of the success of our disclosure regime is
17 whether investors have timely access to material
18 information necessary to make informed investment
19 decisions.

20 Given the dynamic nature of our markets, the
21 types of information material to investors' decision
22 about whether to purchase or sell a municipal security
23 might evolve over time. As a result, I believe that it's
24 essential that disclosure practices evolve.

25 An example of the Commission's commitment to

1 this goal is the recent amendments to Exchange Act Rule
2 15c2-12. Recognizing the increased use by municipal
3 issuers of direct placements and bank loans as financing
4 alternatives to public offerings of municipal securities,
5 the Commission recently approved amendments to Rule
6 15c2-12 that are designed to facilitate timely access to
7 important information regarding material financial
8 obligations whose terms could impact an issuer's
9 liquidity and overall creditworthiness and create risks
10 for investors.

11 The amendments add two new event notices to the
12 list of notices that a broker-dealer or municipal
13 securities dealer acting as an underwriter in a primary
14 offering of municipal securities subject to Rule 15c2-12
15 must reasonably determine that an issuer has undertaken
16 in their continuing disclosure agreement to provide to
17 the MSRB within 10 business days of the event's
18 occurrence. OMS Staff has attended many conferences this
19 fall to discuss the new amendments and answer questions
20 raised by market participants. We are sure many of you
21 still have questions, all of which may not be addressed
22 today, and we will continue to engage in outreach and
23 respond to questions raised by market participants. To
24 this we are committed.

25 Looking to today's panel discussions, I

1 encourage a full and frank dialogue about the current
2 state of disclosure in the municipal securities market,
3 what lies ahead and how we can ensure that disclosure
4 practices evolve to meet the needs of investors. I am
5 eager to hear your thoughts on questions such as, do
6 investors have timely access to important information
7 when a municipality is experiencing distress? What are
8 the opportunities and challenges presented by
9 developments in technology that could improve the
10 availability and accessibility of disclosures in the
11 market? And how are market participants grappling with
12 issues such as cybersecurity and climate risk?

13 I very much look forward to our panels today
14 and our discussion of municipal securities disclosure.
15 And with that, I am going to turn it over to Hillary
16 Phelps to set up the first panel.

17 (Applause.)

18 MR. ABONAMAH: Good morning, everyone. Thank
19 you, Rebecca, and thank you to the Chairman for kicking
20 us off. As you can see, I am not Hillary Phelps. I am
21 Ahmed Abonamah, senior counsel to the director in the
22 Office of Municipal Securities and I would like to again
23 welcome you all to today's event, which we have
24 affectionately called Muni Prom in our office.

25 So it is my pleasure to introduce today's first

1 panel, which will discuss financial distress and
 2 municipal securities disclosure. We have a terrific
 3 panel of folks to discuss the topic, including Ammar
 4 Rizki, the CFO of Cook County, Illinois; Ann Fillingham,
 5 member at Dykema Gossett; Dan Hartman, managing director
 6 at Public Financial Management; Jim Spiotto, managing
 7 director at Chapman Strategic Advisors LLC; and Robin
 8 Prunty, managing director at S&P Global Ratings.

9 So as Rebecca noted a few moments ago, Hillary
 10 Phelps will be moderating the panel. A little bit about
 11 Hillary. She joined the office in 2015 and serves as
 12 senior counsel. Prior to joining the SEC, Hillary worked
 13 in the public finance group of the law firm Chapman and
 14 Cutler LLP in Chicago, where she served in a variety of
 15 roles as bond counsel, underwriters counsel, et cetera,
 16 at the firm.

17 A bit of a programming note. After the
 18 conclusion of this panel, we will be taking a 10-minute
 19 break.

20 Hillary.

21 MS. PHELPS: Thank you, Ahmed.

22 As Ahmed said, I'm Hillary Phelps. I'm a
 23 senior counsel in the Office of Municipal Securities and
 24 I will be moderating this panel on financial distress and
 25 disclosure. Thank you again to everyone in attendance

1 today and those watching online. And thank you
 2 especially to each of the panelists who have so
 3 generously agreed to participate today. I will introduce
 4 each of them to you shortly.

5 Before I begin, I must give the standard
 6 disclaimer that the views I express today are my own and
 7 do not necessarily reflect the views of the Commission,
 8 the Chairman, the Commissioners or other members of
 9 Staff.

10 So while the overall economy has generally
 11 recovered from the financial crisis of the late 2000s and
 12 the financial condition of many issuers of municipal
 13 securities have generally improved, there are still many
 14 challenges facing issuers in the near and long term,
 15 particularly if another economic downturn occurs. Also,
 16 one-off events such as those related to climate change or
 17 cybersecurity could test the finances of an issuer at any
 18 time.

19 Like so much in the municipal securities
 20 market, what financial distress looks like and how it is
 21 remedied varies from issuer to issuer. The ability of
 22 issuers to identify and disclose their financial
 23 challenges as well as their ability to rise to meet those
 24 challenges using their own resources or resources
 25 available to them at a state or federal level is

1 information that is important to an investor's investment
 2 decision.

3 We hope that this discussion and all the
 4 discussions we'll have today will be helpful to issuers
 5 and obligated persons and those who advise them and as
 6 they think through their disclosure obligations in the
 7 primary and secondary markets, as it will help us, the
 8 regulators, as we continue to consider what improvements
 9 and guidance may be needed in the market.

10 One note. I plan to leave some time for
 11 questions at the end so if you will hold on to them until
 12 then, that would be great.

13 So before we start, let me introduce our
 14 panelists.

15 Ammar Rizki has served as chief financial
 16 officer of Cook County since June 2017 and oversees the
 17 financial operations of the county that include a \$5.9
 18 billion annual budget, \$3.4 billion debt portfolio and
 19 over 350 million daily cash flow from operations. Prior
 20 to that, Amar served as deputy CFO, starting in August
 21 2013, where he led a number of management initiatives
 22 across the bureau of finance, including the development
 23 and implementation of a multiyear financial plan to
 24 ensure the county's debt and pension obligations grew no
 25 more than 2 percent annually, the Federal Reserve's

1 long-term forecast for inflation, ensuring manageable
 2 growth without placing unnecessary burden on county
 3 operations.

4 Ammar has over 18 years of diverse experience
 5 in various leadership roles in public finance, investment
 6 management and banking.

7 Robin Prunty is managing director, head of
 8 analytics and research for S&P Global Ratings U.S. Public
 9 Finance. Robin is responsible for implementing the
 10 analytical research and market education strategy for the
 11 U.S. public finance department. She also represents U.S.
 12 public finance in various capacities to discuss the
 13 municipal bond market and S&P's ratings, research and
 14 methodology to intermediaries, bond issuers, investors,
 15 industry associations, media outlets and other market
 16 participants.

17 Jim Spiotto is managing director of Chapman
 18 Strategic Advisors, the consulting subsidiary of Chapman
 19 and Cutler LLP. In this role, he is engaged in strategic
 20 and advocacy initiatives on topics of high interest to
 21 municipal market participants and the presentation of
 22 educational forums on issues impacting the financial
 23 services industry.

24 Prior to joining Chapman Strategic Advisors,
 25 Jim was a partner at Chapman and Cutler where he

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1 represented issuers, indenture trustees, bondholders,
 2 banks, insurance companies, institutional investors and
 3 funds in litigation, bankruptcy or workouts and more than
 4 400 troubled debt financings in more than 35 states and
 5 in foreign countries as well. He's written a number of
 6 articles and books on municipal finance topics, including
 7 the law of state and local government debt financing,
 8 municipalities in distress, and the treatise, Defaulted
 9 Securities, the Guide for Trustees and Bondholders.

10 Ann Fillingham is a member of the law firm
 11 Dykema Gossett. Ann's principal areas of practice
 12 include public structured finance, infrastructure finance
 13 and transactional work for financial institutions. In
 14 the public finance arena, Ann has served as bond counsel
 15 and underwriters counsel to numerous state and local
 16 issuers. Ann has worked extensively with the state of
 17 Michigan and its various departments and authorities. In
 18 addition, she has served as bond counsel or underwriters
 19 counsel on many county, municipal, school and local
 20 authority bond issues and many conduit transactions for
 21 acute care and continuing care facilities and economic
 22 development projects. Ann is on the board of directors
 23 of the National Association of Bond Lawyers.

24 And finally, Dan Hartman is a managing director
 25 at Public Finance Management, PFM, and is head of PFM's

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1 national municipal advisory practice. PFM is the largest
 2 municipal adviser in the country, based on the volume of
 3 debt that PFM has advised on each of the last several
 4 years. Dan has over 25 years of public finance
 5 experience, both in financial advisory and in investment
 6 banking capacities. Dan has been involved directly in
 7 the issuance of over \$70 billion of bonds and has worked
 8 on some of the largest and most complex transactions in
 9 the municipal market.

10 Dan started his career in 1991 with PFM and
 11 also served as a managing director with Bear Stearns and
 12 Citigroup Global Markets in 2002 to 2006 prior to joining
 13 PFM.

14 So a very impressive panel up here.

15 So to start things off, I was hoping, Robin, if
 16 you could set the stage. What do the financial
 17 conditions of state and local governments generally look
 18 like right now?

19 MS. PRUNTY: Thanks, Hillary. And thanks to
 20 the SEC for bringing all of our diverse municipal market
 21 together for this event.

22 The panel is very timely. S&P has been
 23 spending the last several months looking at current
 24 credit conditions and evaluating, you know, what happens
 25 if and when the cycle turns. For state and local

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1 governments, specifically, which is the focus of this
 2 panel, we spend a lot of time analyzing and publishing on
 3 economic and credit conditions because they have a really
 4 meaningful impact on our weighted universe of credits.

5 We have had a very sustained period of economic
 6 expansion, which Hillary mentioned, one of the longest on
 7 record. But for many state and local governments, it has
 8 been a different type of recovery than we have seen
 9 historically with a very slow pace of growth throughout.
 10 2018 has been a bit of an anomaly, which we will discuss.

11 So I will start out with a discussion of
 12 states, because they typically are a leading indicator of
 13 overall credit conditions and credit trends across public
 14 finance. They tend to experience budget shortfalls,
 15 budget variability, you know, at the very early onset due
 16 to the nature of their revenue streams. And what happens
 17 at the state level tends to really ripple through other
 18 parts of the market, whether it be local governments,
 19 school districts, public higher education, overall
 20 spending for health care.

21 So looking at states, our outlook to start the
 22 year was entitled Short-Term Gain, Long-Term Pain. And I
 23 think that really has been the credit story for 2018.
 24 Several things unfolded this year that have translated to
 25 a real surge in revenue collections for U.S. states and

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1 this has contributed to a lot of credit stability. And
 2 that's compared to what we, you know, really observed the
 3 last couple of years.

4 So following the passage of the Tax Reform Act,
 5 states began to see very strong revenue collections
 6 really for the first time, performance well exceeding
 7 their budget forecasts. And we believe part of that
 8 really reflects nonrecurring elements from taxpayers
 9 accelerating income before certain deductions were
 10 eliminated.

11 So the higher revenue growth made it very much
 12 easier for states to pass budgets. There were no
 13 meaningful delays that we saw this year for states as
 14 they looked at their fiscal 2019 budgets. And that
 15 compares to last year, where 11 states had budget delays,
 16 difficulties kind of achieving a balanced budget, which
 17 is very unusual in a recovery period.

18 We have seen that stable credit performance.
 19 We have had two -- it's been very balanced. Two
 20 upgrades, two downgrades. When you look at 2016 and '17,
 21 we saw a lot more volatility and had a very negative
 22 tilt. We had 17 downgrades between 2016 and 2017 and
 23 just two upgrades. And that's really an unprecedented
 24 credit pattern in a recovery period.

25 I do want to caveat that the state sector

1 remains very creditworthy. It's one of our strongest
2 credit profiles and well above average. And the rating
3 movements were largely within a notch but directionally
4 very different than what we've seen in other recovery
5 periods. So we attribute that to the slow pace of
6 economic recovery and that translated to much slower
7 average revenue growth so made it very difficult to get
8 to that balanced budget.

9 So our economic forecast for 2019, it's a
10 little troubling, I think, for overall state and local
11 government credit conditions because it's forecasting a
12 return to a much slower growth pattern, 2.3 percent GDP
13 growth in '19, 1.9 percent in 2020. So also largely
14 because of the equity market volatility that we're seeing
15 and some of the trade tensions, our chief economist has
16 increased the probability of a recession to 15 to 20
17 percent from 10 to 15 percent.

18 So what does this mean for state and local
19 governments? A return to slow pace of economic and
20 revenue growth will likely translate to a much more
21 strained budget climate. And especially when you compare
22 it to kind of the large surpluses that we're seeing this
23 year. And if the cycle does turn, we think there will be
24 significant challenges which are underscored by a recent
25 stress test analysis that we conducted for the 50 states

1 much more pronounced equity investment profile. So if
2 equity markets are down during an economic downturn,
3 which we have observed in past recessions, that will lead
4 to budget pressure -- additional budget pressure in the
5 pension area.

6 So I think another significant uncertainty is
7 the last couple of recessions, federal stimulus has
8 played a very important role in stabilizing state credit
9 quality. Given the federal budget deficit and other
10 policy considerations, I think it's very uncertain what
11 role federal spending would play if the economic cycle
12 turned.

13 So real estate has been very stable in recent
14 years and that's a very positive thing for local
15 governments who rely on property taxes. But there is no
16 doubt that if fiscal strain emerges at the state level,
17 you will see that trickle down to local governments. And
18 we have actually even seen that in this recovery period
19 in certain states.

20 So the municipal market exhibits a lot of
21 stability but there are pockets of distress and during an
22 economic downturn, these tend to be much more pronounced.
23 Our economists aren't forecasting a recession but we do
24 see a lot of headwinds that could affect credit quality
25 in the years ahead and we think it's important for our

1 which showed, you know, in a recession scenario with
2 actual revenue declines recorded, that more than half the
3 states wouldn't have sufficient reserves to, you know,
4 weather the first year of that recession. Of course, a
5 lot of variation amongst the states. And we never expect
6 state reserves to be sized to totally manage volatility
7 because that would be probably an unlikely reserve amount
8 that could be carried. But states do have a broad range
9 of tools that they use in an economic downturn.

10 But we think that a couple points on that.
11 State spending during this recovery has been much more
12 restrained than we have seen historically. And because
13 expenditure reduction is a very large tool that is, you
14 know, brought out for recession periods, we think that
15 flexibility may not be as great as it has been
16 historically there.

17 Medicaid is a huge program item for state
18 budgets. It's very volatile. So in an economic -- you
19 know, in an economic decline situation, spending
20 program -- program spending is accelerating rapidly just
21 as revenues are deteriorating.

22 Revenue volatility, we have, you know,
23 commented on this broadly, that it's become much more
24 pronounced for states, especially those that are reliant
25 on personal income taxes. State pension systems have a

1 analysts to really be mindful of where we are in this
2 credit cycle as they are going about their analysis.

3 So that's a short overview and I'll turn it
4 back to you, Hillary.

5 MS. PHELPS: Yeah, so while it sounds like
6 you're saying, you know, the financial condition of many
7 state and local issuers, it's pretty good right now.
8 There is a potential for downturn that could put people
9 in a precarious position.

10 So what are some like leading indicators that
11 an issuer -- that reflect an issuer may be facing
12 financial distress? You or anyone who would like to
13 respond to that?

14 MS. PRUNTY: So I think I mentioned, you know,
15 the states will typically see it first and it will show
16 up in cities that have a similar revenue mix to state
17 governments. You know, New York City, I see in the
18 audience, they have a very similar -- so you will see it
19 right away in that revenue performance. But maybe the
20 issuer in the audience has a different --

21 MR. RIZIKI: Thank you. I want to, first of
22 all, thank you, Hillary and the Commission, for allowing
23 us to present our perspective here.

24 Again, my name is Ammar Rizki. I am the CFO
25 for Cook County, Illinois.

1 Cook County is a home rule, Cook County. What
2 that means, basically, we have our own ability to raise
3 taxes under state law. And so the liquidity pressure
4 that you would normally see at the state level, you know,
5 they are less of an impact for an entity like us, where
6 they are more reliant on something directly from the
7 state is harder.

8 To answer your specific question, I think the
9 largest revenue source for us on the taxation side is
10 sales tax. So it's a very economically sensitive revenue
11 source. And there are other structural things that are
12 happening along with that. Migration to Internet, for
13 example, Internet sales are growing at a much faster pace
14 than brick and mortar, where a majority of our tax comes
15 from. And so those are the types of things that we've
16 sort of highlighted and continue to highlight in our
17 disclosure practices, and making sure that we state the
18 facts in terms of how they are around that.

19 So I think that has helped the market
20 participants understand, you know, what are the
21 challenges and how -- what the county itself and the
22 leadership is doing to make sure we are accounting for
23 those types of things.

24 And then, similarly, because our revenue is
25 based on sales tax, you heard Hillary talking about what

1 we had done around the 2 percent growth rate. The reason
2 why we chose 2 percent growth rate for our major
3 expenditures around debt service, you know, and pensions
4 cost is because that's long-term Federal Reserve's
5 forecast for inflation. And so sales tax in the long run
6 is supposed to grow at least by inflation. So that way,
7 we have a chance to manage both the growth rate up from a
8 revenue perspective and expense perspective.

9 So those are the types of things that we are
10 doing, in making sure that we are disclosing that. And
11 then, in terms of how -- what may happen in terms of the
12 economy, building the reserves when things are still
13 good. And so trying to address those things and making
14 sure the investor base is clear around how we are
15 managing all of that is some of the approaches that we've
16 taken at the county.

17 MR. SPIOTTO: There are a lot of statutory and
18 other devices used to determine whether financial
19 distress may be occurring, including if you fail to make
20 your debt service payments, drawing out of the debt
21 service reserve, covenant defaults, delayed audited
22 financials, failure to pass a budget after the previous
23 year end and failure to make the actuarial required
24 contribution or excessive pension funding holidays that
25 actually make the hole a little bit deeper.

1 I have on our website posted a slide
2 presentation that you can feel free to go through it, it
3 goes through some of these and other factors regarding
4 the whole issue of disclosure and what are the early
5 warning signs. But there are a lot of great examples in
6 the statutes that help lead to it but no one is going to
7 cure all, so that you have to be careful that you ought
8 to fine tune it to the credit that you're dealing with.
9 Because some people historically may miss some of these
10 but will work the situation out.

11 MS. FILLINGHAM: Let me just add to that,
12 because Michigan for a while had a statutory index, where
13 the state attempted to go through and assess a score for
14 financial performance of various governmental units. And
15 it's an imperfect science, in part because there are
16 different definitions of financial distress. And it's
17 important to make sure we have a context around it. Are
18 we talking about financial distress or are we talking
19 about long-term fiscal health, which really incorporates
20 more of the economic indicators and the general
21 resiliency? So it's hard to reach a common understanding
22 of what the distress means in the first place.

23 And then, as Jim points out, there are very
24 different factors depending on which particular units of
25 government you are dealing with.

1 MS. PHELPS: So are you saying, like so much in
2 our market, it just depends on the credit and issuer and
3 the state law? Yeah, it's just very heavily dependent --

4 MS. FILLINGHAM: And there are some common
5 flags that I think people look to. But I do think it's
6 heavily facts and circumstances dependent.

7 MR. HARTMAN: You know, I think as Ammar said,
8 certainly I think we see distress starting typically on
9 the revenue side and shortfalls in revenue. And it leads
10 to structural imbalances. And really, I think the
11 leading indicators sometimes are when there are not
12 appropriate responses to that structural deficit. So you
13 see elevated debt levels, you see kind of one-time shots
14 to balanced budgets, and unwillingness to raise rates
15 because of difficult financial circumstances. Those tend
16 to be some of the leading indicators that we see
17 certainly in portions of the market.

18 But again, I think those are difficult to
19 universally apply and develop kind of a rule around how
20 you disclose that. I think it's difficult because some
21 of those things may not necessarily mean distress.

22 MR. SPIOTTO: One thing to keep in mind, some
23 general ones that people like to look at and are
24 generally helpful is cash on hand. Because if you don't
25 have liquidity, problems come up very quickly. The other

1 is the age of your infrastructure. Obviously, if things
 2 are sort of dissembling on the infrastructure front, it's
 3 not good for the long-term financial health.
 4 MS. PHELPS: I wanted to turn to the topic that
 5 the Chairman discussed in his remarks, which is the
 6 availability and accessibility of timely financial
 7 information which is, of course, important to evaluating
 8 an issuer's financial health and therefore to investors
 9 in evaluating whether to purchase a municipal security.
 10 As he noted, such information is not always timely. And
 11 we've seen that there seems to be a reluctance from some
 12 issuers to provide unaudited financial information that
 13 might be helpful to assessing their financial condition
 14 at a moment in time.
 15 Ann, what do you think are -- what do you think
 16 are issuers' concerns with respect to providing this type
 17 of information to the market, unaudited or interim
 18 financials?
 19 MS. FILLINGHAM: I would start with the fact
 20 that I'm not sure concern is the right characterization.
 21 There are a number of issuers who simply don't prepare
 22 interim, unaudited quarterly or monthly financial
 23 statements in a format similar to what the CAPRA
 24 contains. So for some, it's a new concept.
 25 Then there is the issue that I think is an

1 important one about the 10b5 issues associated with
 2 unaudited numbers compared to audited numbers. I mean,
 3 there's a real value that that audit process provides,
 4 not just to the market but to the issuers in terms of
 5 conforming to telling everyone, the issuer and the
 6 market, that these financial statements conform to the
 7 set of accounting standards that then everyone
 8 understands. And although unaudited financial statements
 9 can provide data, it doesn't provide it in the same
 10 context that an audited financial statement does.
 11 MR. RIZIKI: Thank you. I think that's exactly
 12 how I would characterize it, too. It's not really a
 13 concern, it's more of a, you know, a comfort level around
 14 making sure that audited information is disseminated in a
 15 way that it's equitable across the board.
 16 And there's a challenge associated with that
 17 for issuers like us. We have 11 different elected
 18 officials, you know, and several different component
 19 units of the government that there's a kind of
 20 administrative burden around trying to get that
 21 information and produce it in sort of a short fashion.
 22 By state law, we are required to have our audit
 23 published within 180 days after the fiscal year ends.
 24 And so we have been able to do that, and that is a
 25 herculean effort in itself. Because it takes all of us,

1 even though within us -- the controller's office reports
 2 to us, where we produce this report, we have to audit all
 3 our component units of government to make sure everything
 4 is provided in a timely basis. And that's why, once the
 5 entire process is complete, there is a certain level of
 6 comfort that, yes, the information that is being provided
 7 is accurate, is audited by independent auditors. And so
 8 that's where it comes down to it for us.
 9 And then, you know, we just finished up -- I
 10 talked a little bit about administrative burden. We just
 11 finished up an ERP implementation that took us four
 12 years, where we had eight different systems, you know,
 13 consolidated into one. So that alone is a challenge,
 14 like I mentioned before, in terms of just getting through
 15 some of these things.
 16 And so that's why I feel that, you know, having
 17 that audited information out there is the best way to let
 18 the participants know around what some of the things are.
 19 Now, what is in the audited information, you
 20 know, in terms of the disclosures around footnotes and
 21 things like that, that's where we've done a lot of work
 22 to help address some of the concerns that investors and
 23 other market participants have had around direct debt,
 24 around some of these things in our debt footnote
 25 disclosures and things like that. And so that's where --

1 I think that's where the value is and has been for us at
 2 least and I think it's working. And so that would be the
 3 perspective that we would provide.
 4 MS. PRUNTY: Hillary, the one thing I might
 5 add, and we've all kind of talked about it, is the
 6 diversity of our market. And, you know, I think we use a
 7 test of if it's relevant to our review. There are some
 8 governments that receive all of their revenues first day
 9 of the fiscal year, they provide very little in the way
 10 of services, we may not be looking for that interim. But
 11 if there's, you know, a lot of volatility in that revenue
 12 base and it's relevant to our review, it may be
 13 something.
 14 So I think that there is a lot of variation
 15 with our issuers and the types of services they provide
 16 and revenues they collect.
 17 MS. PHELPS: Is the form that it's typically
 18 provided to you in, is it a form that's different than
 19 would be presented in an audit? Because we're talking
 20 about the difficulty in producing numbers in a form that
 21 you can compare it. So how do you look at this
 22 information when you do receive it?
 23 MS. PRUNTY: Yeah, it is very different. You
 24 know, even -- you know, even at the state level, which
 25 tend to have among the most sophisticated reporting,

1 monthly reporting, it will look different, you know, what
2 they capture in a monthly report, whether they do it
3 monthly or quarterly. But there typically is a lot of
4 information that can be gleaned on, you know, revenue
5 performance or, you know, other things that you're
6 looking at in terms of expenditure trends. So, you know,
7 I think that the reporting that comes out on an interim
8 basis largely, you know, reflects the nature of what
9 they're providing and sort of how their budget systems
10 are set up.

11 MR. SPIOTTO: One point to make, too, I mean, I
12 think there's a lot of room for debate here and
13 discussion as to how to actually address this. I mean,
14 some people are saying should financials also be done on
15 an accrual basis and does that really work for a
16 governmental body. And I don't think there's an absolute
17 answer to that. I think it's an answer that people
18 should discuss.

19 The whole question of whether -- which I know
20 is already being debated, whether XBRL which is used by
21 the corporate as a data source, does it work for
22 municipalities? Should it be done? And in what way can
23 you deal with the financials?

24 The one thing that you know about distress is
25 everybody wants timely, accurate information. And I

1 think we also ought to think about, you know, distress is
2 dynamic uncertainty. And there should be some form of a
3 safe harbor when you provide information that, if you
4 honestly and fairly present it and circumstances change,
5 it's not a gotcha.

6 MS. PHELPS: I want to turn to pensions. So a
7 recent study by Pew Charitable Trusts shows a decline in
8 aggregate pension funding. And also the Wall Street
9 Journal published an article in October that signaled
10 that issuers with large pension liabilities may be
11 running out of options as interest rates rise, making
12 pension bonds less tolerable and, as economic conditions
13 deteriorate, potentially reducing return rates and funds
14 available to fund pensions.

15 Jim, do you share these concerns and do you
16 think that the risks associated with underfunded pensions
17 are being adequately disclosed?

18 MR. SPIOTTO: Well, I think the real issue, and
19 it is one we sort of all feel the pain, there have
20 been -- you know, the failure not to pay the actuarially
21 required amount is a real issue. And it should be
22 encouraged in every way possible. The failure to pay
23 annually, i.e., pension holidays. Clearly,
24 municipalities and states have all sorts of demands.
25 They have increasing expenses at a rate higher than

1 revenues and they have to try to make it all fixed. And
2 to the degree that it crowds out essential services, it's
3 not good.

4 So I think you're going to see and we have seen
5 a number of municipalities and states solve the pension
6 issue. Others are still addressing it. It's got to be
7 addressed. And it can lead to illiquidity, especially
8 when we pass statutes, which are needed, I'm not saying
9 they're not needed, but require the states to withhold
10 funds from a municipality if they haven't made proper
11 payment into the pensions and they don't have enough
12 funds or liquidity to pay for essential services.

13 And if you start losing taxpayers and
14 businesses, that's the death spiral beginning and you
15 don't want to do that.

16 MS. PHELPS: I know Illinois has a law like
17 that, where it was implemented. Are there any other
18 states that have similar laws on the books like that,
19 where they will intercept the payments to fund -- excuse
20 me, intercept tax revenues to fund pensions, or that are
21 contemplated, that you're aware of?

22 MR. SPIOTTO: Yes, I believe Tennessee has one
23 and a number of states do. And, you know, it is sort of
24 one of those situations, clearly, it's a good to have a
25 way of funding it. But you don't want to have

1 illiquidity as the result that adversely affects
2 essential services.

3 MS. FILLINGHAM: Yeah, Michigan passed last
4 year -- the bill started out with more teeth than the
5 final legislation had in it. But I think that it really
6 underscores the mindfulness that we all need to have
7 about the pension issue. Because when you talk about
8 average funding stats, it tells you one story. But
9 what's harder is figuring out who is on which end of
10 those averages. And so Michigan -- the Michigan statute
11 is really a reporting and analysis statute that looks at
12 local both pension and OPAB and analyzes what percent
13 funded are those plans. And then to Jim's point, the
14 other factor that goes into the analysis is what's the
15 arc as a percent of general revenues. Scores those two
16 components and then, for folks that are over a certain
17 score, requires some reporting and planning that be
18 submitted from the local unit to the state.

19 MS. PRUNTY: Again, I think the relative share,
20 I think that crowd-out, we do feel, to a large extent,
21 for many governments is here. And I think the pension
22 discussion is one, but the issue of other post-employment
23 benefits, you know, can really be equally significant.
24 We just published a report on the 15 largest cities that
25 crowd-out is pretty evident. Pension costs are higher

1 than, you know, the debt servicing costs. But that is
2 one piece of the equation. I think the other
3 post-employment benefit, you know, especially where you
4 don't have flexibility to make adjustments, really needs
5 to be part of that budget equation. You know, the total
6 servicing cost for all of those fixed cost pressures.

7 MS. PHELPS: Another thing I wanted to ask
8 about was we read reports that some issuers may be using
9 kind of creative accounting techniques to mask their true
10 unfunded liability amounts. To what extent do you think
11 this is happening and are these measures being properly
12 disclosed?

13 MS. FILLINGHAM: I don't have an answer to that
14 question. I will tell you my personal assessment on that
15 is, whether or not a pension fund invests in any
16 particular asset should be a function of what their
17 investment protocol and platform is. And there may be
18 various assets that are appropriate for that investment
19 plan.

20 So to me the question is, is a transaction or
21 proposed movement of assets being driven by the
22 investment platform of the pension fund? Or is it being
23 driven by something else? And if the answer is something
24 else, then I think there are questions that are
25 appropriate to ask about what's driving this transaction.

1 MS. PRUNTY: You know, I can only speak from a
2 credit standpoint. But, you know, I think that what we
3 have seen, some different transactions, and I don't think
4 we've necessarily viewed any of them as credit positive.
5 You know, either neutral or if they're using it -- you
6 know, and I think it's important to look at the entire
7 strategy. Because if they're using it to provide, you
8 know, lower contributions in the early years, that's
9 clearly, you know, more negative from a credit
10 standpoint. But really understanding the entire
11 structure is important from a credit standpoint.

12 MS. PHELPS: I wasn't meaning to imply that it
13 was necessarily nefarious. More that whether it was
14 clear to investors what was going on, you know, using
15 perfectly legal methods to present information but in a
16 way that may not be as clear to investors.

17 MR. HARTMAN: I do think, though, that GASB 67,
18 68 is providing clarity to pensions. Certainly we see
19 maybe the most common instance of manipulating is just
20 what is the discount rate for the pension liability. I
21 think rating agencies and investors have gotten smart to
22 that. The rating agencies make their own calculations
23 and apply a common discount rate and add it or treat it
24 as a debt-like instrument. So I think there is, you
25 know, more clarity here and some of the ability to

1 manipulate that has, I think, been taken out of the
2 equation.

3 That's not to say it's not there across a broad
4 swath of governments. But I think there is certainly
5 improvement of clarity on the pension obligation side.

6 MR. RIZIKI: I would exactly echo those same
7 points because, truly, the valuation methodologies an
8 actuary uses, obviously, 7, 7.5, you know, percentage
9 discount rates. And so those actuarial valuation
10 techniques and practices. And then GASB came with some
11 standard guidance around that, around both 67 and 68. So
12 you have now sort of a good, you know, conservative
13 scenario and more realistic scenario that's kind of equal
14 that's shown out there.

15 So I think that's -- and having disclosures
16 where you can explain those types of things, you know, in
17 a very clear manner, I think that's where -- you know,
18 the approach we have taken as a county. We did an
19 alternative approach in terms of how to, you know, start
20 funding our liabilities on an arc basis. And so there
21 was some, you know, confusion initially amongst investors
22 and rating agencies as well. And so we had to, you know,
23 explain all of that. But once you do that and you show
24 that repeatedly over, you know, a two, three-year period,
25 then people get the confidence around that.

1 So I think that's where, exactly, Dan, I agree
2 with you that the 67 and 68 has really helped sort of put
3 that standard out there.

4 MS. PRUNTY: And just to clarify, we don't
5 use -- we don't make one discount rate adjustment. We,
6 you know, look at the whole pension funding discipline.

7 MS. PHELPS: While pension shortfalls can be a
8 clear indicator that an issuer may be in distress or face
9 distress in the future, shortfalls in infrastructure or
10 capital -- deferred capital spending have not been
11 necessarily as widely discussed. Perhaps because there
12 is no true metric to measure it by.

13 But I was wondering, Jim, do you think is there
14 any sense as to the magnitude of infrastructure
15 obligations facing state and local governments?

16 MR. SPIOTTO: Well, according to the American
17 Society of Civil Engineers, they believe between now and
18 2025, it's like \$4.5 trillion we have to put into our
19 infrastructure. Whatever it is, as one civil engineer
20 said, if you look under the bridge, you may not want to
21 drive over it.

22 And so I think that the age of our
23 infrastructure is significant. Again, the civil
24 engineers claim that at least 2 trillion still needs to
25 find homes in the funding market, which should be good

1 news for the municipal market. And there are benefits.
 2 I mean, one of the things to keep in mind,
 3 funding infrastructure is good for your community because
 4 it's an economic stimulus. For every job in a hard asset
 5 infrastructure improvement that you do, it has induced
 6 and indirect other employment. So you have a job
 7 multiplier for putting that person to work for the
 8 construction. Economic studies both during the
 9 Depression and now have shown that if you do hard
 10 infrastructure improvements, for every dollar you put in
 11 over a 20-year period, you get over \$3 in economic
 12 impact. And a lot of that is front loaded.

13 So in 2008, we wanted to show how frugal we
 14 were, so we didn't spend money. We've had 11 economic
 15 downturns since 1949. In every one except the last one,
 16 state and local governments and others actually increased
 17 their spending which helped create the recovery, which is
 18 year to year growth in employment and GDP.

19 And so as people have talked about, I don't
 20 think there's any dispute anymore, we need to fund our
 21 infrastructure. And that could lift a lot of boats and
 22 solve some of the financial distress that some of the
 23 municipalities are finding.

24 MS. PHELPS: Do you think that the issuers, to
 25 the extent that they know that they have infrastructure

1 obligations that could become a real problem in the
 2 future that they're going to have to get to, that they're
 3 disclosing those? Or is it just -- are people paying
 4 attention to it when they go to market?

5 MS. PRUNTY: So I think that, you know, you do
 6 lack that one metric to measure it. And, you know, I
 7 think a lot of that reflects the variation across our
 8 market in terms of who is responsible for funding and,
 9 you know, who actually lays out the capital outlay.

10 You know, I think that capital planning, you do
 11 see a lot of variation that's, you know, a key part of
 12 our financial management assessment. What level of
 13 planning they do, are they looking out multiyear? And,
 14 you know, are they identifying funding sources? I think
 15 that is important. And, you know, I think, again, a
 16 range of disclosure on that. But some of that reflects
 17 some governments have really significant responsibilities
 18 and some have very limited.

19 So, you know, I think along with that, I agree
 20 with Jim's points that, you know, lack of infrastructure
 21 funding can be a marker of fiscal distress and has not
 22 just the immediate economic impact but longer term the
 23 ability to attract and retain corporate employers and,
 24 you know, other investments.

25 MR. HARTMAN: I think part of the question of

1 whether it causes stress is, you know, a willingness of
 2 entities to raise rates. You know, certainly we know the
 3 real strength of municipal credits is that autonomy on
 4 being able to raise rates. And certainly, there's lots
 5 of headroom to do that, stay within affordability for
 6 water and sewer and transportation entities. When you --
 7 you know, certainly, when you get to or come to a cap or
 8 on where the affordability is, I think that's where the
 9 stress happens. And so measuring kind of the
 10 affordability of rates is certainly key to this, of
 11 knowing whether these additional infrastructure
 12 obligations are going to cause stress.

13 MR. RIZIKI: Yeah. I think, and from an issuer
 14 standpoint, even though the county is not responsible for
 15 water and sewer type situations, we do have
 16 transportation infrastructure that we are mandated to
 17 help provide. And so the rates, and talking about the
 18 willingness to raise, I think that's really where it came
 19 down for us.

20 We raised our sales tax by 1 percent back in
 21 2016 and it was primarily to start funding a good chunk
 22 of our pension liabilities. But, you know, a significant
 23 portion of that was diverted towards increasing
 24 transportation funding, too. And so that was the
 25 willingness on our part, from our board and from our

1 leadership, political leadership, to recognize that and
 2 start providing that. You know, because to your points
 3 collectively about economic development and making sure
 4 the long-term viability of the county and the region is
 5 at stake here, that's the decisionmaking that was, you
 6 know, done in terms of providing that.

7 And then subsequently, in our offering
 8 statements and in our budget, where there are a lot of
 9 policy elements, the budget is usually a policy document,
 10 and that's where we kind of go into in-depth detail about
 11 not just the coming fiscal year but a long-term five-year
 12 plan in terms of how that funding is going to be
 13 achieved, what are we doing towards getting revenue
 14 sources from both the state capital allocations, federal
 15 capital allocations, and how we are preparing ourselves
 16 for doing that.

17 And so those are the types of things that, you
 18 know, we've done at the county and sort of highlighted
 19 for investors to sort of get a sense of. And they've
 20 gotten comfortable with it.

21 MS. PHELPS: I actually wanted to turn back to
 22 you, Ammar, just for you to talk -- you talked
 23 specifically about some of the approaches that Cook
 24 County has taken with respect to disclosure on certain
 25 issues. But I wanted to talk -- maybe if you could talk

1 a little bit more generally about your disclosure, your
2 policies and how you approach disclosure in the primary
3 and secondary markets, specifically in light of the, you
4 know, well publicized difficulties that the state of
5 Illinois has faced.

6 MR. RIZIKI: That's good. Thank you. So Cook
7 County, unfortunately, has the word Illinois in its name,
8 too. So, you know, people associate us with the issues
9 with the state and some of the other large entities like
10 the city of Chicago and Chicago Public School Systems
11 that are fairly large issuers, too.

12 And so, you know, we had stress, I wouldn't say
13 distress, six years ago when we first came into office.
14 And there were processes that weren't, you know, up to
15 par. And so what we started doing was just looking at
16 what, you know, we're members of the Government Financial
17 Offices Association, which produces a lot of good best
18 practices around disclosures and financial policies in
19 general, so started adopting that and started making sure
20 that we put information out there accurately as possible.

21 And so that's kind of the experience that we
22 started feeling through. And the feedback we started
23 getting was that, you know, we had to differentiate
24 ourselves from the city's issues, from the public
25 schools' issues, from the state's issues.

1 Some of you may know, the state of Illinois did
2 not have a budget for two years in a row. And that put a
3 lot of stress on local governments. Fortunately for us,
4 we are a home rule entity so we had our own ability to
5 raise taxes. And so, you know, when investors were
6 looking at our bonds, they were not distinguishing that.
7 And so we recognized that and we worked with some of the
8 experts, our disclosure counsel, our municipal advisers,
9 to start strengthening those disclosures where it
10 differentiates, you know, what the issues are for us
11 versus what the issues may be for the state and some
12 other local government in the region.

13 And so that's the kind of stuff we started
14 doing, which helped, you know, get a lot of comfort level
15 both from a rating agency perspective, our ratings did
16 stabilize quite a bit. We were on a downward pressure
17 from all major rating agencies a couple, a few years ago.
18 And so the ratings did stabilize. As well as, you know,
19 investors also started, you know, getting a sense of what
20 it is that we were doing and how different we were in
21 terms of our approach, compared to some of our other
22 large entities within the state.

23 MS. PHELPS: Ann, you have worked with issuers
24 who have faced significant financial challenges. I know
25 each issuer and its situation is obviously unique. But

1 what do you think generally an issuer who is going to
2 market and is in financial distress or exiting a crisis
3 situation should consider with respect to its
4 disclosures? Or if you want to provide examples, that
5 would be helpful, too.

6 MS. FILLINGHAM: Sure. I think it starts with
7 an analysis of what's relevant in the particular issuer's
8 story at that time. It's very hard to build a list of 10
9 factors because, with 10 issuers, no matter whether they
10 are facing stress or not, their factual situations are
11 different.

12 But one example that I will use, city of
13 Detroit is back in the market successfully this week.
14 And as we put together the disclosure document for that
15 offering, it obviously comes, given the history of the
16 city, with a conversation about what is it that is
17 important for the market to know.

18 And I think any large urban issuer or any
19 issuer that has financial challenges needs to ask itself
20 that question. When I talk about it, I often say, what
21 is it that keeps you up at night? What is it that you
22 worry about that's not in your -- that's not depicted or
23 captured in your CAPRA that the market needs to know?

24 And as we started to build the offering
25 document for Detroit, for instance, we compiled a set of

1 offering documents from other issuers and said, read
2 these and you start to get the flavor of the fact that
3 they're not all the same and they should not all be the
4 same. Because if they're done correctly, the primary
5 disclosure tells the market the facts that may not be
6 fully fleshed out in the CAPRA.

7 So, for instance, if you look at investment
8 considerations in a city of Miami deal, you will see
9 things that are not relevant to the city of Detroit.
10 There are conversations about Zika, there are
11 conversations about, you know, Argentina investments.
12 Those were not the things that resonate as we started to
13 compile the Detroit document.

14 Rather, it's the fact that, yes, we have the
15 bankruptcy now in the rearview mirror. But we still have
16 the same economic realities that the city is facing, the
17 state is facing. And that's important for an investor to
18 be cognizant of.

19 Similarly, the city has recently exited active
20 oversight of the Financial Review Commission, which is
21 the oversight process that was imposed after bankruptcy.
22 But nevertheless, the continuing oversight and what does
23 the FRC mean and how does that fit into the otherwise
24 more traditional disclosure is relevant to the issuer.

25 So I think it's a different story for every

1 issuer, regardless of the level of challenge. But it has
2 to do with what are the stressors that the issuer
3 believes are creating those stresses and are they
4 accurately depicted in the more traditional, normal CAPRA
5 disclosure or do they warrant highlighting in the
6 offering document?

7 MS. PHELPS: I wanted to turn -- we talked
8 about financial distress caused potentially by an
9 economic downturn or a recession. I wanted to turn to
10 kind of one-off events that may test an issuer's
11 liquidity. Natural disasters have devastated communities
12 throughout the United States.

13 Robin, how do you think issuers who may be
14 disproportionately affected in the future by disasters or
15 other climate change-related issues approach disclosure
16 with respect to risks and constraints on their finances
17 that they may face?

18 MS. PRUNTY: So again, I can talk from a credit
19 standpoint. You know, it's I guess not really our role
20 to focus on the actual disclosure. But I think the
21 environmental of environmental social governance is
22 something that is, you know, permeates our criteria and
23 certainly there's a lot of different profiles. And the
24 discussion that you might have with a coastal community
25 in Florida and what you're looking for as part of the

1 credit review in terms of reserve position, liquidity,
2 things like that, are going to probably be different than
3 a community that, you know, doesn't have that type of
4 risk of either, you know, hurricane, et cetera.

5 So I think that, you know, it does vary
6 depending on the risk that they're facing. But I think
7 that, you know, another key element and, you know, I
8 think there's variation of understanding, is that FEMA,
9 the Federal Emergency Management Agency, plays a very
10 significant role in state and local government, you know,
11 even in the broader municipal market. That there is a
12 strong recovery and fund flow from that source. But
13 there is that interim period where you need to bridge
14 those reimbursements and need to have sufficient
15 liquidity. So whether it be reserve or what plans that
16 you have to, you know, access external liquidity. And
17 sometimes that can be a little bit strained.

18 But those are some of the things from a credit
19 standpoint that we focus on. And then more broadly, as
20 part of, you know, capital planning discussion, what are
21 some of the resiliency costs, what are some of the
22 things, you know, from a kind of capital perspective,
23 investment perspective, that individual governments might
24 need to be thinking about as they, you know, look at sort
25 of, you know, that one type of risk out there, which is

1 more in the environmental? And, you know, we have seen
2 an uptick in the frequency and severity of storm events.
3 So I think we get a lot of inquiries, you know, from the
4 market when those hit. And, you know, typically you're
5 hopefully building that into the review, looking at
6 their, you know, liquidity and reserve profile and
7 management capabilities.

8 MS. PHELPS: Ammar, are these issues you think
9 about? Maybe, you know, climate change or those type of
10 disasters may be not so relevant to Cook County. But,
11 you know, other -- a cybersecurity event, for example,
12 are those things that you're thinking ahead about doing
13 your disclosure?

14 MR. RIZIKI: Yes. Definitely. I mean, one of
15 the things, right, we're fortunate that, you know, we are
16 a part of the country where we don't have that regular
17 occurrence of these natural disasters. And so, you know,
18 but we do have other one-time events like cybersecurity.
19 So the county also runs elections for the county. And so
20 we just invested \$30 million in a new election equipment
21 system that's going to be, you know, helping us sort of
22 fight some of these upcoming challenges regarding
23 cybersecurity.

24 Beyond that, you know, we've hired, you know,
25 experts, data officers, risk officers and things like

1 that. We're helping roll out strategies and standards
2 across the board in terms of how do we mitigate and fight
3 those types of things. It's a huge, you know, investment
4 in our IT infrastructure beyond just election equipment
5 to do that.

6 So highlighting that in terms of our capital
7 planning perspective when we talk about, you know, how do
8 we fund those types of issues and what the impacts could
9 be, that's a focus that we're increasingly starting to
10 take. So for years, we had underinvestment in that area
11 at the county. And so we have caught up a lot. But now,
12 it's talking about more strategically how to avoid that
13 and keep track of those types of things. So that's the
14 type of stuff that we are looking for.

15 Beyond that, I think I really mean any of these
16 types of situations, whether it's a natural disaster or
17 some sort of a cybersecurity type event, you know,
18 investors and rating agencies, outside market
19 participants are looking for what's the local government
20 or the unit of government's ability to handle these types
21 of things? You know, financially, operationally and
22 things like that. So that's where I think our focus has
23 been when we talk about our capital planning budgets and
24 how we are -- you know, what our plans would be once this
25 investment is in place. What are we doing beyond, you

1 know, just putting the information in there, how we're
2 going to sustain that? And so that's where the focus is
3 and I think insurance requirements and things that we do
4 undertake, those are the kind of practices that we would
5 like to highlight when we're talking to investors and
6 disclosing some of this information.

7 MR. HARTMAN: And I think we see more and more
8 investors, rating agencies, asking these questions. And
9 so I think as that happens, certainly that's going to
10 filter down to where the disclosure is going to reflect
11 that. We're seeing already a number of issuers who, you
12 know, respond to climate change, particularly those on
13 the -- whether it's a sea rise or the severity of storms.
14 And I think what investors want to know is, you know, is
15 your eye on the ball of addressing those.

16 Certainly, no one is going to be able to absorb
17 a Katrina or a Paradise, the fires, I mean, that's
18 catastrophic, without kind of outside help. But I think
19 many of these items we're talking to are manageable to
20 the extent that you have policies, liquidity to address
21 those. And I think that's the focus that we're starting
22 to see and I think it is making its way into disclosure.

23 MS. PHELPS: I actually want to stick with you,
24 Dan, and kind of change the topic a little bit and talk
25 specifically about municipal advisers and their role in

1 disclosure. You know, while MAs obviously have had a
2 long history and, in that history, conduct has not been
3 regulated at the federal level until Dodd-Frank, and so
4 because MAs have a fiduciary relationship with their
5 clients, their role with respect to disclosure may be
6 different than other deal participants.

7 So can you talk a little bit about the role of
8 an MA with respect to disclosure and how the different,
9 you know, SEC and MSRB rules have shaped that role for
10 you?

11 MR. HARTMAN: Sure. And I think the MAs
12 certainly are playing a constructive role in this topic.
13 Obviously, both the Chairman and Rebecca kind of
14 referenced the framework of the regulatory scheme to
15 protect investors. And I would say that, I think, the
16 primary players are the issuer, broker-dealer and
17 investors. And much of those investor protections run
18 through the broker-dealer regulations. But certainly the
19 FAs do or municipal advisers do play a significant role.
20 And that role is really, I think, driven by a few things
21 that both the MA rule as well as G42 requires. And
22 that's, you know, a fiduciary duty to the issuer, a duty
23 of care and antifraud provisions. And we certainly have
24 a lot more conversations in my compliance department than
25 I ever have -- you know, perhaps care to. But we are

1 very vigilant of those three obligations. And I think we
2 serve as an extension, a lot of times, of the issuer's
3 staff to make sure that they are fully disclosing all the
4 material items, don't omit anything, and certainly are
5 abiding by the antifraud and within best practices of
6 disclosures.

7 I would also say that for the MAs I would draw
8 a distinction between -- MAs play perhaps an even larger
9 role, not at some of the large issuers who have a cadre
10 of lawyers and a lot of talent focusing on those, but in
11 the smaller issuers, where there is -- where the advisers
12 play a lot of -- perhaps a more central role in compiling
13 the data, actually take part in drafting the OS. I think
14 that -- certainly, there's scrutiny in that part of it
15 where, if we do that at PFM, we certainly want a 10b-5
16 opinion from counsel. But I think -- so I think it's
17 changed there certainly and there, I think, is certainly
18 a distinction between some of the larger and smaller
19 issuers in this as the MA's role in some of the
20 disclosure.

21 MS. PHELPS: Does your role change at all
22 depending on the kind of financial condition of the
23 issuer you're working with, do you find?

24 MR. HARTMAN: I don't think so. I think we
25 certainly perhaps have a -- we elevate things under kind

1 of a, you know, where we see stress to make sure that we
2 are doing everything correctly. But the approach and
3 what we would advise people to disclose, none of that
4 approach or structure that we have or the policies that
5 PFM has into the way -- with respect to disclosure and
6 continuing disclosure would change whether there is
7 stress or not. Perhaps we would put more eyes on it to
8 make sure we're complying. But the approach didn't
9 change.

10 MS. PHELPS: Ammar, what role does your MA play
11 with respect to disclosure, if any?

12 MR. RIZIKI: So similarly, I mean, we're a
13 larger issuer. And so we do, you know, have
14 sophisticated, you know, consultants and sort of
15 disclosure counsels' assistance to help us with this. So
16 it is -- it's helpful to have that perspective to make
17 sure that we are doing everything in our power, things
18 that are missing. I always like to sort of use our MAs
19 and other counsels just to get a sense of what others are
20 doing around, you know, the country and the nation to see
21 where we can learn from and start putting some of that
22 stuff in there. And so that's been really helpful for
23 us, in terms of -- because we're not out there reading
24 everybody else's OSs and things like that on a daily
25 basis but these guys are.

1 And so that perspective is really helpful for
2 us to see where we can fine tune some of the things that
3 we are already doing and make them better. I mean, there
4 is always room for improvement. And so that's where, you
5 know, the value has been really for us, from all of our
6 MAs as well as our disclosure counsels.

7 MS. PHELPS: And for the kind of final topic,
8 I've been jumping around here, I wanted to turn to
9 considerations regarding the availability of Chapter 9
10 and also maybe touch a little bit on Puerto Rico.

11 So, Jim, I'll start with you. What approach
12 have states taken in recent years with respect to
13 assisting municipalities in financial distress? Is there
14 anything -- has there been anything new that's emerged
15 with respect to their approach to assisting?

16 MR. SPIOTTO: There's been no trend of further
17 authorization of Chapter 9. There are bills pending in a
18 number of states to authorize or to not authorize. Very
19 quickly, there are 12 states that authorize generally the
20 municipality can wake up and file a Chapter 9 at its own
21 discretion. There are another 12 states that basically
22 provide that if they want to file Chapter 9, they have to
23 go to the state governor or the auditor or treasurer or
24 some state agency and get approval. There are three
25 states that have very limited to a specific type of

1 entity that can file. And the rest of the states don't
2 authorize it. So there hasn't been an increase in
3 authorization.

4 On the other side, there has been a significant
5 increase in states, whether it's Nevada, Michigan
6 constantly redoes theirs, Indiana that provide some type
7 of oversight assistance, refinancing to help their
8 municipalities. And so if there's a trend, it's a trend
9 more to oversight and all that.

10 As far as Chapter 9s go, in the years 2011 to
11 2014, you know, you all can remember not only Detroit but
12 San Bernardino, Stockton, Jefferson County, they all
13 filed during that period of time. And the default rate
14 was, you know, per year, about 10 Chapter 9s, 10.75
15 Chapter 9s per year. Since 1980, Chapter 9s have been
16 about 8.5 per year. So, you know, these are the rare
17 exception. Generally small municipalities, not large,
18 with a few exceptions that I just mentioned.

19 Since 2014, it has gone down to like 3.75. And
20 no city, town, village or county since Detroit filed has
21 filed a Chapter 9, with the exception of Hillview,
22 Kentucky, which was just a way of renegotiating a bad
23 lease deal that then got dismissed, they did do a plan.

24 So you can see that Chapter 9 is not really
25 not -- defaults -- you know, just to compare it, we have

1 had sort of a bubble, both in defaults and Chapter 9s, in
2 the 2011, 2014, '15 period. We are now trending down.
3 Generally on rated, nonrated bonds, there were between
4 2012 and 2017 over -- a little over 400 but less than 10
5 percent of those were rated. And you could guess which
6 ones they were. And so I think you can see that the
7 trend is there.

8 I think the real key in these situations is,
9 don't panic. You know, when I first started 46 years ago
10 in the business, I was told, doctors bury their mistakes;
11 in municipal financing, we finance them. And to a large
12 degree of my career, it was true.

13 And I think, you know, the one thing now,
14 whether it's in default or earlier, here's the questions
15 that I think people want answered. One, are they
16 authorized to file Chapter 9? We talked about that.
17 Two, what is the source of payment? Is it a statutory
18 lien or special revenue that will get paid in bankruptcy
19 or not? Is there a mandate to be paid by state law? Is
20 there a set-aside and what does that mean? Three, is
21 there a diversity of tax sources? Are there caps on debt
22 or caps on taxes? And so that they can understand how
23 much headroom you have to solve the problem. And are
24 there efficient remedies or obstacles to remedies?

25 For example, a little-known fact, in Louisiana,

1 there is a constitutional provision that says no state
2 court can order a municipality, state or local, to levy
3 taxes to pay municipal debt. So you have to have a
4 different remedy. Now, that's a pretty well-kept secret.
5 But I think you need to think about that. If you look at
6 the disclosures in Louisiana, they do discuss that in
7 their disclosures.

8 And then I think, lastly, is there that
9 oversight, refinancing ability or other ability to
10 provide technical assistance that can help make the
11 situation better? And I think if you do it before there
12 is distress, people know. During distress, again, you
13 might want some sort of safe harbor that says, this is
14 the best we know. Because as we know, sometimes things
15 change, whether judicially or otherwise.

16 MS. PHELPS: Do you think -- you know, well,
17 Puerto Rico couldn't access Chapter 9 because it's a
18 territory so PROMESA was enacted, which applies at this
19 time only to Puerto Rico. And while Puerto Rico's
20 bankruptcy is still ongoing and Puerto Rico's problems
21 generally have often been considered problems only --
22 Puerto Rico's problems only, do you think that there's
23 anything with respect to Puerto Rico that may have a
24 lasting impact on the market, whether it be because of
25 PROMESA or otherwise?

1 MR. SPIOTTO: I think that we can learn from
2 Puerto Rico. I wouldn't necessarily say Puerto Rico was
3 indicative of the state and local government debt
4 financing market and what will happen.

5 I think we learned you never can be too early
6 in addressing a financial distress problem. And,
7 secondly, you don't want to double down. I mean, Puerto
8 Rico in 2006 had \$40 billion worth of debt. They just
9 lost their 936, which was their economic stimulus, the
10 tax benefits for doing business in Puerto Rico. They
11 needed PROMESA then. 2016 was a little bit too late.
12 And they doubled down with debt, increased it to 72
13 billion, which was really not the right way of going.

14 If you are going to issue debt when you know
15 you have a financial problem, you should have a recovery
16 plan as part of that process. And without a recovery
17 plan, you are just throwing money at a problem without a
18 solution.

19 And I think lastly, we're all in it together.
20 You know, quite candidly, and it's one thing I think we
21 all realize, if we don't talk, we don't resolve. So
22 let's get people together. Nobody gets everything.
23 Everybody, you know, sort of contributes but you work it
24 out. The last thing you want is long-term litigation
25 meltdown. And what you really want is people coming

1 together to solve the problem. Because that's the only
2 solution. There is no there there to fighting.

3 MR. HARTMAN: Agreed. I think, you know,
4 certainly the comments in terms of having a plan are
5 critical of doing that. I think the other thing that's
6 come out of Puerto Rico is the treatment of special
7 revenue debt and some of the -- some of the disclosure or
8 long-held principles of the way in which certain types of
9 debt would be prioritized or paid or insulated from the
10 bankruptcy. I think that is certainly a concern coming
11 out of Puerto Rico that's lingering and is, you know,
12 given the modest amount of case law, perhaps will take a
13 while to be adjudicated.

14 MR. SPIOTTO: I am sort of compelled to say
15 this, and I apologize ahead of time. Having been there
16 in 1988 in connection with the amendments where special
17 revenues came about, it was always intended that if you
18 had special revenues, the special revenues were
19 unimpaired. The unique decision by the Puerto Rico
20 court, contrary to every decision in a Chapter 9 court --
21 hopefully we'll see what the First Circuit does on
22 appeal -- but even then, there might be confusion. The
23 whole philosophy was if the state has a post-sovereign,
24 through statute or authorizing the municipalities to do
25 so, provide and mandate that this pledge of revenue is to

1 be paid, it cannot be rewritten in a Chapter 9. And that
2 was the intention.

3 And I think we need to go back to that.
4 Because the lack of certitude really denies financing at
5 an appropriate cost to those who need it most. And the
6 1988 amendments where special revenues came from was the
7 experience in Cleveland, where they had the ability to
8 tap into some of their enterprises that were creating
9 money but nobody wanted to lend them money because they
10 said, if I give them money, there will be a preference or
11 a fraudulent conveyance if they give me a lien, so
12 therefore I'm not going to do it. So I think we need to
13 rethink that from the market standpoint. Dynamic
14 uncertainty in financing is not a good thing.

15 MS. PHELPS: So we have a few minutes left so I
16 would like to open it up to some questions if anyone has
17 any.

18 AUDIENCE PARTICIPANT: Yeah, truth in
19 accounting, we calculate the financial condition of
20 governments based upon their audited financial
21 statements. Often, when we point out that a government
22 is in financial trouble, they will highlight, what are
23 you talking about, we have a good credit rating.

24 So can you highlight exactly what the credit
25 rating is measuring and also the credit ratings' efforts

1 to change that perception that the credit ratings is a
2 rating of a government's overall financial condition?

3 MS. PRUNTY: Yeah, I mean, ratings are
4 established based on our methodologies. So if you are
5 talking about a general government, financial performance
6 is one element of the review, not the only element. But
7 we clearly do look at financial audits and spend an awful
8 lot of time collecting them and analyzing them. It is
9 one element of the review and we have very clear
10 standards on timeliness of those documentations,
11 information sufficiency, reliability.

12 So, you know, there are other factors that go
13 into our various methodologies. But I think our -- you
14 know, our ratings are measuring the capacity of an issuer
15 to pay their obligations on time and in full in
16 accordance with the documents. So that is really a
17 rating, it's not a -- a rating is not an assessment of a
18 government's financial audit, you know, status or
19 anything like that.

20 So I think that it may be used for other
21 purposes. But really what we are measuring is ability
22 and willingness of an issuer to fund its debt
23 obligations.

24 AUDIENCE PARTICIPANT: Hello, Mark Joffe from
25 Reason Foundation. Not a question to anyone in

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1 particular, a comment just to see what you think.

2 I participated in a study of audited financial

3 statements for both defaulting and bankrupted cities and

4 counties, along with those that didn't go bankrupt or

5 have a default. And we found that a relatively small

6 number of financial ratios distinguished the distressed

7 cities from those that continued to perform.

8 Earlier, Chairman Clayton talked about the

9 importance of municipal disclosure and the timeliness and

10 so forth. And he also emphasized that it's primarily a

11 retail market.

12 So in a market where the average person who is

13 investing in the debt has very little familiarity with

14 the meaning of the various financial concepts and also

15 doesn't have the time to go through hundreds or even

16 thousands of pages of PDF disclosure on EMMA, I think we

17 really need a scenario where the data is provided in a

18 more structured way so that the more important elements

19 are flagged and then provided in bulk, so that third

20 parties like rating agencies and other nonprofits like

21 Truth in Accounting can analyze this data and provide

22 more information to investors and other stakeholders on

23 the relative financial strength of cities. Thanks.

24 MS. PHELPS: I think our panel later will

25 hopefully be addressing some of those issues. So stay

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1 tuned.

2 One more question. Oh, yeah.

3 AUDIENCE PARTICIPANT: My name is Georgios

4 Ziras from DPC Data. I have a question for Mr. Rizki.

5 We're talking about financial distress and I

6 would like to hear your opinion about demographic and

7 socioeconomic data and how are you using these for policy

8 planning? Which kind of expands on the previous

9 question.

10 MR. RIZIKI: So, right. I mean, demographic

11 data, in terms of, you know, Cook County is 5.2 million

12 people that we serve as the residents. And there's

13 dynamics in terms of both birthrate shifts and then

14 migration shift that we are seeing within parts of the

15 county and outside of the county.

16 And so we have tried to like sort of talk about

17 those types of things and the impacts of that in terms of

18 the shifting nature of our needs. Specifically, we are

19 now a big health care system. And so around how we are

20 now investing in health care. Instead of having a

21 hospital that is centrally located, now going into

22 clinical settings, outpatient settings that are more

23 distributed across the county to serve those populations

24 as they move within the county and have different needs.

25 And so that's the kind of stuff that we are doing to sort

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1 of help, you know, investors understand why some of these

2 investments are needed in our clinical spaces and things

3 like that, and then where the need for those are coming

4 from specifically around demographic shifts, population

5 shifts and things of that nature.

6 AUDIENCE PARTICIPANT: Thank you.

7 MS. PHELPS: I think that's time. So thank you

8 again for participating, really appreciate it. And

9 great --

10 (Applause.)

11 MR. ABONAMAH: And we now have a 10-minute

12 break. We will reconvene promptly at 11:15.

13 (Recess.)

14 MR. ABONAMAH: Okay, everyone. Welcome back.

15 Hopefully, you're well caffeinated, though I doubt you'll

16 need it, given the topic of this panel, enforcement.

17 So, as I said, the panel is on enforcement.

18 The title is Lessons from Municipal Securities Disclosure

19 Enforcement Actions. Panelists who bring a wealth of

20 knowledge and insight on this topic include Peg Henry,

21 the deputy general counsel at Stifel; Kenton Tsoodle,

22 assistant finance director of the city of Oklahoma City;

23 John McNally, partner at Hawkins Delafield and Wood; and

24 Paul Maco, partner at Bracewell.

25 The discussion will be moderated by LeeAnn

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1 Gaunt, the chief of the Division of Enforcement's Public

2 Finance Abuse Unit. LeeAnn was named the chief of the

3 unit in 2013 and, as chief, she oversees enforcement

4 attorneys and industry specialists in eight SEC offices.

5 And the unit investigates potential violations of the

6 federal securities laws in the area of public finance,

7 including municipal securities and public pensions.

8 So, LeeAnn.

9 MS. GAUNT: Thanks so much. And thanks for our

10 panelists. We're thrilled to have this group of long

11 experience and leaders in the field particularly of

12 municipal disclosure. I am just going to introduce them

13 briefly and then make a few remarks and we'll get right

14 into it, because we don't want to run into the next very

15 important speaker.

16 So I will start to my immediate right, Kenton

17 Tsoodle. He currently serves as the assistant finance

18 director of the city of Oklahoma City. In the interest

19 of full disclosure, he was just named the interim finance

20 director of that city. Kenton's primary responsibilities

21 include providing oversight of the city's finance

22 department, including accounting, office of management

23 and budget, risk management, procurement and treasury, as

24 well as departmental technology systems. In addition,

25 Kenton oversees the city's debt issuance and compliance

1 programs.
2 Kenton currently serves as the chair of the
3 Government Finance Officers Association's, the GFOA, debt
4 committee.

5 To Kenton's right is John McNally, a partner in
6 the Washington, D.C., office of Hawkins Delafield and
7 Wood. John is a former president of the National
8 Association of Bond Lawyers, NABL. He is a frequent
9 speaker regarding the application of the federal
10 securities laws to municipal securities and served as
11 project coordinator for the third edition of Disclosure
12 Roles of Counsel in State and Local Government Securities
13 Offerings, a joint publication of the ABA and NABL -- I
14 actually have a copy.

15 Mr. McNally was awarded the Friel Medal in
16 September 2015 for Distinguished Service in Public
17 Finance. He is a graduate of the University of
18 Pennsylvania and the Georgetown University Law Center.

19 To John's right is Peg Henry. Peg is the
20 deputy general counsel of Stifel Financial Corporation,
21 where she is responsible for all legal matters concerning
22 the municipal securities group. Ms. Henry has worked in
23 the municipal bond industry since 1981 in private
24 practice, federal and local government and investment
25 banking. She has served as general counsel for market

1 regulation of the MSRB, attorney-adviser for the SEC's
2 Office of Municipal Securities, tax counsel to the
3 majority tax staff of the Ways and Means Committee of the
4 U.S. House of Representatives, attorney-adviser to the
5 U.S. Treasury Department and tax counsel to New York
6 City's Office of Management and Budget. She was also
7 in-house counsel for the municipal securities groups of
8 Jefferies and UBS Securities. She received a bachelor's
9 degree from Georgetown University and law degree from
10 George Washington University.

11 And then finally, Paul Maco is a partner at
12 Bracewell. Paul's career began more than 40 years ago
13 when he interned in the SEC's New York Regional Office
14 and then joined the Enforcement Division. We weren't
15 there at the same time.

16 (Laughter.)

17 MS. GAUNT: Thereafter, he worked in the
18 private sector where, among other things, he was a member
19 of the National Association of Bond Lawyers Securities
20 Committee and headed the team which submitted NABL's
21 comment letter on the 1988 proposal of Rule 15c2-12.

22 Paul returned to the SEC in 1994 where he was
23 the first director of the Office of Municipal Securities.
24 While at the Commission, he worked on continuing
25 disclosure amendments to Rule 15c2-12 and MSRB

1 rulemaking, leaving in 2000 to return to private
2 practice. He has authored a number of important
3 publications relating to municipal securities. He served
4 as draftsman, editor and co-reporter and co-authors of
5 various editions of the aforementioned Disclosure Roles
6 of Counsel publication. And for over 15 years, he has
7 written a federal securities law column for NABL's Bond
8 Lawyer.

9 He has also taught federal securities
10 regulation at Boston University's Law School's Morin
11 Center and a seminar on market regulation at American
12 University's Washington College of Law.

13 So we have leading lights. We're very happy.
14 I'm very happy to be here with you all sitting on the
15 same side of the table, for a change. And just a few
16 remarks and I'll try to be brief.

17 As many of you know, and as the Chairman
18 mentioned, the municipal securities market is subject to
19 less regulation than other sectors of the U.S. capital
20 markets. And this is primarily because the Securities
21 Act and the Exchange Act both provide broad exemptions
22 for municipal securities. For example, municipal
23 securities are generally exempt from registration. That
24 means there is no registration statement filed with the
25 SEC, no review of offering materials by SEC Staff before

1 an offering is conducted. And similarly, where corporate
2 issuers are required to file Forms 10-K and 10-Q with
3 specific mandated disclosures to ensure that investors
4 have timely, relevant information about their
5 investments, municipal issuers are not subject to those
6 regulations.

7 So one area where issuers are not exempt from
8 the federal securities laws are the antifraud provisions,
9 which is where Enforcement comes in. The antifraud
10 provisions generally prohibit materially false and
11 misleading statements by any person, which includes
12 municipal issuers and their officials. And, of course,
13 the Commission has filed a number of enforcement actions
14 over the years involving municipal issuers and their
15 officials.

16 And in the absence of a comprehensive,
17 mandatory disclosure regime for municipal issuers, I
18 think that enforcement actions have played an important
19 role as municipal market participants think about their
20 legal obligations relating to disclosure. And I know
21 that issuers in particular pay a lot of attention to our
22 actions. And in my experience, issuers and their counsel
23 are very eager to learn lessons from the enforcement
24 actions that we file.

25 So today we are going to hear from our

1 panelists from the distinct perspectives of different
2 market participants about what specific disclosure issues
3 have been raised or resolved by enforcement actions and
4 what are some potential areas for the Commission to
5 consider providing further guidance.

6 So first, we will hear from John McNally and
7 Kenton Tsoodle about issuers and issuer officials. Then
8 Peg Henry is going to talk about this from the
9 perspective of broker-dealers. And then lastly, Paul
10 Maco will discuss issues relating to municipal advisers.

11 And so jumping right in, starting with John and
12 Kenton, can you discuss from the issuer perspective the
13 key enforcement actions which have played a role in your
14 disclosure practices?

15 MR. McNALLY: Yes.

16 MS. GAUNT: Thank you.
17 (Laughter.)

18 MR. McNALLY: LeeAnn refers to there being a
19 few enforcement actions. I think there's probably been
20 hundreds and hundreds in the muni arena since really
21 going back to 1996 in Orange County.

22 In analyzing the enforcement actions, I think
23 one way to look at it is what are some particular lessons
24 and particular cases and what are some general lessons we
25 can take away?

1 The majority of the enforcement actions in the
2 municipal arena or otherwise are addressing what we would
3 all agree are clearly material misstatements or
4 omissions. And these are not particularly informative to
5 our practice.

6 The ones that are informative are where they
7 are trying to give us some guidance, if you will, through
8 the enforcement action. I am just going to highlight
9 five what I think are some of the key enforcement actions
10 that gave us that kind of guidance.

11 So we learned early on that omissions
12 concerning an issuer's financial condition can be the
13 basis for an enforcement action, even if the issuer is
14 expected to pay and is paying the principal and interest
15 in a timely fashion when due. This is a general
16 obligation issuer, unlimited authority to tax. But the
17 theory was that, without all the financial information
18 being properly disclosed, the bonds would not be properly
19 priced.

20 We learned that official statements speak not
21 only to prospective investors in the particular bonds
22 being offered but they also speak to investors in the
23 outstanding bonds of that same issuer.

24 We learned that Issuer A can be responsible for
25 misleading disclosure by Issuer B when Issuer A is

1 providing the disclosure to Issuer B and it's materially
2 misleading and Issuer A knows it's going to be used by
3 Issuer B to access the market.

4 We learned more recently that documents can be
5 materially misleading disclosure even if they are not
6 provided to investors and even if they are not reasonably
7 expected to reach investors. In this case, it was an
8 issuer's tax certificate. And this can be the basis for
9 securities fraud liability because the misleading
10 disclosure was, in effect, the opinion of the bond
11 counsel, which was dependent upon the accuracy of the tax
12 certificate.

13 And we have learned in numerous enforcement
14 actions that compliance with accounting standards is not
15 a defense to whether or not the disclosure complies with
16 the federal securities laws.

17 So there are a few of the key specific
18 enforcement actions. Let me just go through some general
19 takeaways if I can.

20 So I think most noteworthy, the SEC has
21 highlighted recently in their enforcement actions the
22 importance of written disclosure controls and procedures
23 and associated disclosure training. And they have
24 imposed this as a condition in numerous enforcement
25 actions, including most recently in MCDC. So even if an

1 issuer is not -- because the question was, how does this
2 inform our practice -- even if the issuer is not a
3 subject of one of these settlement proceedings, why
4 should an issuer consider disclosure training, disclosure
5 procedures?

6 Well, first, and what is obvious, is that with
7 that kind of written procedures and training, it is going
8 to minimize the likelihood of having a mistake in the
9 first instance. But I think equally important is to note
10 that a municipal issuer, in contrast to a registered
11 corporate issuer, does not have virtual absolute
12 liability. So under Section 11 of the '33 Act, if you're
13 a corporate issuer, there is a material misstatement or
14 omission, the only real defense is that the plaintiff
15 knew of that at the time they purchased the security.

16 When you come over to the municipal arena, the
17 SEC has to prove negligence and a private plaintiff has
18 to prove at least recklessness. So these written
19 controls and procedures and this training, in addition to
20 helping with the quality of disclosure, can serve as a
21 defense to liability of these charges of either
22 negligence or recklessness.

23 And Kenton is now going to speak to some of the
24 GFOA efforts in this area.

25 MR. TSOODLE: Thank you. And thank you for

1 having us, on behalf of issuers and GFOA.
 2 You know, to echo on John's comments, you know,
 3 I think that is one thing that we learned but we've known
 4 it for a long while, is the importance of having those
 5 written procedures and policies. You know, just to give
 6 you an -- to bring this down a little bit to a real-world
 7 example, you know, the city of Oklahoma City, we have 40
 8 to 45 bond issues and CDAs outstanding. When you look at
 9 the 14 events, you look at the annual financial
 10 information, you look at the operating data that we're
 11 required to monitor. I started adding it up and it's
 12 over 1,200 points of compliance that we have to keep up
 13 with. And we're about a one-and-a-half-person shop when
 14 you look at that.

15 You know, we're interested in good disclosure.
 16 We provide voluntary information, such as rating agency
 17 presentations, investor road shows. We post those to
 18 EMMA. You know, and we've long had this history of doing
 19 so.

20 GFOA, the organization that I work closely
 21 with, with almost 20,000 issuer members, have the same
 22 goal. You know, I would say we've been working on
 23 disclosure practices for 30 years. I think we dug out
 24 the original Making Good Disclosure publication from
 25 1984. So, you know, consequently I was still in junior

1 high back then.

2 So what do we learn from these? I think we've
 3 learned from the enforcement actions that disclosure is
 4 better than we think, actually. You know, I don't know
 5 whether it's the 50,000 number or the 65,000 number in
 6 terms of the number of issuers. But MCDC produced 71
 7 cases against issuers. That's a very small number from
 8 my perspective.

9 You know, I think these enforcement actions,
 10 they have had some unintended consequences, in that, you
 11 know, I know myself I have more lawyers now. And nothing
 12 against good lawyers. But, you know, there really is a
 13 concern about the cost of this to issuers, especially
 14 small issuers. And, you know, there is an increased
 15 diligence on the part of the underwriters and that may be
 16 a good thing. But, you know, it also results in costs to
 17 us.

18 You know, that being said, I think it is
 19 important that we recognize if there are patterns of
 20 deficiencies so that us, as the issuers community and the
 21 different industry groups, that we can be more strategic
 22 in our outreach to our issuer community and make sure
 23 that, you know, we're getting the materials out there
 24 where there may be problems.

25 But, you know, I think my biggest takeaway on

1 this point would just be we don't think as issuers that
 2 enforcement action is the best teaching tool. You know,
 3 we would really like to work collaboratively, side by
 4 side with the regulators to put out that information, put
 5 out those best practices to help issuers.

6 MS. GAUNT: You probably won't like my next
 7 question then.

8 (Laughter.)

9 MS. GAUNT: So my next question is, are there
 10 other open questions relating to issuer disclosure
 11 practices that you think the Commission should address,
 12 either through enforcement actions or through an
 13 interpretive release or other formal guidance from the
 14 Commission?

15 MR. McNALLY: There are no issuer practices
 16 that should be addressed by issuer enforcement actions.

17 (Laughter.)

18 MR. McNALLY: I mean, that's a funny answer but
 19 it's a serious answer. I mean, when you have the
 20 vehicles being either an interpretive release, the
 21 indirect rulemaking through 15c2-12 or the enforcement
 22 actions, enforcement action seeks and it goes after
 23 something, as I said, is clearly a problem.

24 But I think at this point, when you have the
 25 opportunity to do a new interpretative release, that

1 would be the venue to try to get guidance to the market.

2 One area that I think could use some help would
 3 be the concept of selective disclosure because it
 4 continues to create confusion in the municipal area. I
 5 would like to the SEC clarify the selective disclosure as
 6 a regulatory matter through Reg FD and therefore -- and
 7 not an antifraud matter -- and therefore does not have
 8 direct application to the muni market.

9 And I think that such clarification could note
 10 the distinction between selective disclosure and insider
 11 trading. But I think it would go a long way to giving
 12 comfort to issuers and their counsel that they could have
 13 the freedom of this transparency we're talking about,
 14 about being able to talk to rating agencies, talk to
 15 analysts, without being concerned. Because we hear
 16 criticism continually that counsel were advising, no, you
 17 cannot talk to people. That's simply not the case.

18 So, you know, recognizing the distinctions
 19 between selective disclosure, insider trading and its
 20 uniqueness in the municipal market, I think, could be
 21 very helpful for us practitioners.

22 MR. TSOODLE: I would like to echo his no on
 23 the part about issuers.

24 You know, just to touch on that, I agree. And
 25 I think, you know, the selective disclosure issues also

1 cause some uncertainty with issuers and some nervousness
2 about how we share information. Which is a nice tie-in,
3 I think. The one other issue I would bring up on this
4 was this, you know, kind of the discussion and some of it
5 happened on the last panel, about interim financial
6 information or interim financial statements.

7 So, you know, many issuers have unaudited
8 monthly, quarterly or other interim financial information
9 that's available to the public. I mean, if you're in
10 local government or state government, you've lived in
11 this world of transparency. Everything is subject to
12 open records or Freedom of Information Act. But I will
13 say it is kind of I think what someone on the first panel
14 mentioned. It's typically not in the same format. We're
15 typically talking about budgetary information,
16 projections, things like that, as opposed to kind of a
17 full accrual basis type of thing.

18 And I think there is some -- you know, there
19 would be some value if issuers were provided a safe
20 harbor or some assurance that those types of things
21 couldn't come back on them if they're shared with the
22 market. You know, the example would be you look at a
23 budget projection or a revenue projection half way
24 through the year and, you know, you don't -- you can't
25 foresee that a recession is going to happen in the second

1 half. We don't want to be held liable for that. And I
2 think the unintended consequence of not having that
3 assurance is, you know, some of us are scared to share
4 that, lest it be held against us later on.

5 You know, I do want to make a comment that I
6 think it -- we want to work closely with the regulators
7 if there's something in that area being considered.
8 Because while that's a good idea for some, you know, I
9 really would not make a blanket statement that that's the
10 right option for every issuer. You know, and certainly
11 would not want that to be mandatory because there's just
12 too much diversity in the issuer community.

13 And I would say, me personally being involved
14 with our accounting division and audit, I think having
15 interim audited financials is a virtual impossibility
16 with the -- just all the things that people have to go
17 through, the GASB and GAAP standards, the audit standards
18 that you have to go through to get an auditor to issue a
19 clean opinion.

20 So these are things that I think, you know, we
21 hear talk about them and I really would just encourage,
22 you know, any regulation or guidance that's being done in
23 that area, that issuers would be heavily consulted on
24 that. Because I'm not sure everybody understands the
25 uniqueness of governmental accounting and that process.

1 Did you have any more comments on that?

2 MR. McNALLY: Well, maybe just 30 seconds.

3 This is not something -- let me remind people,
4 this is something actually Commissioner Elisse Walter had
5 raised when she was looking at the -- in 2010 when she
6 was conducting the field hearings and she addressed the
7 market generally and said, issuers are always out there
8 providing information to legislative bodies, to
9 constituents, to rating agencies. Isn't there some means
10 by which that could be used to inform the market more
11 broadly and perhaps get it posted on EMMA?

12 And as has been discussed, it would be useful
13 to have some guidance on how that could be done. And
14 absent really intentional fraud, some sort of protection
15 were an issue to determine to try to get that information
16 out to the market, which really fosters the goal all of
17 us are trying to do, which is the increased transparency.

18 MS. GAUNT: Great, thank you.

19 So let's move on to underwriters and
20 broker-dealers. Peg, you have a great deal of experience
21 as counsel to broker-dealers and specifically to firms
22 acting as underwriters in municipal offerings.

23 The Commission has filed a number of
24 enforcement actions against underwriters over the years,
25 many relating to the obligation of underwriters to

1 conduct due diligence on issuer disclosures before
2 offering securities to the public. Are there issues for
3 underwriters in this area where you think more guidance
4 is necessary or would be beneficial?

5 MS. HENRY: Well, in keeping with the theme of
6 the day but from a slightly different perspective, one
7 area which guidance on underwriter due diligence would be
8 useful is the inclusion of unaudited financials in
9 offering documents. Many issuers have stale audited
10 financial statements so it's tempting to include
11 unaudited financials. To what extent can underwriters be
12 expected to diligence the unaudited numbers and how? The
13 Ramapo case highlighted issues for underwriters when key
14 issuer officials in effect cooked the books.

15 There's another thing that bears mentioning and
16 it's not really guidance on how to diligence issuer
17 representations but what should be disclosed once an
18 underwriter has conducted its due diligence. This is
19 particularly true in the context of continuing disclosure
20 failures, which is a particularly important topic for
21 underwriters, given the large MCDC fines that most of
22 them paid. More interpretative guidance would be
23 welcome, particularly concerning whether materiality of
24 noncompliance is a question of state contract law or a
25 question of whether the noncompliance makes it difficult

1 for the investor to make an informed investment decision.
 2 For example, if an issuer makes a required
 3 filing on EMMA but fails to link it to the CUSIP for a
 4 particular series of bonds, from the standpoint of the
 5 investor in that CUSIP, has the filing been made at all?
 6 MS. GAUNT: So how do you think prior
 7 enforcement actions in the broker-dealer space might
 8 influence how dealers will comply with the recent
 9 amendments to 15c2-12?
 10 MS. HENRY: There's been certainly a tremendous
 11 amount of discussion within the dealer community on this
 12 topic. Underwriters are really struggling at this time
 13 with a number of issues concerning the rule amendments.
 14 And it would be helpful to have some guidance before they
 15 start engaging in the process of due diligence rather
 16 than finding themselves in another MCDC situation five
 17 years from now.
 18 First, an underwriter is required to make sure
 19 that the issuer has undertaken to comply with the rule,
 20 including the amendments, and that's relatively simple.
 21 It's a question of reviewing the new continuing
 22 disclosure agreement to make sure that events 15 and 16
 23 have been included. However, an underwriter is also
 24 required to reasonably believe that the issuer will
 25 comply with the new continuing disclosure agreement and

1 it's not readily apparent how the underwriter will
 2 establish that reasonable belief at least at the outset.
 3 For example, is it sufficient for the
 4 underwriter to assure itself that the issuer has been
 5 educated on the rule amendments? Must the issuer have
 6 policies and procedures for compliance? Must the issuer
 7 have compiled a list of its existing obligations, since
 8 there is a 10-business-day turnaround on notifications to
 9 EMMA when certain events occur with respect to those
 10 existing obligations?
 11 Finally, how will an underwriter diligence
 12 whether an issuer has complied with the new CDA when it
 13 comes time to do another deal? Will reviewing an
 14 issuer's audited financial statements for descriptions of
 15 financial obligations suffice? How can the underwriter
 16 know whether one of the events in 16 has occurred other
 17 than simply asking the issuer?
 18 There is some guidance to similar effect on
 19 that point in the 2010 release, when some of the events
 20 were added, and it might be useful to take a similar
 21 approach here.
 22 And then, how should the diligence expected of
 23 a negotiated underwriter reasonably differ from that
 24 expected of a competitive underwriter? And guidance on
 25 all these topics would be particularly helpful.

1 MS. GAUNT: Let me go a little off script and
 2 just ask the issuer group here about your perspective on
 3 compliance with the new amendments to Rule 15c2-12 and if
 4 you have any thoughts about whether you're clear about
 5 what needs to be tracked and disclosed or whether you
 6 think further guidance is necessary on that point?
 7 MR. McNALLY: I'm crystal clear. But I'm not
 8 sure about my clients.
 9 Well, I think the approach to it has to be
 10 similar to what we said about the enforcement actions,
 11 which is what's going to be key is having written
 12 procedures addressing this as well as training. Most of
 13 the concerns, as Peg alluded to, are going to really
 14 arise in the underwriter area. You know, how do they
 15 establish the reasonable determination? How do they
 16 establish the compliance?
 17 I don't think it's going to be as hard for the
 18 issuers as maybe is anticipated. The concern is that the
 19 CDAs to date, what they have done is establish events
 20 dealing with the then bonds being offered. And we have a
 21 new construct which is now having to give material event
 22 notices for defaults or terminations with what are called
 23 financial obligations, which is a much broader concept,
 24 and picks up obligations, leases in effect even before
 25 February 27.

1 So the question is, speaking to Peg's point in
 2 part, is it going to be necessary for an issuer to
 3 catalog that? Does the underwriter need to see such a
 4 catalog before they can reach their reasonable
 5 determination? And let me propose something, which is
 6 that for the smaller issuers that have a minimal number
 7 of financial obligations they can get a handle on, they
 8 can simply establish a list and assure the underwriter
 9 they're closely following it.
 10 In working with large issuers over the last few
 11 weeks, what they've told me is, we may not be able to
 12 provide any kind of comprehensive list; it's just too
 13 voluminous, too many leases, too many agreements that
 14 might meet this definition. But what we can tell you is,
 15 were there to be an event like 16, like a termination or
 16 a default, we would know about it. So even though we
 17 haven't finished our characterization as capital, as
 18 operating, we do have a good sense and certainly when
 19 there would be a default or a termination, we'd know
 20 about it.
 21 And I think that would allow the issuer, once
 22 that occurs, to then have the 10 business days to
 23 determine does that reflect financial difficulties and be
 24 able to meet the material event.
 25 So I think, you know, at first glance it looks

1 like it's going to be overwhelming. But I think this, if
 2 you will, indirect approach might have some merit.
 3 MR. TSOODLE: I have a little more heartburn.
 4 No, I think, actually, it's some of the same issues. But
 5 it's just us as issuers trying to determine what all
 6 falls under that. And there's been some guidance there.
 7 You know, he mentioned leases, that's one of those which
 8 there's been some guidance there in terms of -- but
 9 again, I think all of us are going to have to really go
 10 through -- when I say us, issuers and our consultants,
 11 and make a list.
 12 And, I mean, GFOA has already put out kind of
 13 an alert on that. And that's really what we're
 14 encouraging issuers to do, is create a master list of all
 15 these financial obligations, guarantees, other things
 16 that fall under that and develop a system to track -- not
 17 only track those but financial difficulties. And I think
 18 that's -- you know, I think there are some different
 19 timing issues in there of what constitutes a financial
 20 difficulty and things like that that will kind of remain
 21 to be seen. But again, this is one we're encouraging
 22 everyone to reach out to their legal counsel.
 23 But it will be interesting to see how the
 24 underwriter community approaches this from a diligence
 25 standpoint because I think that's going to shape somewhat

1 how we track things. And so it remains to be seen.
 2 MS. GAUNT: Great, thanks.
 3 And so, heading back to Peg, are there
 4 practices in municipal underwritings where you think
 5 additional guidance from the Commission and/or
 6 enforcement action would be helpful or necessary?
 7 MS. HENRY: There is a real pervasive practice
 8 of undisclosed charitable contributions made by
 9 underwriters or underwriter affiliates, such as banks,
 10 and other financing team members to curry favor with
 11 local government officials charged with the selection of
 12 underwriters and other deal participants. These
 13 contributions are sometimes requested by governmental
 14 officials and made at times when RFPs are pending, which
 15 suggests a direct linkage between the contributions and
 16 the award of business.
 17 At times, RFPs even ask underwriters for a list
 18 of charitable contributions made in the issuer's
 19 jurisdiction. Some issuers refuse requests to disclose
 20 such contributions in official statements, arguing that
 21 they are not material to an investment decision.
 22 While the SEC has brought cases in which
 23 municipal underwriters have allegedly payments to other
 24 transaction participants in return for underwriting and
 25 swap business, such as the JP Morgan Securities case, no

1 cases come to mind when payments were made to charitable
 2 organizations at the request of government officials.
 3 The extensive discussion of conflicts
 4 disclosure in the 1994 interpretative release does not
 5 directly address charitable contributions. Depending
 6 upon whether the SEC thinks that its prior statements
 7 were broad enough to address disclosure of these types of
 8 contributions, either additional interpretative guidance
 9 or enforcement might be considered.
 10 MS. GAUNT: Do any of the other panelists have
 11 a view on that? I thought you might.
 12 MR. McNALLY: Well, when a suggestion was
 13 interpretative guidance or additional enforcement
 14 actions, I would recommend interpretative guidance.
 15 MR. MACO: I would offer just the observation
 16 that whatever is done, have the concept of clarity in
 17 mind. And I go back to one of the pronouncements of
 18 Chairman Clayton back in August regarding guidance. You
 19 know, there's a lot of things that come out particularly
 20 from the MSRB that aren't run by the SEC under Exchange
 21 Act 19(b)(1), whether it's interpretation, whether it's
 22 just a compliance tip. And broker-dealers and others
 23 have to live under the gaze of OC and FINRA. And quite
 24 often, that message as to the difference between what
 25 really applies and what's just a nice little thought for

1 the day from the MSRB doesn't make it to them. And time
 2 and treasure get wasted in the process.
 3 MS. HENRY: Can I just say one additional
 4 thing? Although the 1994 interpretative release may not
 5 have specifically addressed charitable contributions,
 6 there is a series of cases that have been brought by the
 7 federal government called the Linkage Cases. And they're
 8 not specifically muni cases, but there has been
 9 enforcement action when payments are linked to the award
 10 of business.
 11 MS. GAUNT: Yeah, I mean, I think from the
 12 enforcement perspective, if we were to run across a
 13 situation where there was a clear quid pro quo, even
 14 if -- we have MSRB Rule G-37 which is sort of the -- sort
 15 of a clear violation, but a think a contribution to a
 16 favored charity of a government official, you could
 17 imagine a situation where that would be a corrupt quid
 18 pro quo arrangement in exchange for underwriting -- the
 19 offering of underwriting services. And I think that's
 20 something I think most of us would agree could be
 21 appropriately dealt with through an enforcement action
 22 and probably wouldn't need guidance to tell you that's
 23 not okay.
 24 All right, let's move on from underwriters and
 25 dealers to municipal advisers. I want to have Paul

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1 address the perspective of municipal advisers. And just
 2 some quick background, I know we have a sophisticated
 3 audience, but some quick background.
 4 Generally speaking, municipal advisers are the
 5 market professionals who provide advice to municipal
 6 issuers about potential bond offerings. And importantly
 7 for our discussion today, they often have a role in
 8 preparing the disclosure documents for bond offerings.
 9 Since the Dodd-Frank Act, they have been directly
 10 regulated by the Commission and they are now subject to
 11 registration and conduct rules. And, in addition, as a
 12 result of Dodd-Frank, municipal advisers owe a fiduciary
 13 duty to their issuer clients.
 14 And so, Paul, there have been a number of
 15 enforcement actions against municipal issuers, both
 16 before and after Dodd-Frank and the establishment of the
 17 fiduciary duty. Are there areas where the existing law,
 18 in your view, is not clear about their duties and
 19 obligations?
 20 MR. MACO: Thanks, LeeAnn, yes. First, in a
 21 general context. Early in its focus on the municipal
 22 market, well before the regulation of municipal advisers,
 23 the Commission brought several disclosure-based antifraud
 24 proceedings against financial advisers. One of these,
 25 Leifer Capital, involved the financial adviser to Orange

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1 County, California. Leifer settled charges for
 2 participating in drafting official statements while
 3 knowing undisclosed financial information and permitting
 4 their circulation without it being disclosed.
 5 Similarly, a financial adviser in Maricopa
 6 County, Arizona, having access to its client's financial
 7 information including interim financial statements and
 8 budget projections was found reckless in failing to cause
 9 its client to include information about the client's
 10 troubled cash flow position in offering documents. I
 11 should note also that the county was also charged and
 12 also settled.
 13 Some municipal advisers today have the view
 14 that, as mere scribes of offering documents, they are
 15 not exposed to antifraud liability. So in this more
 16 general context, the Commission could both address
 17 potential antifraud exposure for municipal advisers who
 18 are mere scribes as well as clarify the post
 19 Dodd-Frank applicability and/or viability of these and
 20 other prior proceedings now that much financial adviser
 21 activity is regulated as municipal advisory activity and
 22 under the Exchange Act and MSRB rules.
 23 In the more specific context of municipal
 24 advisers assisting in preparation of offering documents
 25 in competitively bid offerings, some 20 years before

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1 municipal advisory regulation, in the 1988 Rule 15c2-12
 2 proposing release statement of municipal underwriter
 3 responsibilities, the Commission addressed the disclosure
 4 obligations of financial advisers who are also regulated
 5 broker-dealers in preparing the official statement or
 6 assisting in its preparation for the competitive bid. It
 7 said, ordinary financial advisers, who are also
 8 registered broker-dealers in competitively bid offerings,
 9 publicly associate themselves with the offering and
 10 perform many of the functions normally undertaken by the
 11 underwriters in corporate offerings and in municipal
 12 offerings sold on a negotiated basis. Thus, where such
 13 financial advisers have access to issuer data and
 14 participate in drafting the disclosure documents, they
 15 will have a comparable obligation under the antifraud
 16 provisions to inquire into the completeness and accuracy
 17 of disclosure presented in the bidding process.
 18 At that time, of course, non-broker-dealer
 19 financial advisers not regulated by the SEC. Today they
 20 are as municipal advisers.
 21 The Commission could provide guidance to
 22 registered municipal advisers in this context parallel to
 23 that in the 1988 broker-dealer financial advisers and
 24 address the regulatory implications of a municipal
 25 adviser's fiduciary duty when assisting the preparation

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1 of an offering document.
 2 MS. GAUNT: What role do you think that MAs, as
 3 you discussed, often in a competitively bid deal, that
 4 MAs have a primary role in development of the offering
 5 materials, and we've also seen MAs who have taken on
 6 responsibility for sustaining compliance with continuing
 7 disclosure agreements, what role do you think MAs should
 8 have in facilitating the compliance with the new 15c2-12
 9 amendments?
 10 MR. MACO: That's an important question.
 11 Because my sense is that many municipal advisers will
 12 pursue engagements to assist the issuers in either
 13 creating issuer disclosure procedures where they don't
 14 exist or modify those when they do. Among their -- among
 15 other things, preparing an inventory of existing
 16 financial obligations to facilitate with new event 16 and
 17 assist in ongoing compliance with both events 15 and 16.
 18 Issuers, of course, may seek their help out, as well.
 19 One question in the minds of many municipal
 20 advisers is what's their potential exposure to primary or
 21 aiding and abetting antifraud liability for -- when
 22 advising whether or not an event should be filed, with
 23 regard to advising on the content of the filing, or
 24 assisting an issuer in preparing the information, such as
 25 existing financial obligations that serve as the basis

1 for the filing? At the same time, many municipal
2 advisers may question whether they can protect themselves
3 from such liability, as well as liability relating to
4 offering document disclosure, by use of MSRB Rule
5 G-42(C)(v). That rule requires documentation of the
6 adviser's relationship with its clients, specifically
7 "the scope of the municipal advisory activities to be
8 performed and any limitations on the scope of an
9 engagement."

10 Simply put, can a municipal adviser insulate
11 itself from antifraud liability by contractually
12 disclaiming any responsibility for its client's
13 disclosure, including in situations where the facts and
14 circumstances indicate the municipal adviser's knowledge
15 of material misstatements or omissions in the client's
16 disclosure?

17 There are two cases that preexist. I will just
18 mention them without going into the details. One was a
19 Nevada county. The other was Public Finance Consultants,
20 Inc., Robert Fowler, Dolphin and Bradbury. And each one
21 came out in slightly different circumstances but there
22 are ALJ decisions out there on that that may provide some
23 insight.

24 But again, all of this was well before
25 Dodd-Frank.

1 MS. GAUNT: Go ahead, Peg.

2 MS. HENRY: One thing that we have been
3 spending a good deal of time talking about internally is
4 the role of the municipal adviser and how the -- and how
5 that intersects with the underwriter, and especially as
6 far as compliance with these new rule amendments.

7 We do, at my firm, think that there is going to
8 have to be a good bit more time on the part of the
9 underwriter in doing diligence, especially assessing the
10 issuer's reasonable probability of complying. And in
11 certain jurisdictions, it's not uncommon for the
12 underwriter to be called up one day by the financial
13 adviser and say the deal is put together, we're pricing
14 in a week. The offering document is already done, we're
15 mailing this afternoon, we're pricing in a week. We just
16 don't think that's going to work once these rule
17 amendments take effect.

18 The same thing with competitive deals. It is
19 going to be difficult enough to diligence this, you know.
20 But in a competitive context, you sometimes have two or
21 three days at most to decide whether you're going to bid.
22 And we don't think that that's going to work in this new
23 environment and it may depend -- it may influence what
24 deals we choose to participate in going forward if the
25 municipal advisers don't take that into account.

1 MS. GAUNT: And from the issuer perspective, do
2 you folks see the sort of dynamic that Peg is describing
3 that, you know, your preferred time to go to market might
4 not give underwriters and/or MAs enough time to do the
5 diligence that they think they need to do?

6 MR. TSOODLE: Well, I think it's certainly a
7 concern. I don't know. I think anecdotally, and
8 speaking with a lot of my colleagues, you know, we've
9 started seeing the period of time lengthen out. The due
10 diligence questionnaires get really a lot bigger. They
11 are asking about everything under the sun, things that we
12 don't think are sometimes relevant to the transaction but
13 they're doing their diligence.

14 And so I would say I don't know that we're
15 seeing that yet but that is certainly one of our biggest
16 concerns about kind of the increased regulation and where
17 that goes. I mean, ultimately, as someone mentioned
18 earlier, you know, there is so much of our infrastructure
19 that is funded through this market, we think it's a
20 vibrant, well run market, and it's very important to
21 cities, it's very important to our country. And anything
22 that ends up hurting that and keeping those deals from
23 moving forward and those projects getting done, that's
24 just very, very concerning to us in the issuer community.

25 MS. GAUNT: So I guess I will ask my final

1 question to Paul, which is the question I've put to
2 others. You've covered it a little bit already.

3 What kind of additional guidance, if any, do
4 you think the Commission should provide for municipal
5 advisers? Is there anything additional that you'd like
6 us to consider?

7 MR. MACO: Well, two things. One, I've already
8 mentioned, and that's again clarification of the
9 application of Chairman Clayton's statement regarding
10 guidance. It would really be helpful to clarify for
11 those who want to comply what precisely it is they need
12 to comply with.

13 The second is, in the municipal adviser space,
14 a lot of the focus has been either on fiduciary duty --
15 there haven't been the cases of specifically discuss
16 disclosure yet. But one other aspect of the statutory
17 change picks up the manipulative -- the fraudulent,
18 deceptive, manipulative act charge. And that's right
19 there in the statute. You bring a lot of cases, not only
20 to just the municipal area but in the corporate and other
21 areas as well under that concept. You may have instances
22 that you've seen where you're weighing whether or not you
23 have to bring a case. But some guidance on that would be
24 very helpful.

25 MR. McNALLY: If I could just speak for a

1 second, too, about another area of guidance for the
2 municipal adviser context? When the municipal adviser
3 regime was being established, many of us thought it was
4 trying to reach independent municipal advisers, namely
5 those who were not otherwise broker-dealers. It
6 certainly picks up those. But it also picks up
7 broker-dealers, to the extent they meet the definition of
8 providing advice to municipal issuers. So you have this
9 overlapping regulatory regime.

10 But let me take it in the other direction.
11 Which is to the extent you have an independent municipal
12 adviser, what can they be doing, what if they do do it
13 has them going over the line the other way so as they
14 become broker-dealers? So once again, the attempt was to
15 pick up the independents. You have a dual regulatory
16 scheme for the broker-dealers that give municipal advice.
17 But to the extent you're a municipal adviser, the
18 question becomes do you meet the definition, depending on
19 your activities, of being a broker under the '34 Act?
20 And a broker is one who engages in the business of
21 affecting transactions in securities for the account of
22 others. And each one of those phrases has multiple
23 no-action letters in cases, engaged in the business,
24 affecting transactions.

25 But I think it's an area, particularly now as

1 municipal advisers are becoming more and more involved,
2 in some cases they're directly involved in getting the
3 securities from the issuer to the buyer, where is that
4 overlap? I think it's an area that needs some input from
5 the Staff.

6 MS. HENRY: I would say hear, hear to that.
7 The private placement market raises this question all the
8 time.

9 MS. GAUNT: I suppose one of the interesting
10 aspects of that kind of an arrangement is that, unlike
11 the underwriter who is in more of an arm's length
12 relationship with the issuer, in that context sort of
13 finding the buyer, the MA would be in a fiduciary
14 relationship with the issuer so there's, you know, maybe
15 more power there. All right.

16 So that concludes our questions. Are there
17 questions from the audience? We have a couple of
18 minutes, I think, before our next speaker.

19 AUDIENCE PARTICIPANT: So there was discussion
20 about municipal advisers. And obviously, during the
21 course of devising the municipal adviser role, there was
22 a lot of effort put into distinguishing the role between
23 municipal advisers and broker-dealers. So some of these
24 early enforcement cases didn't really do that because
25 they were looking at municipal advisers that were also

1 broker-dealers.

2 But I think it's actually a little troubling in
3 this context of talking about disclosure to focus so much
4 on municipal advisers because the antifraud rules apply
5 to everybody. And so another fiduciary at the table that
6 was not mentioned at all is lawyers. And so I just want
7 to hear from the panel of, you know, what guidance there
8 should be for lawyers? And how do some of the things
9 that Paul and Peg talked about apply to lawyers.

10 MS. GAUNT: We actually talked about,
11 considered trying to have a section on lawyers. But we
12 decided that since they were shorting the enforcement
13 panel by a few minutes that we would focus on this group.
14 Always do that, right?

15 (Laughter.)

16 MS. GAUNT: But, yeah, do folks have thoughts
17 about the role of -- sort of the potential parallel that
18 bond lawyers or disclosure lawyers would have in this
19 process of municipal disclosure?

20 MR. MACO: I think one thing that's very
21 important, particularly in any instance of the
22 application of law, is to look at the role that the
23 person is serving. Lawyers generally participate in
24 advising a client. So the client of underwriter's
25 counsel is the underwriter. And their role there is to

1 provide advice to the underwriter.

2 There are court decisions that make that very
3 clear, that's what their responsibility is, and limit
4 external liability, at least under antifraud and other
5 concepts beyond that. If there's a default or if there's
6 a breakdown in there, then you're looking at malpractice
7 claims and that sort of thing.

8 Perhaps one of the areas that's a little more
9 open to expansive view is bond counsel. And there have
10 been one or two cases that have focused on bond counsel
11 and their potential liability.

12 MS. GAUNT: I have a somewhat different
13 perspective, not being a practicing bond counsel anymore.
14 One of the most frustrating things from the standpoint of
15 an underwriter is what we view as the goal of lawyers to
16 limit disclosure and to spend so much time with angels
17 dancing on the head of a pin about whether something is
18 material or not.

19 We think more disclosure is a good thing. I
20 think that these new rule amendments are going to place
21 emphasis on whether or not these financial obligations
22 are being disclosed currently. Not just filings with
23 EMMA but in official statements. And so we -- that's the
24 perspective, at least I see from the underwriter
25 community.

1 MR. McNALLY: Well, speaking of issuer and
2 counselor community, yes. I mean, we were focusing in
3 15c2-12 on 16, which was the termination event, et
4 cetera, for existing agreements. 15 is the incurrence of
5 these new financial obligations. And the concern being
6 that they were being reported, at least in your financial
7 statements, but they were not being reported necessarily
8 in a timely fashion. So I think that will address that,
9 I'd like to think.

10 As far as the role of counsel, I think some
11 perspective is it goes beyond simply facilitating the
12 access by the issuer to the market. I've tried to
13 emphasize, as have many of my colleagues, the importance
14 of the written disclosure controls and the training. And
15 I think it's incumbent upon us as both disclosure counsel
16 and bond counsel to advise issuers of this and advise
17 them how it can once again not only try to assure the
18 disclosure is accurate but also try to provide a defense
19 to liability.

20 I've not seen to any real degree, except in the
21 continuing disclosure context, where it doesn't make any
22 sense. Our position is, if there's any doubt whether
23 it's material, just put it in there. It's simply not
24 worth the MCDC.

25 I think there's a concern the other way, which

1 is the inability of counsel to discern what really is
2 material to an investor and therefore have a tendency to
3 put too much in. So I think that's another tendency that
4 we have to be concerned about. Because I'm seeing
5 official statements go on for hundreds of pages. And I
6 think there is a need to try to make sure exactly what
7 the investor needs to know in a comprehensive fashion can
8 be set forth, without getting it so bogged down that
9 you're really obscuring the key information.

10 MS. GAUNT: Great. Do we have other questions?
11 Looks like we do.

12 AUDIENCE PARTICIPANT: Hello. Thank you very
13 much.

14 From the point of view of an investor, I wanted
15 to echo what you just said, John, and also what Peg was
16 describing in terms of the timeliness of a deal to come
17 to market and the challenges we may face if there is a
18 delay between the time an investor is able to see a full
19 disclosure for a new bond issue and the pricing, because
20 it's already quite tight in some situations.

21 But secondly, I wanted to echo the fact that,
22 yes, I do feel many times that, as we talk about 15c2-12s
23 and the required disclosures, that if we are requesting
24 any information beyond what is enumerated in 15c2-12, the
25 pushback we're getting is, no, we're not required to

1 disclose that. And when I think about the condition
2 under which a borrower would need to disclose something
3 which they deem to be an issue of financial distress,
4 they kind of have a natural disincentive to disclose
5 this, right? Because as a borrower, you're going to be
6 in the market next week or next month and, if you decide
7 something is an event of financial distress, then you may
8 be sending the wrong signal to the market. Whereas, if
9 you don't disclose it, then we might not be getting the
10 information that we need. You know, you may be better
11 off.

12 But an area, for instance, that I think would
13 be more helpful is if we were to disclose more outside of
14 the financial distress scenario. For instance, covenant
15 performance under these bank obligations. Then you
16 wouldn't have to decide if, when a covenant is close to
17 being breached, whether that's representing financial
18 distress or not.

19 So more disclosure beyond what's literally
20 described under 15c2-12 would benefit both the investor
21 and the borrower in terms of not having to necessarily
22 determine is this a financial distress situation or not,
23 is something that I would like to encourage.

24 MS. GAUNT: Thank you. And so I think we have
25 one more question and that probably will be our last

1 question so that we don't run over our time.

2 AUDIENCE PARTICIPANT: Hi, LeeAnn, Rick Miller
3 from Locke Lord. A question that actually could go to
4 you if you could answer it, or others on the panel. But
5 the Port Authority case on the disclosure of the
6 authority to issue bonds and bond counsel's opinion, if
7 you recall, there was a question among the attorneys
8 whether certain things could be financed with this
9 particular statute. And the SEC action fined the Port
10 Authority. It wasn't all that substantial but, you know,
11 real money for not disclosing that there was a debate.

12 Now, my question to you is, does that eliminate
13 debate? Because when you're in that, you know, locker
14 room setting, basically, and writing the official
15 statement and the attorneys are there, one representing
16 or more, the underwriters and bond counsel representing
17 basically the issuer, then the issuer's counsel, they may
18 not want to talk about whether there is a question of
19 authority to issue bonds. Because they may have to
20 disclose that thereafter.

21 So it's a hard dilemma and it's kind of a new
22 dilemma that we've seen. I actually face that in one
23 situation. A question for you.

24 MS. GAUNT: Yes, so obviously I will be limited
25 in terms of what I can discuss in terms of an actual

1 enforcement action and in terms of parties which were not
2 charged. I mean, I do recommend people take a look at
3 that enforcement action against the Port Authority of New
4 York and New Jersey. It's probably a couple of years ago
5 now.

6 I mean, I think one of the things to think
7 about, and I'm interested if other panelists have
8 thoughts on this, that the debate is an enormously
9 healthy thing to be having. It seems to me, from an
10 enforcement perspective, that when we think about
11 bringing enforcement actions, we have to think about
12 whether people have acted with intent to mislead and so,
13 you know, there is a pretty high standard of evidence to
14 show that people have acted with deceptive intent.

15 But we can also, in certain circumstances, take
16 actions against people who have acted merely negligently.
17 And in that regard, you know, we are looking to see
18 whether people have acted in good faith, reasonably, with
19 due care. And I think that that's sort of the gospel
20 that John has been singing for a while, that having
21 debates, having discussions with their attorneys, having
22 policies and procedures all go to show whether you have
23 acted in good faith. And so, you know, I think that's
24 sort of an issue I think people could consider.

25 But beyond that, I think I'm not really in a

1 position to discuss much more about that enforcement
2 action.

3 So I think that is our time. Actually, we've
4 gone a little bit over. But I really want to thank our
5 panelists, really appreciate their time. Thank you.
6 (Applause.)

7 MS. GAUNT: And I think we are going right into
8 our next speaker, right?

9 MR. ABONAMAH: Thank you, LeeAnn.

10 So it is now my honor to introduce to you
11 Commissioner Kara Stein. Commissioner Stein was sworn in
12 as a commissioner in August of 2013. While at the
13 Commission, Commissioner Stein has been a vocal advocate
14 for strong investor protections and initiatives to
15 further increase competition and facilitate capital
16 formation. Commissioner Stein has also focused on
17 identifying ways to improve our securities market
18 structure to promote efficiency and resiliency, including
19 ways in which technology can be used to enhance
20 transparency in our markets.

21 Before joining the Commission, Commissioner
22 Stein held several senior level positions in the United
23 States Senate, including as staff director of the
24 Securities, Insurance and Investment Subcommittee of the
25 Senate Committee on Banking, Housing and Urban Affairs,

1 where she played an integral role in drafting and
2 negotiating significant provisions of the Dodd-Frank Act.
3 Please join me in welcoming Commissioner Stein.
4 (Applause.)

5 COMMISSIONER STEIN: This is for the height
6 challenged. Here, wait one second.

7 So I want to welcome everyone to the conference
8 today, thank Ahmed for the kind introduction and in
9 particular thank the Office of Municipal Securities and
10 the Chairman, Chairman Clayton, for planning this
11 conference. I also want to thank all of the panelists
12 who have taken time out of your busy schedules to be with
13 us today. And I want to thank the Municipal Securities
14 Rulemaking Board, the MSRB, for their continued efforts
15 to protect municipal securities investors, municipal
16 entities and the public interest.

17 So I'm going to keep my remarks very brief
18 because I don't really want to stand between you and your
19 lunch break for too long. But as we deliberate and
20 debate the ins and outs of the securities laws,
21 disclosure requirements, market structure, I believe it's
22 important to keep in mind why we're all here.

23 Investment in municipal securities allows our
24 nation's communities to raise money for better schools,
25 sewers, roads, fire and police protection and countless

1 other important needs. At the same time, it allows
2 investors to invest in something tangible and worthwhile
3 that often makes a difference in their own communities.

4 As is the case in our capital markets in
5 general, these mutual benefits can only fully accrue
6 where there is trust in the marketplace. And one of the
7 foundations of that trust is transparency.

8 Is there sufficient disclosure for investors to
9 trust that their money is being invested according to
10 their expectations? And when disclosure works well and
11 trust is maintained, the municipal securities markets
12 function in a way that benefits both investors and their
13 communities.

14 With an estimated 50,000 municipal issuers in
15 the United States, representing \$3.85 trillion in
16 outstanding principal, municipal bonds are a key
17 component of our overall securities markets. And maybe
18 even more importantly, retail investors hold
19 approximately 42 percent of that amount. Although
20 household ownership has been falling, municipal bonds are
21 one of the oldest forms of investing. And they have
22 traditionally had a significant level of participation
23 from everyday investors.

24 As we consider the purpose, the size, the scope
25 and the history of the muni market, it is also important

1 to reflect on key changes that have taken place in the
2 last decade or so. Three major categories of changes
3 worth calling attention to are, one, the changes related
4 to the Dodd-Frank Wall Street Reform and Consumer
5 Protection Act which, of course, included municipal
6 adviser registration on that new paradigm and the
7 establishment of the Commission's Office of Municipal
8 Securities.

9 A second change is in the area of disclosure
10 that the panel that I was just listening to was talking
11 about some of those changes. But including the
12 implementation of and updates to obligations for dealers
13 to have continuing disclosure agreements with municipal
14 issuers, post-trade markup/markdown transparency and the
15 SEC's report on disclosure recommendations from the
16 municipal securities market. I always say "muni" so I'm
17 having a hard time on municipal. And then, three,
18 technology changes, which you're going to be talking
19 about later this afternoon, such as electronic trading,
20 service provider solutions to make it easier to invest in
21 muni securities, and the creation of EMMA, the primary
22 data and disclosure resource for muni securities which is
23 similar to the SEC's EDGAR system.

24 Each of these three changes or categories of
25 changes has key ingredients in common. They are all

1 meant to reinforce the integrity of and trust in our muni
2 securities markets.

3 Muni market participants, including investors,
4 have had to balance all of these changes as the
5 marketplace continues to evolve and face new challenges.
6 For instance, there is no shortage of concerns regarding
7 underfunded public pensions, short and long-term impacts
8 of the tax cuts and JOBS Act, record-breaking defaults
9 and bankruptcies, and of course how rate changes will
10 affect the muni market. As some commenters have said,
11 it's not your grandfather's muni market anymore.

12 There also have been lots of exciting
13 innovations in the muni marketplace. For example,
14 investors have shown interest in green muni bonds, which
15 is a way to invest in municipal securities while
16 maintaining sustainable investment goals. The
17 proliferation of passive muni bond exchange-traded funds
18 has further democratized access to the muni bond market.
19 And in addition, spreads on smaller trades have been
20 decreasing over the last two decades, a likely result
21 from increased trade transparency and electronic trading.

22 So a successful regulatory regime particularly
23 for a market in which there have been so many changes
24 also needs to be able to evolve and change. In
25 particular, how do we continue to provide full, fair and

1 effective disclosure that evolves with changes in the
2 marketplace? Such a regime must also keep pace with and
3 encourage technological changes as well, which is, as I
4 said, the subject of one of the afternoon panels.

5 With respect to disclosure and technology, we
6 have come a long way but more work needs to be done. Our
7 own -- the Commission's own Investor Advisory Committee
8 recently held a discussion on pretrade data transparency,
9 which may be able to improve price discovery. How can we
10 improve our market structure to allow for more efficient
11 trading at better, more competitive prices for all market
12 participants?

13 Additionally, we should encourage technology
14 solutions that improve participation and safeguard
15 investor protection at the same time. What type of
16 technology solutions help strike this balance well? How
17 can structured data help improve disclosure in the muni
18 securities market? And how does the use of social media
19 impact muni bond offerings? What effects have the growth
20 of alternative trading systems had on the muni
21 marketplace?

22 So I appreciate all of the commentary so far
23 and look forward to hearing additional thoughts on these
24 and other important topics affecting our municipal
25 securities markets. Thank you and enjoy the rest of the

1 conference. And enjoy your lunch.

2 (Applause.)
3 (Whereupon, at 12:26 p.m., a luncheon recess
4 was taken.)

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

6 MR. ABONAMAH: Okay, everybody, welcome back.
7 We will keep things rolling here. I hope the lines in
8 Union Station weren't too long. Same for the security
9 line upstairs.

10 So our next panel is titled Recent Developments
11 in Disclosure Technology. We have a tremendous group of
12 panelists here, including Colin MacNaught, CEO and
13 co-founder of BondLink; Ernie Lanza, senior counsel at
14 Clark Hill; Mark Kim, deputy executive director and chief
15 operating officer at the MSRB; and Nikki Griffith, Bureau
16 Chief, Cash and Debt Management of Howard County,
17 Maryland.

18 The panel will be moderated by Justin Pica.
19 Justin is a senior policy adviser in the Division of
20 Trading and Markets here at the SEC. In his role, Justin
21 focuses on fixed income issues concerning market
22 structure and market practices. Prior to joining the
23 SEC, Justin oversaw product development and strategic
24 direction for market transparency programs at the MSRB,
25 including working with the MSRB's EMMA website, which

1 serves as the central transparency system for the
2 municipal securities market.

3 And so with that, I turn it over to Justin.

4 MR. PICA: Thanks, Ahmed. Well, first of all,
5 I thank all of our panelists for being here today. I'm
6 looking forward to this conversation on recent
7 developments in disclosure technology.

8 The MSRB's electronic municipal market access
9 website serves as the central repository for continuing
10 disclosures identified in Rule 15c2-12, which consists of
11 important information provided by an issuer or obligated
12 person about its financial condition or the occurrence of
13 specific events that arise after the initial issuance of
14 debt. The EMMA website couples these disclosures with
15 official statements and other primary offering
16 disclosures, as well as market data.

17 Prior to the SEC's designation of EMMA as the
18 central repository for continuing disclosures in 2008,
19 there were a collection of nationally recognized
20 municipal securities information repositories or NRMSIRs
21 throughout the country that served as official
22 repositories for continuing disclosures.

23 This panel will review the evolution of EMMA as
24 a centralized disclosure platform and discuss the role of
25 technology in making disclosures. In discussing the role

1 little bit more for us and it did make it much easier for
2 us to track the record of our filings, that they were
3 done on time. And that proved very useful when the MCDC
4 initiative came about, because we just went right into
5 their website and were able to have a printout that
6 everything was filed as appropriate.

7 Then once EMMA was available, the county serves
8 as its own dissemination agent now. We -- because it's
9 so user friendly. It's very easy to go in there and
10 provide all the information. Especially with PDFs, now,
11 it's very easy to take care of that. And the MSRB has
12 been a great partner in responding to things that we
13 felt, as issuers, that would be helpful to us. I know
14 the searches have become much better and I know that I've
15 used it to try to find different things. Hey, I know
16 this entity issued similar debt, how did they talk about
17 it, how did they disclose it, what were some of the
18 things they included in their OS or how did they disclose
19 it in their CAFR? So that's been very helpful and easy
20 to find.

21 MR. PICA: Mark, I would like you to touch on a
22 bit about the key benefits to regulators and the
23 public -- some of this was echoed by Nikki, I'm sure --
24 with having a centralized source of continuing
25 disclosures.

1 of technology, the panel will consider potential
2 technological improvements to the current state of
3 disclosure, how enhanced disclosures can benefit issuers
4 and investors, and the challenges associated with broad
5 use of technology that lie ahead.

6 So I want to first make sure there is a level
7 set among the audience with respect to the evolution of
8 EMMA as the centralized disclosure platform. One of the
9 rationales for the establishment of EMMA was addressing
10 the inherent inefficiencies in having multiple
11 repositories under the NRMSIR model versus a single
12 repository.

13 I would like to start off with Nikki and have
14 Nikki give us an overview of the issuer experience of
15 furnishing continuing disclosures under the NRMSIR model
16 and through EMMA.

17 MS. GRIFFITH: First, I just wanted to thank
18 the SEC for giving us the opportunity to weigh in on
19 disclosure issues.

20 And so I would say with the NRMSIRs model,
21 especially for a small entity, it was very labor
22 intensive, having to send out hard copies of your OS or
23 your CAFR to all of the different locations. Howard
24 County did end up using DAC as their disclosure
25 dissemination agent to help streamline that process a

1 MR. KIM: Sure. Thank you, Justin, for
2 inviting me to participate on the panel and for inviting
3 the MSRB to be a part of this discussion. I do want to
4 offer a disclaimer that the views and opinions that I
5 express are my own and not necessarily those of the MSRB.

6 So I think the best way to describe how
7 disclosure is today is maybe just to take 30 seconds and
8 describe how it was yesterday. So pre-EMMA, and so I'm
9 talking about the 1990s, the MSRB had its own information
10 repository system called MSIL, Municipal Securities
11 Information Library, which some of you may be familiar
12 with.

13 So when Nikki would submit her hard copy and
14 mail it -- mail the OS to the MSRB, what we would
15 actually do to it is cut the spine off the OS, take all
16 of the pages and manually feed it into a scanner and then
17 it would be copied onto a disk or a drive and stored
18 away. And if you wanted to research Nikki's debt and her
19 OS, you could come to the MSRB's offices, you could
20 request that her OS be pulled. We would go out and find
21 whatever storage disk it was on. We'd sit you down into
22 a room and you were welcome to look at it and read it.
23 And if you wanted to make photocopies of it, we allowed
24 you to do that and charged you a couple pennies per page,
25 I think.

1 So disclosure pre-EMMA is really defined by
2 physical delivery. It was decentralized, it was
3 incomplete. None of the individual NRMSIRs had the
4 complete set of primary and continuing market
5 disclosures. And as Nikki described, it was a very
6 burdensome system of disclosure.

7 I think that there was a paradigm shift in the
8 mid-2000s with the Commission's concept release of access
9 equals delivery. And I think that was the major shift
10 that really set in motion something like EMMA coming into
11 existence. And EMMA was rolled out on a pilot basis to
12 the market in 2008 and the Commission approved it to be
13 the sole repository for the industry in 2009.

14 Today, we've moved from a paradigm of
15 disclosure is physical delivery to disclosure is
16 electronic access. And under this model, disclosure
17 today is centralized, it's comprehensive, it's realtime.
18 And very importantly, access for the public is free. So
19 that's how I would describe disclosure today.

20 MR. PICA: So, Mark, it's hard to believe that
21 that was less than 10 years ago, the process of cutting
22 the spine and scanning documents. Can you talk a bit
23 about the ways the MSRB has worked to improve the
24 usefulness and some of the context around disclosures on
25 the EMMA website? And in particular, some of the ways

1 that the MSRB has provided tools for issuers to enhance
2 investor relations, for lack of a better word?

3 MR. KIM: Sure, I would be happy to. And it's
4 interesting, it really was only 10 years ago when we were
5 cutting off spines on OSs. And even when immediately
6 prior to EMMA's launch the MSRB did move to an electronic
7 submission process. But what you may not have realized
8 is, when you submitted, when issuers submitted those OSs
9 electronically to us, we printed them out and fed them
10 through the same scanner that we used to do when you
11 mailed them to us. And so it truly did not change until
12 EMMA came about. And so that's really remarkable
13 because, as you said, that's only 10 years ago.

14 So let me give you a quick history of the
15 evolution of EMMA over the last 10 years. And I would
16 characterize it as EMMA is a work in progress and it's
17 continually evolving to meet the needs of the market and
18 evolving with changes in the market.

19 With EMMA's launch in 2009 -- 2008 and then
20 2009, very importantly, I would say the first benefit to
21 the market was not only that mandatory disclosures were
22 made public but voluntary disclosures were also made
23 public. And I know in the last panel before the lunch
24 break, there was some really great conversation around
25 the tension issuers might feel in their willingness to

1 make voluntary disclosures on EMMA. But the capability
2 and the functionality is there. And I think having the
3 opportunity to provide the market with interim
4 financials, quarterlies, pro formas, things of that
5 nature is a great enhancement to disclosure in the
6 marketplace.

7 In 2011, EMMA displayed its first credit
8 ratings. There was an interesting question about ratings
9 and what role they play from a questioner earlier today.
10 In 2013, in response to pay to play, under Rule G-37, the
11 MSRB required the disclosure of political contributions.
12 Another great discussion from the prior panel on
13 enforcement around, well, what about charitable
14 contributions and I think that's a really interesting
15 question.

16 In 2015, this is really in response to changes
17 in the market post financial crisis and the emergence of
18 alternatives to publicly offered securities, you had bank
19 loans, you had direct placements, you had private
20 purchases happening and displacing the more traditional
21 issuance of typically underwritten securities that are
22 offered to the public for sale. So the MSRB modified
23 EMMA and created functionality for issuers to voluntarily
24 disclose those types of financial obligations.

25 And then kind of moving straight to the

1 present, this last year we spent a lot of time when EMMA
2 reached her 10-year anniversary, we spent a lot of time
3 on improving the user's experience. And if you haven't
4 been to EMMA recently, I encourage you to do so. And if
5 you do, I hope what you will find is a system that is
6 much more intuitive, that is easier to navigate and much
7 more efficient at getting you the information that you
8 need. We spent the better part of a year speaking with
9 the industry, establishing user groups, test groups,
10 focus groups in figuring out how to make it easier to use
11 EMMA. Because there is a lot of information there.

12 We made a lot of substantive changes under the
13 hood and we also made some pretty interesting cosmetic
14 changes as a result of feedback from the industry. For
15 example, my favorite one was we had a number of comments
16 say that the color scheme that we used on EMMA made it
17 very difficult for people who are color blind to actually
18 read what was being displayed. So we changed the color
19 scheme and improved the contrast and you now can see and
20 read what is being displayed on EMMA.

21 We also had a number of comments from folks
22 that the information we presented was too small and they
23 couldn't read it. So we put one of those little things
24 that you keep pressing and the font keeps getting bigger
25 and bigger. So we made a number of, as I said, kind of

1 cosmetic, superficial changes to make the experience
2 better and then we also made some much more substantive,
3 under-the-hood changes, including advancements to our
4 search engine and so on to try to make your experience
5 better.

6 So really, I share those kind of milestones to
7 really highlight the evolution of EMMA and how EMMA has
8 really evolved with the market, has changed with the
9 market, and I envision that will continue to change going
10 forward.

11 MR. PICA: Thanks, Mark.

12 I'd like to go back to Nikki for a spell.

13 Nikki, you just heard Mark talk about the capabilities on
14 EMMA to provide voluntary disclosures and the like.

15 What are some of the motivations that drive an
16 issuer to provide voluntary disclosures and take
17 advantage of some of the investor relations tools that
18 Mark described?

19 MS. GRIFFITH: Sure. I would say that
20 definitely if you are going to do negotiated sales, if
21 you are going to engage in a retail sale, period, that it
22 is very beneficial to get the information out there and
23 make some additional disclosures, putting your POS out
24 there in advance. Also, definitely underwriters will
25 sometimes suggest that you provide additional

1 information, especially for revenue bonds or any bonds
2 that have a somewhat complex or nontraditional structure
3 to get some more information out there.

4 But it is, I would say, difficult for small or
5 infrequent issuers to provide the additional disclosures,
6 just having the time, the manpower, the expertise to get
7 all of that out there. And then the issuer website
8 portion that is now on EMMA, that's definitely helpful
9 and gives you the ability to put some additional
10 information out there in an easy-to-understand way.

11 And the addition of the credit ratings was --
12 it's also beneficial to us because, as issuers, we always
13 like to compare and see where we are and get a feel for
14 some of the other issuers. And again, for comparison
15 purposes. Let's find some other similarly rated entities
16 that we can compare some of their same ratios and give us
17 a comparison.

18 MR. PICA: Thank you. Before we shift the
19 spotlight to Ernie and Colin, Mark, can you give us a
20 couple minutes on what the MSRB is doing to prepare for
21 the recent amendments to Rule 15c2-12?

22 MR. KIM: Sure. And I would like to just thank
23 Rebecca and her whole team at OMS for working really
24 closely with us on these amendments and the rollout. And
25 I am really happy to say that, on February 27, when you

1 sign in to your account at EMMA to submit disclosure
2 information, you will find a redesigned site that is
3 fully operational and ready to go and will allow you to
4 make any required disclosure filings with respect to the
5 amendments to 15c2-12.

6 In terms of support and resources for issuers
7 and for the industry from a compliance standpoint, the
8 MSRB's call center staff is up and running and is happy
9 to take your calls from an issuer side, to walk you
10 through the steps if there are any difficulties. We are
11 also preparing to release revised and new education
12 materials about the changes to the system as well.

13 And then, finally, on January 17, the SEC and
14 the MSRB are hosting a joint webinar and we will have
15 representatives from both NABL and the GFOA participating
16 to talk about the new submission process and to answer
17 any questions in advance of the effective date on
18 February 27. So at this point, we are ready to go and
19 will be ready to go live on the 27th.

20 MR. PICA: That's good to hear. Thank you.

21 So we just heard a lot about the efficiencies
22 of EMMA as a centralized disclosure platform, those
23 efficiencies that have been brought to issuers, as well
24 as how EMMA has created a more effective mechanism for
25 investors and regulators. So now let's shift to examine

1 how technology can further enhance disclosures and bring
2 additional efficiencies to issuers.

3 I would like to start with XBRL, which is
4 currently used for a number of corporate filings. Ernie,
5 can you give us an overview of XBRL and how XBRL-tagged
6 disclosures improve the usefulness of disclosures?

7 MR. LANZA: Sure. Thanks, Justin. And thanks
8 to Rebecca and the rest of her team for inviting me,
9 giving me the opportunity to speak here today. Very much
10 appreciate that.

11 First and foremost, XBRL, what do the letters
12 mean? It's eXtensible Business Reporting Language. It's
13 a phonetic acronym, because it doesn't start with an X
14 but it starts with the sound of X. It looks cool when
15 written with a small E and a capital X. But that's what
16 it stands for. It is built upon another I'll a phonetic
17 acronym, XML, but it's a much more powerful process built
18 on top of that.

19 Let me step back a little bit to talk about
20 some of the things Nikki and Mark mentioned in passing
21 and give the context both in the muni market in
22 particular and in the world in general in terms of where
23 technology has been going, where data use has been going
24 in general, to get an understanding of kind of the
25 broader ecosystem in which the muni market exists as a

1 small part of it.

2 You know, in the muni market, as Mark

3 mentioned, we've moved from a paper-based system to a

4 dematerialized system. By and large, it is now an

5 electronic representation of a piece of paper. And so a

6 PDF, particularly in the early days, was a scan of a

7 piece of paper and so it had the same utility of a piece

8 of paper. Other than that, you can transport it back and

9 forth easily through the Internet, through emails and

10 otherwise and have it on systems.

11 Then over time, the MSRB moved to having kind

12 of word searchable. And so now, by and large, documents

13 are that way.

14 Now, think about how you use it, and we're

15 going to focus specifically on financial statements or

16 the CAFR for the rest of this discussion. Think about

17 how you use it. You know, you're going to read the

18 document and you're going to understand the particular

19 issuer. And a big part of it certainly is the numerical

20 information. You know, the financial information in the

21 tables, in the primary tables and in the subsidiary

22 tables as well as sometimes within the text there's

23 additional data that's important for you to understand.

24 And certainly when you're reading within the four

25 corners, you can get all the full meaning you want to get

1 out of it.

2 But certainly oftentimes, you can imagine, you

3 want to be able to do analysis over a period of years for

4 a particular issuer or across other issuers or some other

5 kind of aggregation of data. And, you know, if you're

6 working off a piece of paper or off a scanned PDF, you're

7 going to do it by opening up your Excel spreadsheet and

8 typing out all the information or getting one of your

9 data analysts to do it for \$15 an hour, whatever it is,

10 and get that information and use it as well as you can.

11 If it's a word searchable document, otherwise, you might

12 legally or illegally try to scrape the tables in the

13 particular document and if you're lucky, you're able to

14 cut and paste and put it into an Excel spreadsheet and

15 then mess with it and make it all look good and fit well.

16 And from year to year, it may work well for a particular

17 issuer. But then if you go to the next issuer, they may

18 have the tables structured in a different way. So it's

19 very difficult time wise and structure wise to be able to

20 kind of put the data in a form that you can really use.

21 XBRL is intended to make this process much more

22 efficient and effective overall. It -- what you

23 basically do, and I'm going to talk about it a little bit

24 in kind of what I'll call the most efficient

25 implementation of XBRL, which the SEC recently approved,

1 the concept of in-line XBRL, which kind of eliminates

2 some of the clunkiness of prior implementations or, I

3 guess, the current implementation where you have two

4 separate files, a readable file and then a separate XBRL

5 file.

6 In the ideal state, what you're going to be

7 doing, if XBRL were to be used, would be as you produce

8 your financial statements, you'd be using either a

9 document that will simultaneously, as that information is

10 put into your document, will put in place the necessary

11 tags -- and I am going to step back for a second and talk

12 about tags in a minute -- as an automated process. Then,

13 so when the document is produced, it is submitted to

14 whoever needs to receive it, presumably the MSRB

15 eventually, if that ever happens, and then users are able

16 to use a venue, presumably on the central transparency

17 system, that allows them to read it, to save it and to

18 print it in a plan -- not plain English, that's the wrong

19 word -- but as if it's a piece of paper, a document, you

20 know, not with any weird formatting underneath it or

21 otherwise.

22 But that someone seeking to use data analytic

23 tools or other automated processes can go back, go

24 through the file, look at the tags that are underneath

25 it, embedded underneath it and are able to pull out all

1 that data into their spreadsheets or other higher

2 functioning analytic tools, and so bypass a few things.

3 One is the time, process and effort of trying to find

4 individual documents and then pull out the data, you

5 know, either by typing or cutting and pasting or other

6 things otherwise. That then presumably reduces data

7 translation errors on the part of those users.

8 So that's kind of the simple, end user,

9 hey-this-is-great process. But there's a lot more to

10 think about when we go forward.

11 So to get a picture of what is actually

12 happening, I like to think about it -- I know, I guess

13 this conference didn't have registration. But, you know,

14 a typical conference, you're going to go online,

15 register, and there's going to be 10 or 12 fields of

16 data, information you have to give, your name, your

17 address, your firm, your phone number, your email

18 address. You know, and you type all that stuff in. You

19 know, these are data fields, and they are then being put

20 into the system with tags. You know, this is the name

21 tag, this is the phone number tag, this is the email tag.

22 Some of them will allow only alpha characters, some will

23 allow only numeric characters. Some will do edit checks

24 to make sure you have it properly formed, like an email

25 address with an "@" and a ".com" or a dot, you know,

1 whatever it is. And it's putting it into a file with a
2 bunch of what I'll call tags.

3 It's the same general concept. So, you know,
4 that is kind of what you're producing when one produces
5 an XBRL-based document. It is at a much higher and more
6 sophisticated level, you know, getting data and giving
7 predefined labels to each of those data elements for use
8 to the public or for whoever is going to use it.

9 There is quite a bit more. And so I've talked
10 kind of what I'll say the plus side of things. As
11 everything, there are pluses and minuses or balances and
12 considerations that need to come into play. And there
13 are quite a few of those. But I'll pause and see if you
14 have any questions at this point on that.

15 MR. PICA: Thanks. That's a great overview,
16 Ernie.

17 So you talked about a few benefits, data
18 extraction, the ability to have kind of one file, if you
19 will, have two purposes. It provides for that kind of
20 data set but it also provides the capability to easily
21 produce the human-readable version. So it seems like,
22 you know, from disclosure, it has the same benefits that
23 disclosure provides currently.

24 But the added benefit to XBRL seems to be
25 focused a lot on data extraction. But can you speak a

1 behalf of retail investors, presumably those funds or
2 their managers will be the ones doing the processing in
3 order to get the information they need in order to make
4 the investment decisions on behalf, ultimately, of the
5 retail investors.

6 But the question is, what does a pure retail
7 investor get out of this? And I guess the one thing I
8 think of first of all is, you know, if you're watching TV
9 for any period of time, you're going to see one of these
10 ads by some online broker-dealer saying how cool it is to
11 invest online. And they usually have a split screen and
12 they have one person on one side who is all frazzled
13 because they have lots of papers and stuff or 12
14 different screens and trying to figure everything out,
15 then you have the person who, of course, is using that
16 company's website and has a nice little laptop with a
17 nice screen with a bunch of graphs and numbers and stuff
18 like that, with research reports and stuff like that.

19 And the ideal, and certainly when they show
20 that they're talking about equities or other things, not
21 munis, really, is to have that data available to people
22 that it is not just raw data but it is analyzed data, it
23 is researched. Someone has consumed it, has done
24 analytics on it and then makes it usable to investors and
25 the public. So that's one way, is that the hope is that

1 bit about tagging and what kind of normalization benefit
2 could come to the municipal market in terms of
3 disclosures from having tagged documents of a familiar
4 structure?

5 MR. LANZA: Sure, I'll answer that. But I also
6 want to talk a little bit more about the tagging process.

7 MR. PICA: Okay.

8 MR. LANZA: You know, certainly, you know, if
9 you are able to get to a point where you are able to
10 properly tag each item of information that is usable and
11 of benefit to the marketplace and that's, you know, in
12 the audited financial statement for the CAFR and they're
13 tagged to a defined term that everyone understands what
14 it means, it will clearly provide the benefits that we've
15 kind of touched on for those who are using the data in an
16 automated way, in an algorithmic way, in a process way,
17 who are doing analytics. And there are some ifs in
18 there, and I will come to those in a second.

19 One of the big concerns or areas that you want
20 to think about, and certainly as has been touched on in
21 all the previous panels, is that the muni market is very
22 much a retail market. It is a retail market at a couple
23 different levels. You know, so to the extent that you
24 have, you know, financial professionals or other products
25 like mutual funds or others who are kind of investing on

1 in the muni marketplace, you know, the level of
2 research -- which I think people talk about there are
3 significant levels of research for lots of structural
4 reasons besides the data, the ease of data, it's this
5 question of size of market, nature of market, nature of
6 issuers, in addition to data, you know, accessibility.
7 That's one way that, if that develops, it will benefit
8 investors.

9 But another way you might, and this is a little
10 speculative, which is to the extent that the taxonomy,
11 and that's kind of the name you use for the set of -- the
12 glossary of accepted tags and how you structure those
13 tags to make it all meaningful and have this type of
14 relationships, if that creates a certain level of greater
15 what I'll call rigor or consistency across users, there
16 is at least the theoretical potential that even if you're
17 just a plain old retail investor who is not going to do
18 research but wants to see kind of the paper-like
19 representation of it, you may find that from issuer to
20 issuer, you will find a bit more uniformity around it.

21 Having said that, I think that's a lot of time
22 talking about kind of the what I'll call the straight
23 path, easy path, everything works out well version of it.
24 You know, there's a lot to think about how to get to this
25 "nirvana."

1 You know, a big part of it is to understand how
 2 one tags your data and how well it gets done and whether,
 3 at the end of the day, it works well for the 40,000 or
 4 50,000 issuers out there across 50 states in all
 5 different sizes and types and ways of doing things, many
 6 of which are subject to GASB, some of which are not, some
 7 of which are subject to different implementations of GASB
 8 or different, you know, changes because of state law.
 9 And so there's that piece. There's significant question
 10 around costs and how is that cost borne and the burden.
 11 And then the question is again, are people going to be
 12 using this data in a way that makes it useful?

13 You know, will a world where you have, you
 14 know, several thousand companies that are trading and you
 15 have, you know, one or two or three or four, five firms
 16 out there who are committed to doing research on a
 17 continuous basis, are you going to find that same
 18 treatment in a market of 50,000 issuers where many of
 19 them are extremely small, coming to the market very
 20 infrequently. And so does it -- you know, either, does
 21 that benefit flow or do you start creating bifurcations
 22 or different levels of things. Those are impacts.

23 I'm going to go on for a little bit longer, if
 24 you don't mind.

25 So in thinking about how the data ultimately

1 comes in play, you know, it is important to think about
 2 the taxonomy. And there is a group now, XBRL U.S. and,
 3 for disclosure, I'm an observer and so I've been at
 4 several of their meetings, you know, talking about it.
 5 You know, they are making a very committed effort to try
 6 to understand the difference between a corporate side and
 7 the state and local government side, trying to understand
 8 how to -- what changes or processes need to be put in
 9 place to make sure that they're able to kind of capture
 10 those differences and make it usable for the marketplace.

11 There is also significant commitment on their
 12 part other make sure that the process of producing the
 13 documents is done in a way that's as efficient as
 14 possible and ultimately, hopefully, as least costly as
 15 possible, in order to ensure kind of people produce the
 16 documents in a way that makes sense.

17 But, you know, one of the problems, and I'll
 18 mention a couple of things that, for example, the SEC
 19 talked about in its approval order for the in-line XBRL.
 20 Two things, two big questions that pop up is data quality
 21 and the question of how much control over the tags there
 22 are. The issue was, you know, in theory, the data going
 23 out into the marketplace would be much better quality.
 24 If for no other reason because people won't have to
 25 retype it. So it would be kind of the less handling of

1 data, the better.

2 There have been some cases where people have
 3 entered on the producer side data incorrectly and had to
 4 go back to fix it. But it seems like that hasn't been a
 5 major negative. That data quality may have improved
 6 somewhat, maybe not leaps and bounds, but it has improved
 7 somewhat.

8 Number two is a problem, I think, that the SEC
 9 still exists, which is to say you have a glossary, you
 10 have definitions. And you say these particular items,
 11 you know, this item means this, this item means that,
 12 this item means that. And there are assumptions built
 13 into what that is. You know, a two-word label or a
 14 five-word label, but there's a whole bunch of, you know,
 15 20 pages of accounting standards or whatever it is to try
 16 to explain what's in, what's out, what variations are
 17 allowed. And so two things happen. One, you have a
 18 bunch of people putting in things into the same label
 19 that might have slightly different meanings.

20 Or people who are concerned about that will
 21 take advantage of the first world in XBRL's name,
 22 extensible, and say, hey, extensible means you're able to
 23 add tags to it. And so, hey, I'm a little worried that
 24 the tag that exists today, or I couldn't find the tag
 25 that exists today for this particular element, I'm going

1 to make my own tag and define it myself and put it out
 2 there. And so what people complained about is that for
 3 things that are the same or very similar, you end up
 4 finding multiple tags for the same or similar thing.

5 So, you know, there are things that make it so
 6 that one can't say, hey, let's pull the trigger. But
 7 there is some serious work being done out there to do it,
 8 to try to get there.

9 And going back to the kind of general social
 10 kind of background on this, you know, the world is
 11 moving, the world is moving around us. I mean, you know,
 12 whether or not this market is excited about big data,
 13 data integration, you know, AI, machine learning, it's
 14 happening. And the question is, how are they getting
 15 that data? Are they doing it in a way that has
 16 integrity? Are they, if they can't get data that's
 17 already preformatted, are they then kind of getting other
 18 data about you that may be less relevant but they're
 19 saying, well, that's all I can find?

20 Many of those people who are doing it, many of
 21 them are parts of the financial markets but some are not
 22 and so don't have the sensitivities around information in
 23 the securities markets that others may have. And so this
 24 stuff is moving. And the question is, to what extent do
 25 people want to be part of making sure it moves in a way

1 that makes sense for the marketplace?
2 And so having said that, and again I'm running
3 on, but I do think that we're not ready anytime in the
4 very near future for a quick implementation. Even the
5 move from the first implementation of XML to in-line XML
6 has a two and a half year -- what's the word --
7 transition into usage. And that's for people who have
8 been using XBRL.

9 Now, the plus part is if the decision were made
10 to say, hey, in some form or another XBRL makes sense for
11 the muni marketplace, you do have all the learning that
12 occurred during the period of time that the SEC has used
13 it, FDIC has used it, other countries have used XBRL. So
14 you have that to help you along.

15 You know, my view, and I think you can see that
16 between the lines in the filings that approved EMMA and
17 in the MSRB's former long-range plan, kind of the
18 thinking on the part of the MSRB -- and certainly cannot
19 speak for them, I cannot speak for them then and I cannot
20 speak for them now -- was this idea that the MSRB would
21 help kind of market voluntary planning and testing around
22 this. And I think some of you who kind of pay attention
23 to the securities market have heard a lot about different
24 regulators at federal or state levels producing what are
25 kind sandboxes. And, you know, my view, and obviously

1 others will have different views, is that it's premature
2 to say, hey, here is a mandate to do this.

3 We need to understand whether the people who
4 are earnestly working on this are able to produce
5 taxonomies that make sense for the marketplace, that are
6 able to be tested by people from across the different
7 types of issuers in the marketplace and that they work
8 well and they get the feedback from those people about
9 how it works, that they are able to put on utilities for
10 people to try and use to produce documents in that way.

11 Like I said, a sandbox, not an obligatory place
12 but a venue for a public proof of concept of XBRL. And I
13 think that kind of fits in what the MSRB has been talking
14 about over the years.

15 Now, there are people who will say, hey, the
16 difference between the muni marketplace and the corporate
17 marketplace aren't as significant as people like to say.
18 And, you know, there are pros and cons of that. But one
19 thing to think about is this. And I'm taking some of
20 these stats, although I don't remember the exact numbers,
21 from the recent SEC approval order on the in-line XBRL.
22 And I think they were saying something around 10,000 or
23 12,000 distinct issuers submitted XBRL documents to
24 EDGAR, I don't know if it was last year or the year
25 before. So that's a lot. And in the muni marketplace,

1 you think about 40 or 50, you're saying, okay, it's a
2 different number but only 30 or 40 times -- three or four
3 times.

4 But I don't think that really tells you the
5 full story because it's just numbers. In this country,
6 how many businesses are there? I tried to find it and
7 the ranges are very broad but they kind of congregate
8 around 20 to 30 million businesses. So if you talk about
9 10,000 or so businesses submitting XBRL to the SEC, that
10 represents 0.05 percent of the business community. So
11 you are dealing with -- I won't call it the cream of the
12 crop, because that's the wrong term. But you're dealing
13 with a kind of self-selected group of entities who are
14 purposely moving forward to go to the securities market
15 and so they're taking on, you know, the obligations that
16 go with it.

17 Certainly when an entity goes out to the
18 marketplace, it has antifraud, you know, obligations and
19 things like that to the marketplace. But the 40,000 or
20 50,000 issuers, and I don't have a good number for this
21 but I've heard around 100,000 units of government in
22 general, because not all units of government issue bonds.
23 You know, that's 50 percent of the marketplace. And so
24 you are going much deeper into the level of
25 sophistication and types of entities that you're trying

1 to get XBRL implemented into than you do in the corporate
2 marketplace. And I think that might be a meaningful
3 difference that you need to think about in terms of level
4 of sophistication, level of -- you know, the diversity of
5 types of situations you might find.

6 And so, you know, that's why I say I don't
7 think anyone is in a position to say, hey, let's go. I
8 think it's worthwhile if, for no other reason, because
9 this is where the world is. This is a process that has
10 worked in a certain marketplace, you know, reasonably
11 well or we've heard pretty well. Let's see if it does
12 work in this marketplace.

13 So I'll stop there.
14 MR. PICA: So Ernie, I had one question for you
15 on that. So who do you think XBRL is for? Who is it
16 going to benefit? Is it for issuers like Nikki? Is it
17 for third-party service providers like Colin? Is it for
18 regulators like me? Or is it bond lawyers? Who is going
19 to benefit and then who is going to pay for it?

20 MR. LANZA: Well, right. And those are all
21 incredibly important. And that hopefully is what I'll
22 call the sandbox experiment will help tease out.

23 In terms of beneficiaries, you know, we've
24 talked a little bit about some of them. The people who
25 are -- one hopes in this context that ultimately is the

1 investors who will get some benefit. One can theorize
 2 that, even though there is burden on the part of issuers
 3 to begin with, that if market forces work however market
 4 forces work, and we had the same argument around, you
 5 know, disclosure in general about prove to me disclosure
 6 matters. And I don't have the study in front of me that
 7 proves it so it's theoretical. You know, there may be
 8 some rebound back to the issuers on this front.

9 The other thing to keep in mind is that, of
 10 course, audited financial statements and CAFRs are used
 11 for more things than just the muni bond market. There
 12 are other uses, there are other mandates from the federal
 13 government to federal agencies about how they are going
 14 to use data. And those may ultimately flow down. Which
 15 goes to the benefit -- which is to say maybe it will
 16 benefit in those other processes, but it also goes to the
 17 complexity of implementing in this marketplace because
 18 you do have to be a little careful to have a
 19 securities-market-only focused implementation of XBRL
 20 without paying attention to the other uses for which
 21 state and local governments or their, you know,
 22 counterparties will be using, you know, for the data. So
 23 that goes into that.

24 Cost, you know, certainly the perception is
 25 going to be that it's going to be the issuers who have

1 the cost. And then the question is can there be a way to
 2 either moderate that, to talk about it in saying that
 3 maybe there is an up-front cost but here is your savings
 4 going forward. There's a bunch of discussion about it
 5 and I think there have been some studies on the corporate
 6 side to support or refute that. That again is part of
 7 the sandbox process, to understand it in a real-world
 8 test, as opposed to a real world, just throw it in and
 9 have theories and see if the theories prove out, you
 10 know, when the time comes.

11 And the other thing I want to mention in the
 12 context of the big data is that you do have to be
 13 worried -- and it's not necessarily a bad thing. But
 14 let's say you go on the Internet and you went to Amazon
 15 and you bought a particular product and of course you're
 16 used to the next website you go to, you see an
 17 advertisement for that very same product. You know,
 18 you're being tracked, here is data about you. And that's
 19 kind of the obvious use of kind of data that's not really
 20 in your entire control and there are all the fights
 21 around data privacy and data usage.

22 But there's all kinds of other implementations
 23 of the information that you as a person give out through
 24 over the years that are being used by AI, machine
 25 learning, to kind of come up with theories about you and

1 who you are and what you are. And so I try to think
 2 about the thought experiment of what would happen, how
 3 could that come up in the world of municipal securities?

4 So I can imagine that some smart -- nothing to
 5 do with securities but just some smart person who knows
 6 data well and has access to different types of data
 7 sources can say, hey, I just did a study, I went through
 8 and went to every county animal shelter and I got what
 9 the average number of abandoned dogs are in the shelter,
 10 and I compared that to the population or the tax base of
 11 those cities. And I have a 98 percent corollary between
 12 this ratio and that issuer's ability to repay their
 13 securities.

14 And that example is a stupid example. But you
 15 should expect that people are trying to do that kind of
 16 stuff, figure something out about your behavior as a
 17 city, county, state, based on things that no one would
 18 ever think about being relevant.

19 And so two thoughts come out of that. One is,
 20 you'd like to have your actually clearly relevant
 21 information as part of the mix of that discussion out
 22 there. But it also is a warning to everyone, including
 23 lawyers and regulators, that I actually think it might
 24 start becoming a challenge to long-held concepts of
 25 things like materiality. Is it now material that that

1 metric, which has a 98 percent success rate, which might
 2 be compared to, let's make up, you know, what your fund
 3 balance is at the end of the year might have an 80
 4 percent success rate, is that material information? What
 5 does it mean?

6 So the world -- the boundaries that we live in
 7 are falling apart whether we like it or not. And so the
 8 question is, how are we going to interact with the world,
 9 given those boundaries dropping.

10 MR. PICA: We are going to shift to Colin in
 11 just a minute, talk about some other technology. But
 12 Nikki, I just wondered, for a second, do you have a
 13 perspective on XBRL as an issuer, real quick?

14 MS. GRIFFITH: Not specifically XBRL. But I
 15 understand the goal of trying to standardize the
 16 information that is conveyed by issuers so it can be more
 17 understandable. But as an issuer, we already went
 18 through this process once of trying to standardize with
 19 rating agencies. And so they came out with their
 20 scorecards and all the criteria and it was supposed to be
 21 this check the box and you can do all the calculations
 22 and figure out what your rating is. But it doesn't work
 23 that way. Because then they have the, well, then we have
 24 all these below-the-line adjustments that the rating
 25 analysts, because they're thinking outside of just the

1 numbers, there are also other issues that affect
2 different entities in different ways.

3 And so I don't think that there's really a way
4 of standardizing, as much as it sounds like it would be a
5 great idea. And I think it would be great that I could
6 compare myself more easily.

7 But, for example, in Howard County, we issue
8 all the debt for our schools. But we don't own any of
9 the buildings. So we have this huge liability on our
10 books but no asset to offset that. Whereas there are
11 many, many other entities across the country that they
12 don't have that same issue. So how do you -- how do you
13 put that in the tags that, well, you shouldn't have to
14 count that? I just don't -- there are so many
15 differences in how the different counties and states are
16 regulated within their own -- what their own laws are,
17 I'm not sure that it would work. It would be great
18 but --

19 MR. LANZA: Yeah, just one thought on that. I
20 don't know if you had anything else. But I agree with
21 that completely.

22 And to be clear, when I say that there's a
23 sandbox and there's this public proof of concept, it may
24 fail the proof of concept. And so I think the sandbox
25 needs to be clear. This is not the sandbox that is the

1 move quickly.

2 I think I have a unique perspective. I've been
3 in the market for 20 years, first as a consumer of
4 financial data at one of the rating agencies, then as a
5 producer on the issuer side, now I'm trying to facilitate
6 it. I obviously think there is a major challenge,
7 there's a major problem. I think technology is the way
8 to address the problem.

9 But I want to pump the brakes a little bit. I
10 would caution, as the Commission thinks about disclosure
11 solutions, not to settle in on any one solution or any
12 one type of technology, whether it's anything I build at
13 BondLink or EMMA or XBRL. There are just other
14 fundamental issues in the market before you even get to
15 how can we unleash the innovations of technology.

16 You know, just picking on XBRL for a minute,
17 everybody in the room, I think, would support the idea
18 and the concept. We have no idea how expensive it's
19 going to be. And if it's going to be expensive, we can't
20 call it an exercise because taxpayers are footing the
21 bill.

22 There are some fundamental issues. Not every
23 issuer completes an annual audit. Not every issuer
24 follows GASB/GAAP. I talk to investors every single day.
25 Not every single investor cares about a CAFR.

1 precursor of we're going to do it. It needs to be a
2 sandbox to say, it may work, it may -- we may have gotten
3 it just right. Or it may kind of work but you've got to
4 spend another couple of years figuring out how to make it
5 work right. Or it's working but, you know what, there's
6 a new technology came around that's 10 times better and
7 we're going to say forget that and let's move on to
8 something else. Or this is not going to work, it's too
9 complex, there are too many subtleties that this can't be
10 captured in information, let's move on.

11 So I think it's important that you raised that.
12 Sandbox is just not automatic precursor to doing it.

13 MR. PICA: So XBRL may be a few years off. But
14 Colin, you through your company are helping issuers do
15 things today using technology to help them comply with
16 disclosure obligations but also to go above and beyond
17 and provide voluntary disclosures. And I would like you
18 to speak for a few minutes about those efforts.

19 MR. MacNAUGHT: Sure. First, I want to --
20 Ernie, you had me right up until you talked about the
21 dogs and the dogcatchers and the correlations. And then
22 you lost me.

23 (Laughter.)

24 MR. MacNAUGHT: So thank you to Rebecca and OMS
25 and Justin for including me in the conversation. I will

1 So, Nikki, in Massachusetts, I issued debt for
2 the state road program. So I had the debt for the roads
3 but no assets. So the investors that followed
4 Massachusetts ignored, just to a large extent, what was
5 in the CAFR. They instead relied on interim information.

6 You know, other fundamental issues, the CAFR
7 itself. So GASB does an incredible job. There is an
8 incredible amount of detail that goes into a CAFR. But
9 it's starting to feel a lot like an encyclopedia and it
10 takes eight to 10 months to get it completed. It's great
11 when you have it. It's completely obsolete when it gets
12 out there.

13 And I think those are the types of really
14 fundamental issues that market regulators should consider
15 when we're thinking about ways to close the information
16 gap.

17 I also think more broadly, you know, the lack
18 of clarity on certain matters within the industry, a lack
19 of common understanding of terms and issues I really
20 think hampers innovation. So at BondLink, we built this
21 fantastic technology. Issuers love it, investors love
22 it. And yet every single day, every single day, I have a
23 conversation with an issuer and with bond counsel and get
24 asked the same questions every single day. And they are
25 very fundamental. And to me it belies that there is --

1 this lack of clarity needs to be addressed. The default
2 is to do nothing or to do as bare minimum as you can.
3 And I would get asked questions like if I start
4 to share more data, I'm already sharing this with
5 taxpayers but if I provide it on a voluntary basis to the
6 market, does that open me up to more enforcement and, if
7 so, why would I do that? If I start to share more today,
8 do I have to stick with this for the next 30 years? And
9 then finally, you know, I'm in the investor website
10 business. What does the SEC say about investor websites?

11 I am not a securities lawyer but my
12 understanding is, relative to the corporate market, they
13 say very little. And I look at what the corporate --
14 what they've said in the corporate market about
15 technology and innovation. You know, Reg FD has been
16 around for 18 or 19 years. It talks about selective
17 disclosure and it talks about the solution which is
18 technology and investor websites. You still have EDGAR
19 as the center of the universe for filings.

20 But they have unleashed innovation in the
21 corporate market. Every single public corporation has a
22 public website and it's a race to the top. They want to
23 communicate more. They want to tell their story. And it
24 has resulted in a very transparent and very efficient
25 market for corporate securities, both bonds and stocks.

1 And I think that -- we really need to think about that as
2 we try to tackle and understand the next steps in terms
3 of closing the gaps for disclosure.

4 MR. PICA: So what are some of the innovative
5 practices that you've seen though with those issuers that
6 are comfortable with disclosing more through an investor
7 website or through some other means? What are some of
8 the practices that you've seen that really do stand out
9 in this market?

10 MR. MacNAUGHT: Yeah, I think we should have a
11 market or set up a system where issuers who want to do
12 more are rewarded. And ideally, that would come from the
13 market. But we have been 10 years in this bond grab
14 where 30-year bonds -- you can sell 30-year bonds at 3.5
15 percent. So it's been difficult for the market to send
16 signals because rates have been so low.

17 I think issuers have a duty to provide their
18 financials to taxpayers. And if an issuer wants to do
19 more, we should give them the clarity that if they do
20 more, they're okay with it and this is exactly what
21 market regulators want to do. Whether that's an investor
22 website, road shows around a transaction, road shows away
23 from a transaction, investor meetings.

24 You know, we -- I hear from investors every
25 day, we are no longer having issuer meetings. Issuers

1 are paralyzed in having a conversation with an investor.
2 That's a major problem.

3 MR. PICA: So issuers that do create investor
4 websites or provide these other repositories, if you
5 will, of their own information, how is an investor to
6 know that there are two places, maybe more, to go to find
7 a complete picture about an issuer? If they just go to
8 EMMA, are they aware that there are other resources? Or
9 if they just go to perhaps one of the investor websites
10 that you create, how do they know that there might be
11 more information, market data, for example, on EMMA?

12 MR. MacNAUGHT: Yeah, they're always linked
13 back and forth. So our clients all have disclosure
14 policies and procedures and we go through a whole
15 buildout routine with disclosure counsel. But on any
16 website we build for a client, they are linking into EMMA
17 and we encourage our clients on EMMA, link back. Let
18 investors know who go to EMMA that you are doing more on
19 your own existing investor website.

20 MR. PICA: So you mentioned the biggest benefit
21 that could come from an issuer disclosing -- being best
22 of class, if you will, is that they would actually see a
23 lower cost of raising capital. Have you seen that play
24 out in the market?

25 MR. MacNAUGHT: Yeah, I experienced it for

1 seven years. I mean, that was the core of what I did.
2 There is very little you can do as an issuer to move your
3 rates. You know, there are macro events happening all
4 the time. Rates are low today because the stock market
5 is selling off again because of an arrest of a Chinese
6 official. An issuer has no ability to control that
7 whatsoever.

8 And yet you know you have to come into the
9 market because you've got to finance that bridge, whether
10 the rates are 10 percent or 2 percent. So what are the
11 things on the margins that you can do to improve your
12 engagement with investors? That's share more information
13 and getting to know that investor and being open to
14 taking questions and handling that. Those are things you
15 can control as an issuer. That's a very good thing. And
16 I think we should do everything we can to encourage that
17 type of behavior.

18 MR. PICA: Going back to EMMA specifically, do
19 you provide technological solutions that help issuers
20 create their disclosures and provide that information
21 directly to EMMA? Or is that maybe small potatoes in the
22 context of some of the stuff that you're --

23 MR. MacNAUGHT: Definitely not small potatoes.
24 We definitely don't help with preparing disclosure. We
25 let the experts, like John McNally, handle that. We

1 provide an API into EMMA. And we encourage our issuers,
2 put more in EMMA. It's very clear there's not enough
3 voluntary filings on EMMA and we are encouraging our
4 issuer clients to do that every single day.

5 MR. PICA: Nikki, from your perspective, are
6 you approached by technological vendors to help you
7 disclose for EMMA. You mentioned that you used DAC under
8 the NRMSIR model. Are you approached today? And what
9 are some of the pitches you receive on how the efficiency
10 would inure to your operation but also some of the
11 benefits that you would foresee from providing the
12 voluntary disclosures?

13 MS. GRIFFITH: Sure. So we do receive
14 marketing materials and, of course, at different events
15 you will be approached by vendors. But again, as a once
16 or twice a year competitive general obligation issuer,
17 there aren't really much benefits that we would see. We
18 don't have to make quarterly disclosures. Maybe if we
19 had to do it more often or if there was more information,
20 I could possibly see that.

21 But again, I don't know if it would help with
22 event notices when you have different things, again,
23 outside of your control that occur that you are required
24 to report upon. I don't know if there's any technology
25 that assists with that.

1 MR. MacNAUGHT: I just want to offer a slightly
2 alternative view to Nikki, just in general. The fact
3 that you're in the market only once or twice a year is a
4 challenge to investors. There's 225 bond sales a week.
5 In general, the market standard is -- and issuers are
6 only giving notice six or seven days in advance. So it's
7 a fire drill even at the biggest mutual funds. So they
8 don't hear from you for, you know, six or seven months.
9 Then they've got to dig back into Howard County.

10 Fortunately, you're a top issuer, top credit
11 rating, so it's easy to dig in. It's a challenge,
12 though. It's not ideal. And, you know, I think we need
13 to foster ways to make it easier for you to reach more
14 investors and be more transparent, even if you're not in
15 the market every single day.

16 MR. PICA: So I've got a couple questions that
17 I want all of the panelists to kind of chime in on their
18 perspective. First off, we talked a bit about issuers
19 going above and beyond, exploring XBRL, setting up issuer
20 websites. To what extent should these be market-borne
21 solutions? Or should regulators kind of prod the market
22 in a certain direction? And in what respect should we as
23 a regulator make sure that we're prodding the market in
24 the right direction?

25 Not all at once.

1 MR. KIM: Well, I guess I'll take that one,
2 since you're kind of looking at me. But I guess I would
3 be a little bit uncomfortable with the word "prod,"
4 associating with a regulator in this space. I think as
5 LeeAnn had kind of summarized eloquently before, in the
6 absence of kind of a comprehensive, mandatory disclosure
7 regime in this market, the role of a regulator is going
8 to be different than if there were regulatory authority.

9 And so the right solution, at least today, I
10 think the right solution has to be a voluntary,
11 industry-driven consensus around what the right standard
12 is and what best practices are for disclosure in this
13 market.

14 I think the -- and it's probably a good time to
15 say the views and opinions that I express are my own and
16 don't necessarily reflect those of the MSRB. But I think
17 the role of a regulator, there's many possible roles. I
18 think even the SEC today, by convening this group and
19 calling attention to this issue, is helping to advance
20 the cause.

21 In fact, there's a great parallel with the
22 creation of EMMA itself being born of an industry
23 coalition through the Muni Council, recognizing that
24 there were gaps, significant gaps in the disclosure
25 regime and that a move to centralized electronic

1 disclosure was something that was in the best interests
2 of everyone in the market. And that's a great example of
3 the industry coming together and recognizing that we
4 could do better and that there was a challenge that we
5 needed to address. And collectively, we found a
6 solution. I think we're at that same potentially a
7 crossroads where there's clearly demands for -- we heard
8 from Chair Clayton in his opening remarks that timely
9 financial disclosures is a big concern. We heard from
10 Chair Stein that full, fair and effective disclosure
11 needs to be better.

12 So this may be that kind of time and that
13 opportunity for the industry to come together to really
14 evaluate what the technology solutions are. And it can't
15 happen by fiat and it needs to happen by the industry
16 coming together.

17 MR. LANZA: Yeah, I mean, I would agree that,
18 you know, almost always it should be really, you know,
19 market driven and regulators really step in in a couple
20 different ways but primarily where there is a market
21 failure, where the market fails to respond to an actual
22 perceived problem.

23 A couple of reasons. One is that, you know --
24 more than a couple reasons. One is the lack of full
25 jurisdiction. That's a practical reason. But it's also

1 just what's right for the market. There's also, you
2 know, I'm not sure what the -- if someone went back and
3 did an honest scoring, long term, when regulators come in
4 to dictate market structure and process, what the success
5 rate is. Or whether people kind of understand the
6 externalities and unintended consequences of making
7 certain decisions based on what makes sense, you know, on
8 an a tabletop in an office either here or someplace else
9 with, you know, certain amount of input.

10 To the extent that there is going to be
11 technological changes that, you know, require some level
12 of regulatory support, mandate, whatever you want to call
13 it, it needs to be done with very significant, very open
14 interaction with the marketplace and trying to understand
15 where the costs are best put, where the processes are
16 best done. Is it centralized versus, you know, across
17 all the different parties in the marketplace or the
18 relevant parties? And -- and really -- and political
19 pressures sometimes, you know, come about to kind of
20 create a success and a win. Need to have the backbone to
21 say, you know, we need to have a win that's a good win,
22 not a win because we checked the box.

23 You know, although it's not in the issuer
24 disclosure side, I think in the dealer disclosure side, I
25 think even though markup disclosure is a good thing, I

1 think because the process and the lack of real quality,
2 up-front thinking and discussion with the marketplace, it
3 would be in my vision a third for fourth best solution
4 that again is based on a paper idea of confirmations and
5 structured around internal enforcement consistency versus
6 what would give the most disclosure to the marketplace
7 about prices and where things went. And so, you know, it
8 has some benefits. But I think it was a much higher
9 cost, much less consistent and ay end up being something
10 that has to be reworked in five to 10 years because the
11 world has moved on but after much expense.

12 So that's a lesson to really make this an open
13 process if one does go about doing this. And, again, to
14 be clear, I'm not advocating that Congress, for example,
15 give additional authority to the SEC or otherwise. I
16 think the current statutory makeup of authority, I think,
17 works well and there has been no proof of market failure
18 to say it should be something different.

19 MR. MacNAUGHT: Justin, I think the answer, my
20 opinion, it's both. We need clarity. And I am not
21 suggesting a repeal of Tower or shelf registration, but
22 clarity. It's that simple.

23 I think the market can and is and does send
24 signals. And I think they will send stronger signals as
25 rates rise, the yield curve steepens and credit spreads

1 widen, which is -- which is happening.

2 I was on a panel with an investor this summer.
3 And this person, talking to issuers, said if I see your
4 bond trading in the secondary and I can't see your data
5 very quickly, I'm moving on. And that was a pretty
6 powerful statement.

7 MS. GRIFFITH: I would say as an issuer, the
8 market is definitely a big motivator for governmental
9 entities to make change. But also, despite the fact --
10 nobody probably wants to hear this, but it's the rating
11 agencies. Because we want -- we have a triple-triple A,
12 we want to keep that triple-triple A. And so what they
13 suggest in their scorecards is what makes you a
14 triple-triple A, that's what we are going to strive
15 towards. And how often you disclose information is not
16 one of the boxes that rating agencies check.

17 So that is what we spend a lot of our time is
18 looking at those metrics, looking at that. We certainly
19 think about disclosure but not as much time as we spend
20 on rating criteria.

21 MR. PICA: One more question and then we'll
22 open it up to see if anybody in the audience has any.

23 Some of the technological solutions we talked
24 about today have a cost, both from a dollars and manpower
25 but also from a sophistication. So is there a concern

1 that, in advancing the market to use more sophisticated
2 technological solutions, that we're really only
3 benefitting those that have the means to integrate the
4 technology? And could we end up in a situation where we
5 have a bifurcated market and is that necessarily an
6 outcome that we should try to avoid at all costs?

7 MR. LANZA: You're asking the right questions
8 or at least some of the right questions. You know,
9 everything needs to be balanced based on what's the
10 benefit, what's the ultimate benefit, what's both the
11 aggregate benefit and what is the what I'll call the --
12 what do you call it -- the distributional benefit, so to
13 speak? And who is ultimately bearing the cost and is the
14 cost put to the right place and the most efficient place?

15 So I think there needs to be a lot of
16 consideration around that. And if that's not part of the
17 discussion or not a significant part of the discussion,
18 then I think we're just asking for failures or for things
19 that end up being very suboptimal.

20 MR. PICA: Nikki, you kind of mentioned earlier
21 that there are natural kind of segments of the market
22 today, frequent issuers, those with a simple versus a
23 complex source of repayment. We don't normally talk
24 about a bifurcated market. But is this perhaps, in your
25 view, one of the areas where, well, the technology is

1 going to lend itself to -- it's going to gravitate
2 towards those that really need it and others that are
3 infrequent and have -- you know, just issue GO debt,
4 maybe the technology is not as critical to the success in
5 that area?

6 MS. GRIFFITH: Yeah, I would think so.
7 Definitely, the big issuers that have complicated revenue
8 streams or structures of their debt, it's probably going
9 to be more helpful to them. But as a little township
10 that issues debt every five years when they build a new
11 high school, it's not going to be as helpful to them.
12 And certainly, the burden to implement that would be
13 quite large for them as well, I would think.

14 MR. PICA: Colin, you have a lot of regular
15 interaction with issuers of a wide variety. I wonder if
16 you have a perspective on some of the needs of the more
17 sophisticated issuers versus maybe those that, to Nikki's
18 point, are infrequent in nature or have simple
19 structures?

20 MR. MacNAUGHT: Yeah, it's a tough question.
21 You know, I again talk to investors every day. And one
22 would think that investors really focus on disclosure
23 with large and frequent issuers. Those issuers tend to
24 be in the market so often that their data is current.

25 The real challenges to the market are the small

1 and infrequent. I think when you are dealing with a
2 small and infrequent issuer with a lack of resources,
3 technology is the solution not the problem. Now,
4 obviously, it's got to be the right technology. But all
5 sorts of technology all across the globe and in all
6 different markets, it tends to be very affordable, very
7 open, everything is moving to web based. I think
8 technology can be the solution even for smaller issuers.

9 If they're asking for a loan and the market or
10 market regulators are requiring a certain set of
11 standards, I don't necessarily think that's a bad thing.

12 MR. PICA: Happily, we have five minutes left
13 to open it up to anybody in the audience. We have a few
14 Michael.

15 AUDIENCE PARTICIPANT: For Ernie and Mark,
16 machine learning technology exists today that allows a
17 computer to go into a plain, dumb PDF and identify and
18 extract data elements and put them into an XBRL-type file
19 that an investor could manipulate in the same way. So
20 hasn't the technology kind of bypassed us in terms of
21 XBRL and hasn't the ability to extract data from regular
22 disclosure documents kind of made XBRL almost obsolete in
23 some sense?

24 And how would the MSRB feel about adopting that
25 kind of technology on EMMA, so that when a disclosure

1 document comes in, there would be an automated process to
2 turn it into data?

3 MR. KIM: Thanks, Michael. So that's a great
4 question. And the MSRB has been exploring the use of
5 machine learning and artificial intelligence to see if we
6 can extract information from primary market disclosure
7 documents, those unstructured PDFs.

8 We have been working on this on kind of a rapid
9 prototype demonstration basis just internally to see and
10 to assess and evaluate these new technologies and to see
11 what's possible. We're not yet finished with our
12 prototyping but I can share with you just some
13 interesting observations that we've seen along the way.

14 One is that, while the vast majority of
15 unstructured data that the MSRB receives comes in the
16 form of PDFs. There's PDFs and then there's PDFs. And
17 what I mean by that is that they're not of uniform
18 quality and they're not all equally able to have their
19 data extracted.

20 And just a real simple example of what trips up
21 technology is you can have PDFs embedded within PDFs.
22 You can have PDFs that have images, perhaps a snapshot of
23 a very complicated spreadsheet which lays out your
24 budget, taken as a photo and then embedded within a Word
25 document which is then PDFed and then submitted to us.

1 So there are challenges. It's not quite as
2 simple as we had hoped it would be. And I think as
3 promising as some of these technology solutions are, from
4 the small taste that we've had, I can say that they're
5 expensive and it takes a long time and that there's no
6 substitute for the quality of the underlying data that is
7 submitted to us.

8 I don't think technology is a solution for poor
9 quality. I think it can help us on the margins and we
10 are continuing to explore how we can advance the quality
11 of the data that we receive.

12 MR. LANZA: Yeah, and I agree. I've heard a
13 statement that, you know, maybe XBRL may not be the next
14 thing, it may already be late in its life. I don't know
15 the answer and that's part of the idea of the sandbox is
16 to put it out there to the test and see if anything else
17 is better.

18 The other thing on machine learning, and again
19 this is kind of the simple, advertiser's version of it
20 and we talked about the whizbang of having an
21 advertisement that's somewhat relevant to you even though
22 you didn't buy anything. They're already peeking into my
23 mail. But on the other hand, once in a while, they
24 really screw up and miss and ask the question, can this
25 machine learning AI understand the subtleties and how

1 often does it miss and is its performance better than
2 human error interpreting what goes here versus what goes
3 there?

4 So I think it's an exciting thing to look into.
5 I just have no idea who gets across the finish line
6 first.

7 MR. PICA: Over here.

8 AUDIENCE PARTICIPANT: So just an observation.
9 First off, when I listen to Ernie talk, I wonder if
10 somebody has hijacked me and transported me to a VC
11 technology conference in Silicon Valley, because I -- it
12 may be just a reflection of my age.

13 But in thinking about that, so it's great to
14 have smart people thinking about these things and what
15 the application might be. But the reality of the world
16 that we live in is that we are the stewards who are
17 responsible for extracting value, the maximum value out
18 of every tax dollar that we collect. Right? So I am
19 more into the practical reality and realistic solutions
20 rather than having to dream up the possible application
21 of something that will be extraordinarily expensive in
22 terms of implementation.

23 So the practical reality is the XBRL -- we had
24 this debate previously, PDF versus XML. And the
25 discussion was around, let it be a market-based solution.

1 Once you embed it in a regulatory regime where it's a
2 mandate, it is frozen in time forever and stifles all
3 innovation from that point forward.

4 So the cost -- and it's interesting, because
5 the cost is ultimately going to be borne from any mandate
6 by the issuer community. And then so you've got to make
7 a strong case that it has tangible, practical
8 application. Because the expense is going to come at the
9 expense of whether it's firefighters, teachers, clean
10 water, fire engines. The exercise is allocating scarce
11 resources.

12 And so there really has to be -- which are
13 finite outside the Beltway. Only inside the Beltway are
14 resources unlimited an infinite. And so you have to be
15 careful about how you apply those resources and it has to
16 have practical, tangible benefit for the issuer community
17 for us to get behind that.

18 And all solutions should be market-based
19 solutions, not mandates sent down from inside the
20 Beltway, without a complete understanding of the
21 practical reality of the app.

22 MR. MacNAUGHT: Can I ask you a question?
23 There's a law in Florida around XBRL, isn't that right?

24 AUDIENCE PARTICIPANT: Yes.

25 MR. MacNAUGHT: Is that --

1 AUDIENCE PARTICIPANT: Feasibility study, is
2 how I would characterize it. Exploring the possibility
3 of the feasibility of, not a mandate.

4 MR. PICA: Thanks, Ben. I think that was
5 actually a good synopsis of the issues that we discussed
6 up here.

7 We are actually over time and we do have the
8 next panel starting -- well, it started two minutes ago.

9 AUDIENCE PARTICIPANT: May I please say
10 something very quickly?

11 MR. PICA: Well, we really do have to move on
12 because we do have the rest of the agenda and we do have
13 folks on the webcast that might be tuning in just in
14 time. But the panelists will be floating around. Feel
15 free to pull us aside and we will be happy to answer your
16 question.

17 Thank you for an excellent panel.

18 (Applause.)

19 MR. ABONAMAH: Interesting discussion. And
20 moving on to the next panel, which is our last panel of
21 the day, titled What's Next for Disclosure? And
22 consistent with the preceding panels, we have a terrific
23 set of panelists here.

24 Joining us Amy Johonnett, a research analyst at
25 Fidelity Investments. We have Dee Wisor, is a partner at

1 the law firm of Butler Snow. Matt Fabian is a partner at
2 Municipal Market Analytics. And Patrick McCoy is the
3 director of finance for the Metropolitan Transportation
4 Authority of New York.

5 Moderating this panel is Adam Wendell who is an
6 attorney-adviser in the Office of Municipal Securities.
7 Adam is an experienced municipal bond lawyer, having
8 served as bond underwriter, disclosure and issuer counsel
9 for over a decade prior to joining the Commission in
10 2016.

11 One logistical note, we will take a brief
12 10-minute break following this panel and we will begin
13 the Commissioner Roundtable promptly at 4:15. Thank you.
14 And Adam.

15 MR. WENDELL: All right, thank you, Ahmed.

16 Thank you, Ahmed, and good afternoon, everyone.

17 As Ahmed just said, this is our last regular
18 panel of the day before the Commissioners' Roundtable so
19 I feel kind of like the eighth inning setup guy, brought
20 in just to keep things moving smoothly and hand the ball
21 over to the closer. But hopefully we can do a little bit
22 more than that.

23 Thank you all again for being here and thank
24 you especially to our panelists.

25 As you know, the topic of this panel is What's

1 Next. There's a lot to cover there and I hope we could
2 have a wide-ranging discussion about the trends market
3 participants are seeing and the ones we hope to see.
4 We've got a lot to cover. Hopefully, we will have a few
5 minutes for questions at the end.

6 Before we jump right into our discussion, let
7 me briefly introduce our panelists, starting closest to
8 me.

9 Dee Wisor has been a practicing bond lawyer
10 since 1977 and is a partner in the Denver office of
11 Butler Snow. He serves on the board of directors of the
12 National Association of Bond Lawyers and is currently the
13 president.

14 Matt Fabian is a partner at Municipal Market
15 Analytics where he leads market and credit research. He
16 is the lead contributor to MMA's weekly Municipal Outlook
17 and biweekly Municipal Default Trends. He has been with
18 MMA and its predecessor since 2006.

19 Amy Johonnett is a research analyst at Fidelity
20 Investments, covering municipal debt issued by state and
21 local governments. She has been on Fidelity's research
22 team since 2008.

23 And Pat McCoy is the director of finance at the
24 Metropolitan Transportation Authority in New York. He is
25 the immediate past president of the Government Finance

1 will, at some point, drive more pain down to the state
2 level.

3 The states themselves wrestling with slow
4 growth, paying for their legacy liabilities and every
5 other thing that goes into being a state, you know, will
6 in turn push costs and extract revenue from the local
7 level and be less able to smooth things out city to city.

8 So whereas before, right, like the current --
9 not to say that the default rate for local government
10 bonds is going to spike. But the current default rate of
11 general obligation bonds is less than one-tenth of 1
12 percent, right? So 0.08 percent. That is a homogenized
13 output in part because of what states are able to do.

14 So going forward with, in theory, states less
15 able to do it -- I'm from Connecticut, right? We're
16 seeing -- one of the things that the state considered and
17 will almost surely come back to at some point is large
18 cuts to local governments that, you know, where the most
19 affluent communities don't get a whole lot of aid from
20 the state as it stands, the middle class and upper
21 middle-class communities do, enormous amounts of aid.
22 That's going to cause budget problems in the future.

23 So what we risk in -- when we think about the
24 future of disclosure and the kinds of regulatory mandates
25 or however we want to phrase it is, you know, we need to

1 Officers Association and has spent a combined 25 years
2 working for the MTA and the city of New York.

3 Welcome again and let's get started.

4 One thing that we're seeing in the market and
5 that we've seen playing out here today, from the
6 Chairman's opening remarks to that last comment made by
7 Ben is the competition between a desire for more timely
8 and consistently useful disclosure, particularly in the
9 secondary market, while at the same time, as Ben noted as
10 Kenton Tsoodle noted this morning, more pressure is being
11 placed on municipal entity budgets, leaving them with
12 fewer resources to provide this disclosure.

13 How do we see this tension playing out in the
14 market and what might be done to mitigate it?

15 Matt, let's start off with you.

16 MR. FABIAN: Thanks, Adam.

17 You know, at MMA, we talk a lot about, you
18 know, seeing -- thinking about the next few decades of
19 local government and state government and, in general, we
20 see a country where futures are diverging and outcomes
21 are becoming less homogenous than what they were. In
22 part, it's because you have a large, you know, federal
23 budget deficit. And whether you're a Republican or
24 Democrat it doesn't matter, there's still -- regardless
25 of policy, there is a huge federal budget deficit that

1 be sensitive to the costs on the issuer community. And
2 we do risk -- you know, there was -- Justin talked about
3 it in the last panel, about this bifurcation of the
4 market. I would say it's worse than a bifurcation. You
5 have a complete differentiation credit to credit.

6 Some issuers, you know, Pat's MTA, other, you
7 know, strong, solvent, well disclosing governments will
8 be able to handle anything that we ask of them. But the
9 huge majority of small governments won't. So you are
10 leaving more governments behind.

11 So just in thinking about solutions for the
12 future, it's not to say that there's no additional things
13 that can be built on. But we need to think about what is
14 the net benefit to the government, right? We need to
15 give them a reason for wanting to do these things. It
16 has to make financial sense. And, at some point,
17 political and policy sense for them to want to make the
18 exchanges.

19 So we do risk leaving a larger slice of our
20 governments behind, to the extent we make it more
21 difficult for them to issue muni bonds.

22 MR. WENDELL: Dee, what about you? What are
23 you seeing from your issuer and obligor clients or other
24 NABL members?

25 MR. WISOR: Thanks, Adam. And let me thank

1 Rebecca and OMS for inviting me to participate. I've
2 also been proud to see NABL members on every panel today.
3 NABL was founded 40 years ago next year for the purpose
4 of promoting the integrity of the municipal marketplace
5 through education about the understanding of and
6 compliance with the law of public finance. While we
7 don't always agree, but we're happy to partner with the
8 SEC and other market participants to try and improve
9 disclosure practices.

10 If past is prologue, and that's a Shakespearean
11 quote that I prefer to the one about lawyers, primary
12 disclosure has come a long way since I started in 1977.
13 Back then, official statements were pretty rare. In
14 fact, what I most often saw was an offering circular
15 prepared by the banker, which was maybe three or four
16 pages, and there was no such thing as continuing
17 disclosure.

18 I think we have seen a lot of voluntary efforts
19 on the part of the public finance community to make the
20 primary disclosure improve. Certainly, GFOA's Initial
21 Disclosure Guidelines were my bible when I was a young
22 lawyer preparing offering documents. Making Good
23 Disclosure by Dean Pope improved that. Disclosure Rules
24 of Counsel by my friend John McNally and Paul Maco and
25 Jack Gardner. Best Practices by the GFOA and NFMA and

1 certainly the pension disclosure paper that John McNally
2 led as well all have improved the quality of primary
3 disclosure through voluntary action.

4 And it's my view, really, that primary
5 disclosure documents today are pretty darned good. They
6 contain the material information which investors need to
7 know. And when I sit in working groups, people take the
8 task seriously of making sure that that is so.

9 I get that the marketplace might want the
10 formatting to be different, the presentation to be
11 different. They might want interim financials. But
12 again, I think that for the most part the documents are
13 in pretty good shape.

14 We're going to later discuss, I think, plain
15 English as an approach. But my premise is the primary
16 disclosure is in pretty good shape.

17 Continuing disclosure has also improved since
18 1995 when the rule was first adopted. But I get that
19 there remain concerns from the market. But to tag onto
20 what Ben said a little bit ago about costs and
21 cost/benefits, at least during the MCDC process as I
22 counseled with clients, I had finance directors tell me
23 that part of the problem for their failure to comply with
24 continuing disclosure was staffing issues. And I was
25 once an elected school board member and no one ever

1 called me and said, hire another accountant. They did
2 call me and say, hire more teachers. And so I think it
3 is that budget realities at the local government level
4 certainly influence this.

5 And while we're talking about costs, I think
6 anything that the Commission could do to be helpful is in
7 the context of amendments to continuing disclosure
8 agreements. We and other market participants sent a
9 letter on that to OMS in 2016. I think the issue there
10 is that the world changes. And as Commissioner Stein
11 said in a 2016 speech about disclosure in the digital
12 age, what investors want changes, materiality evolves,
13 to achieve effective disclosure we must understand what
14 is important to today's investors.

15 And so the ability to more efficiently amend a
16 continuing disclosure agreement to avoid having to
17 continue to repeat information that is no longer relevant
18 to the marketplace would be, I think, a big help to
19 issuers.

20 With respect to the delivery of audited
21 financial statements, I frankly have never seen a client
22 of mine drag their feet to delay sending audited
23 financial statements to the marketplace. We have a state
24 law in my state that that must be done within six months
25 and people attempt to comply with that. But I think a

1 point on audited financials is that so many of the bigger
2 governments have component units and they have to wait
3 for those component units to get their work done, and so
4 it becomes this domino effect.

5 I would also observe on a continuing disclosure
6 front that I see market sectors where, if the buy side
7 wants something different, they get it. I work a lot in
8 the nonrated, developer-driven dirt bond space and we
9 have continuing disclosure agreements where there is
10 periodic reporting, there are agreements with parties who
11 are not obligated persons but they are obligated under a
12 contract to provide information on a quarterly basis
13 which would not otherwise be required by the rule.

14 MR. WENDELL: So Dee just said in his
15 experience, when the buy side wants something, they get
16 it. Amy, I guess you are representing the buy side up
17 here. So maybe you could talk a little bit about what it
18 is that you do want and what it is that you are getting.

19 MS. JOHONNETT: Sure, sure. And I just want to
20 say thanks to SEC for hosting the conference and allowing
21 me to provide my perspective.

22 Prompt and public sharing of material
23 information is important to our market, it is important
24 to investors, issuers and taxpayers. We do think there
25 are areas for improvement and I think, if I could say one

1 thing, it's that disclosure is inconsistent. It's
 2 inconsistent for our tax-backed issuers and revenue
 3 issuers. It could be inconsistent in the secondary
 4 market and then also in different types of securities
 5 that are issued.

6 So something that we are interested in -- and I
 7 cover tax-backed credit; I used to cover health care --
 8 is interim financial disclosure. We have talked about
 9 that a lot today.

10 You know, it doesn't have to be GAAP based, it
 11 can be budget based. We have seen that come out from
 12 large issuers. I understand that small issuers have
 13 difficulty in producing that information. I think it's
 14 important because we only see financials once a year and
 15 you can have deals come towards the end of their fiscal
 16 year and we don't know how they're doing. You know, what
 17 issuers have done is label them as unaudited and also
 18 include a disclaimer, letting us know that they clearly
 19 are unaudited information.

20 I guess my point being is that if they're
 21 tracking this information monthly, and I'm sure many
 22 issuers are looking how their revenues are doing versus
 23 budget, they should be disseminating this information to
 24 the public market on an unaudited basis.

25 Also, you know, we ask but we don't always

1 receive -- the issuers provide a lot of information to
 2 rating agencies. And this morning, Kenton from Oklahoma
 3 said that he posts that to his website. We would love to
 4 see information that is shared with the agencies. The
 5 agencies receive great information and we do consume
 6 that. But I think it would be beneficial to have that on
 7 websites.

8 And then finally, I wanted to make a note about
 9 the note market, specifically bond anticipation notes.
 10 I'm sure the audience knows what these are. But just
 11 quickly, these are notes, they're typically less than a
 12 year and they're issued in anticipation of bonds, just
 13 like their name says. But the way that an investor is
 14 paid is through the issuance of bonds or notes at that
 15 maturing band's maturity date. And these notes are
 16 exempt from Rule SEC 15c2-12 because they're under the
 17 private placement exemption. And I would argue that
 18 these type of instruments that rely on market access, I
 19 respectfully argue they need good disclosure and we need
 20 to see official statements on these deals.

21 Some states do provide disclosure, official
 22 statements and even short-term ratings in the note
 23 market. And some provide nothing more than a notice of
 24 sale, which causes me to have to cobble together
 25 financial information, make phone calls to investors,

1 which we'll talk about later.

2 So I think, you know, there's a difference
 3 between what's required and best practice. And I think a
 4 best practice in the note market would be an official
 5 statement at the very least, and then also providing
 6 interim financial information as they pull it together
 7 themselves.

8 MR. WENDELL: Thanks. Pat, I guess, we'll go
 9 to you next. You're a large issuer, you are a revenue
 10 bond issuer. How is it maybe different for you than for
 11 a GO issuer? Obviously, you're not issuing bond
 12 anticipation notes, necessarily. So how might the
 13 pressures that you face on disclosure be different than
 14 other GO issuers?

15 MR. McCOY: Sure. Well, you know, obviously
 16 one of the key differences is that revenue bond issuers
 17 typically do not have taxing authority. And but in fact
 18 we do issue bond anticipation notes. We are pretty
 19 active in that market. We do put them into the market
 20 with full disclosure around them because we think that's
 21 important. We want to -- our posture with investors is
 22 to be very open and transparent. Everything that we
 23 place onto EMMA is also placed on our website. We think
 24 that's a good practice and we think that it only benefits
 25 the information flow in the market and interest on the

1 part of investors in the securities being offered. So
 2 we're certainly on board with that.

3 I think, like any issuer, a revenue bond issuer
 4 is going to have challenges dealing with their other
 5 related entities within their jurisdiction. And those
 6 require reporting that goes both ways, to the parent and
 7 from the parent to the entity. And so it places
 8 challenges on meeting the timing requirements within the
 9 disclosure obligations.

10 That said, I think what we see in the market is
 11 a consistent approach and a consistent I would say effort
 12 on the part of issuers to meet those obligations in a
 13 timely way.

14 MR. WENDELL: Thanks. One of the things that
 15 you just mentioned is that you put a lot of your
 16 disclosures on your website. So I think that's a good
 17 way to transition into the use of electronic media. You
 18 know, electronic media is a low-cost way in which issuers
 19 and obligated persons can get their information out. But
 20 it obviously presents a number of legal issues.

21 You know, we talked a little bit in the
 22 technology panel about websites specifically, but we've
 23 also got social media which Commissioner Stein mentioned
 24 in her remarks earlier today. Dee, I'm wondering what do
 25 your clients or clients of other NABL members that you

1 talk to come to you with as far as the pressures on them
2 to use this kind of media but also, you know, the
3 possible pitfalls?

4 MR. WISOR: Sure. You know, increasingly,
5 governments and government officials are communicating
6 with a wide variety of people, constituents, investors
7 and others by use of websites, social media and other
8 digital platforms. I think there are legal issues with
9 all those things in the municipal disclosure world. And
10 the touchstone is really the antifraud provisions.

11 When you think about information that's posted
12 out there digitally, at some point when it becomes stale,
13 how is that dealt with? And you said, Adam, it's a
14 low-cost way, but that still means that somebody is
15 administering the data somehow, they're administering the
16 website or tracking the information. And that's somebody
17 who is working for the finance officer to do that. I
18 would be interested in hearing how Pat's folks manage
19 that.

20 But I think there are issues around using
21 disclaimers. I get that we can't disclaim our way out of
22 liability but it can establish a context for why the
23 information might become stale at some point. I think
24 maybe issuers would be thinking about archiving
25 information or having a place on their website to archive

1 information.

2 Hyperlinking it to third party reports or sites
3 not maintained by the issuer again present some
4 challenges, I think. And, of course, in the social media
5 context, there is the continued sharing of information.
6 So the chief financial officer posts the financial data
7 or a report about the ratings on Twitter and it gets
8 forwarded by a bunch of folks, you know, at what point do
9 you have to worry about that?

10 And thinking about the Harrisburg example, the
11 mayor now has a Twitter feed and is communicating with
12 constituents. Managing that balance between political
13 speech and things that are intended to go to investors
14 are important.

15 With all of that in mind, NABL -- a group of
16 NABL members has prepared a paper, the working title of
17 which is Practical Considerations in Electronic
18 Disclosure. The purpose is, in fact, to give advice to
19 lawyers to then advise their clients about how to use the
20 various digital platforms and the legal issues associated
21 with that. That paper is undergoing an internal review
22 now and we hope that it's published in an academic
23 journal sometime in the next year.

24 MR. WENDELL: Pat, so maybe you could talk a
25 little bit more about your practical experience with

1 using electronic media and/or with social media. I won't
2 ask you how New Yorkers respond to the MTA's social media
3 posts, because that might not be appropriate for this
4 forum.

5 (Laughter.)

6 MR. McCOY: Okay, thanks. We actually do use
7 social media in the finance department at the MTA. I
8 think we saw early on by using social media, we can draw
9 a link between our disclosure and the broader investor
10 community that would have an interest in that
11 information. So we worked very closely with our
12 disclosure counsel to set some very tight parameters
13 about what we could and could not tweet out.

14 So if you visit @mtabonds, you will see some
15 very sort of plain, factual tweets that say, oh, by the
16 way, this morning we issued a preliminary official
17 statement, here is the link. And it hyperlinks right to
18 our website. We don't hyperlink to any other outside
19 parties or any other outside sites.

20 Our investors by now know that if they want
21 something, they can go to EMMA or they can go right to
22 the MTA.info site and get the same exact information.
23 It's all there. It's all reachable in different ways
24 within the various sites.

25 But we think that's an important posture to

1 have with investors, again to make ourselves available to
2 them, to make sure that we're providing information in
3 various channels that are commonly used to get the
4 information in their hands quickly. And so we found it
5 to be very positive. Again, with that caveat that
6 everything is closely structured around tight guidelines
7 that we worked out with disclosure counsel.

8 MR. WENDELL: Amy, you worked with both -- as
9 an investor with both large and small issuers. And is
10 the perspective on electronic media from smaller issuers
11 maybe different than it would be for a large issuer like
12 the MTA that does put out a lot of social media?

13 MS. JOHONNETT: You know, I don't think so, to
14 be honest. You know, for some of our smaller issuers,
15 they typically post their CAFRs and their budgets and
16 debt statements on their own websites. It's not maybe as
17 timely as the MTA's but it eventually gets up there. And
18 if we call and want it, they'll put it up there. So that
19 is a good thing.

20 Some issues that we have though with a smaller
21 issuer is their official statements or the lack thereof
22 if it's in the note market in particular states, is we
23 have to call them on the phone to ask for our
24 information. So this question of can websites help with
25 selective disclosure, the answer is absolutely yes.

1 Although the MSRB guidance states that
2 one-on-one communication with investors is not inherently
3 problematic, there are times when I call and they won't
4 talk to me at all. So solutions to that have included
5 them responding to my written questions and posting it on
6 their websites. While that can pose problems because
7 they may not be timely, getting our questions answered is
8 better than not getting them answered. So that's how
9 we've worked with smaller issuers, especially those that
10 don't give us the disclosure we need to make an
11 investment decision.

12 The idea is for us -- and this is where it
13 benefits the issuer -- the more information that we have
14 available to us, the more informed decision we can be and
15 that can reflect well in pricing.

16 MR. WENDELL: Great. Matt, you, through your
17 work with the Volcker Alliance, you've done some studies
18 and some reviews of issuer websites. Can you talk a
19 little bit about the differences in quality and what you
20 found during that review?

21 MR. FABIAN: Sure, yeah. So just for
22 background for you all, if you don't know, the Volcker
23 Alliance is Paul Volcker and Dick Ravitch and they have a
24 number of good government public policy initiatives. One
25 of them to which MMA works is a -- it's a catalog,

1 basically, of how states use short-term budget solutions
2 every year.

3 So every year, we look at every state and every
4 state's budget for the last few fiscal years and make a
5 comprehensive catalog of every kind of short-term budget
6 solution that they might be using -- people call them
7 gimmicks, too, in a more pejorative way -- but we put
8 this together. And in theory, right, to the extent we're
9 providing transparency into what states are doing, there
10 will be fewer or at least the choices will be maybe a
11 little more sustainable than they would be otherwise.

12 So one of the things that we -- one of the
13 areas that we look at is transparency, and with the idea
14 that the more transparency there is, the less likely it
15 is that gimmickry and similar will follow. We look at --
16 so we look at every state's website, every state's --
17 what they provide to not just investors but to their own
18 taxpayers and other stakeholders. You know, we look for
19 the presence of a comprehensive summary of their budget
20 operation. Right? And so it's not just is the budget
21 available online or are the CAFRs available on line, but
22 also is it easily available or linked access other the
23 budget procedures to what actually happens, you know,
24 what are the rules about it to the economic assumptions
25 that underlie the budget to monthly updates. And, you

1 know, maybe not just financial updates but also with a
2 narrative about what's happening.

3 Some states, like Arizona for example, Arizona
4 is one of the best providers on this perspective.
5 Arizona provides updates not just on the month-to-month
6 financials but also on litigation related to the budget
7 and a whole host of other factors, all very easily
8 accessible.

9 The opposite end of the spectrum -- and most
10 states -- most states, remember we're looking at states
11 not cities -- most states do a pretty good job. Only
12 nine states, I think, get scores below a B in this broad
13 transparency area.

14 But one of the worst is Arkansas. So Arkansas,
15 from their website, you are not quite sure that they have
16 a budget or that they do budgeting because it's just so
17 difficult. And so unless you have a ready familiarity
18 with the exact people who you can call in Arkansas to
19 find out what's happening, it's hard to know exactly
20 what's going on in the state. So it's very divergent.

21 And so you, as -- and again, this is not
22 something just for investors. Because investors, in
23 particular, with respect to states, you know, their risk
24 of defaulting or even having a serious financial crisis,
25 in particular if Bruce Rauner is not the governor, is

1 very small, right?

2 So at the local level, right, you know, you can
3 establish criteria just like we have done and think about
4 this as a way to get information. Or as a way to screen
5 in your credit allocation decisions.

6 MR. WENDELL: I am going to apologize to my
7 panelists very quickly because I am going to change the
8 order of topics a little bit, only because Pat is going
9 to have to leave us a little -- a few minutes early and
10 there are a couple things that I want to make sure we get
11 his views on.

12 The topic of this panel is what's next. And
13 one key component of what's next is how to disclose new
14 risks in the market that maybe we haven't had to grapple
15 with before. Two big ones are cybersecurity and climate
16 change. Commissioner Stein particularly mentioned green
17 bonds in her remarks just before lunch. And, Pat, MTA
18 happens to be the largest issuer of green bonds in the
19 country, I believe. And know you've worked a lot with
20 the climate bonds initiative.

21 I'd love to hear a little bit about how the
22 disclosure has worked with your green bonds, particularly
23 with the CBI bonds, which I know are different from other
24 types of bonds that may also be called green bonds.

25 MR. McCOY: So we determined in late 2015 to

1 take a look at the green bond market and to become an
 2 issuer in that space. The big hurdle for us is that
 3 we're not a project-based issuer; we're a
 4 programmatic-based issuer. So we have this large capital
 5 program. Our current capital program is \$33.5 billion
 6 for the five-year window between 2015 and 2019.

7 And so we don't ring-fence assets and we
 8 certainly don't ring-fence bond proceeds. If a project
 9 is an approved capital program and eligible for
 10 tax-exempt bond spending, then it becomes part of what we
 11 call a pool fund. So we thought that hurdle was going to
 12 prevent us really from being able to issue green bonds.

13 However, we worked closely with CBI. We met
 14 with them. I think they understood quickly what it means
 15 to be a programmatic bond issuer. And I think they
 16 actually adapted their criteria to allow for a
 17 programmatic bond issuer to apply for a green bond
 18 issuance.

19 We did that and we had an outside, independent
 20 third party evaluate spending on our prior capital
 21 program and of spending that had been done to that point.
 22 11.3 billion qualified as green bond eligible under the
 23 CBI low carbon transport criteria. And we worked with
 24 CBI to then say for the next however many bond issues it
 25 takes to soak up that 11.3 billion for green bonds was

1 eligible.

2 Everything we do to move people around in New
 3 York City on electrified rail through our subway system
 4 and through our two large commuter railroads, the two
 5 largest commuter railroads in the country, is inherently
 6 green because we're getting people out of cars. We
 7 estimate that every trip on public transportation avoids
 8 10 pounds of greenhouse gases going into the atmosphere.

9 So when we aggregate that data together, we
 10 estimate that's about a 19 million metric ton number in
 11 New York. It costs us two metric tons to provide the
 12 service we provide. So that's 17 million metric ton
 13 benefit of avoided gases meets the criteria. We wanted
 14 to get credit for that in the market.

15 Quite frankly, there is a growing concern of
 16 investors, not just here in the United States but
 17 worldwide, that they want to invest in securities that do
 18 have a green benefit, called a green benefit. And so we
 19 have taken that approach. We have since issued a number
 20 of transactions, totaling \$5.58 billion that are CBI
 21 certified.

22 We're obviously very active in the disclosure
 23 business. And so adding the green bond disclosure to our
 24 already existing disclosure requirements for us didn't --
 25 really wasn't burdensome. We do have, again, the outside

1 third party come in on an annual basis and ensure that
 2 we're still investing in the things we said we're going
 3 to invest in. And because of the way our capital program
 4 is structured, that's a very easy test to meet. We
 5 don't -- projects don't come in and go out unless there's
 6 a very public process to review that.

7 So given all that, we think this is the right
 8 thing to do. In 2012, Hurricane Sandy did a number on
 9 us. It caused \$5 billion of damage to our system. Next
 10 year, we will have to close down a critical rail tunnel
 11 to repair that tunnel because of Sandy damage. So we are
 12 still reeling from the effects of that event.

13 New York City has 578 miles of shoreline on the
 14 Atlantic Ocean. So we know climate change is real.
 15 Since the Brooklyn Battery Tunnel was created in the
 16 mid-1950s, water levels in the harbor have increased by
 17 11 inches. So that's a measurable change that's occurred
 18 in modern times. And being a green bond issuer, I think,
 19 elevates those issues to the investment community which
 20 is, I think, appropriate and certainly important, not
 21 only for our customers but for our investors.

22 MR. WENDELL: Matt, maybe you could talk a
 23 little bit about how you are seeing different assessments
 24 of climate risk and/or cybersecurity risk in the market
 25 and whether it's being done by issuers themselves and

1 obligated persons or whether it's being done by third
 2 party consultants or vendors?

3 MR. FABIAN: Sure. I mean, I think, we have
 4 maybe passed a pivot in our market, in particular with
 5 the release of the two recent climate change reports and
 6 the growth of the ESG movement generally for investors
 7 looking for some kind of bolt-on in addition to
 8 additional things to look at. There hasn't been any
 9 consistent approach. There hasn't been, from either the
 10 investor side or from the issuer side, although there
 11 are, you know, a few different ways that issuers will
 12 comply with, you know, various green or other protocols.

13 But we are, I think, for the first time -- you
 14 know, we have -- MMA sells research to the buy side and
 15 the sell side for the most part. And our -- I would say
 16 a number, many of our buy side clients have begun talking
 17 to us about ESG type solutions, climate change type
 18 solutions, different ways to go about it.

19 You know, incidentally, we did have -- we also
 20 track defaults and impairments. So bonds that file a
 21 notice to EMMA, you know, disclosing some kind of
 22 problem. Which actually, when you think about how that
 23 process works, there are, I think, really interesting
 24 takeaways for XBRL, which we could talk about later.
 25 It's sort of off topic but it's sort of an interesting

1 exercise in comparing what the issuers do now with their
2 EMMA filings and what they might do if they're required
3 to do even more tagging and similar in the future.

4 So we track munis getting into default. And
5 we've had our first green bond default in the muni
6 sector. It's an industrial development bond in Texas.
7 Mission, Texas. It was a desalination byproduct
8 remediation facility, a small IDB that never got started.
9 It was a self-declared or self-designated green bond. So
10 it didn't comply with any international or national
11 protocols. But they recently defaulted, just for the
12 lack of there being enough economics in their business.

13 MR. WENDELL: Great. Amy, maybe you could talk
14 a little bit about cybersecurity risk and how, on the buy
15 side, you assess cyber risk, or environmental risk, if
16 you'd like, with the issuers that you're looking at
17 buying or the issuers that you have current relationships
18 with?

19 MS. JOHONNETT: Sure. And before I answer
20 that, I think it's important that the issuers let us know
21 what's material. When we think about risks, there can be
22 regional risks, you know, if you're talking about
23 wildfires, you're talking about the opioid crisis. In
24 that risk section, it can be very standardized. Having
25 issuer-specific, material event information in there, I

1 do you decide how to disclose these risks and what to
2 disclose?

3 MR. WISOR: I think that we are starting to see
4 more disclosures about climate change and cybersecurity.
5 But I think the challenge, and Amy touched on this, is it
6 going to be this generic disclosure or how issuer
7 specific can you make it? I fear it's going to tend to
8 be, at least for a while, more generic because it's going
9 to be hard for governments to decide, you know, what are
10 the financial impacts going to be. I mean, there are
11 impacts that could require them to use their reserves,
12 there are economic impacts that might affect revenues.
13 There are impacts on their capital structures that they
14 might have to replace. And I don't know how -- the
15 conversation in working groups would be how do you
16 quantify what that risk is. And I do think these risk
17 factors become a little viral, once one issuer or law
18 firm puts it in an offering document, it kind of spreads
19 across the country.

20 So the challenge we as lawyers and issuers will
21 have is trying to drill down and get that so that it's
22 specific enough to be actually useful in an evaluation of
23 the credit.

24 MR. FABIAN: If I could just jump in real fast,
25 I think it's a bit hazardous, too, to think about climate

1 think, would be really helpful and we've seen that. But
2 I think we could use more of that.

3 Just as it relates to cyber within that risk
4 section, there is a -- and we saw this more over the
5 summer, there is a disclosure of cyber insurance. And I
6 think what we are interested in seeing is, you know, how
7 much is this insurance, how much does it cover, how much
8 does it cost, what's the deductible, what does it cover?
9 So those are some things that we're thinking about,
10 things that our portfolio managers are thinking about.

11 And then as relates to climate, I think
12 whatever issuers have for studies, you know, when Pat was
13 talking about the tunnel, 11 inches of seawater, I think
14 that's information that should be shared with investors,
15 what you think you may have to do to fix that. I know
16 you guys have a pretty robust forward capital plan.

17 But specifically, how much capital is going to
18 have to be spent for climate-related infrastructure
19 improvements, I think that's important to include as
20 well.

21 MR. WENDELL: Dee, maybe you could talk a
22 little bit about how you decide what to disclose. You've
23 got these risks that we're just starting to learn about
24 the magnitude of them. And when you are working with a
25 client or when you're speaking with other attorneys, how

1 change and these other things we've talked about as all
2 negatives for the issuer community. To the extent
3 governments are proactive and taking steps, you know,
4 building in either infrastructure resilience or putting
5 together a capital buffer to help with the rebuilding or
6 making policy changes to help them in, you know, manage
7 from a sustainability perspective, those are positives
8 and investors want to see that.

9 This isn't just a disclosure of potential
10 downside. It's also a disclosure of management
11 capability to address risks, which this is what investors
12 are looking for. So this is something that could provide
13 a benefit to not necessarily issuers as a whole but
14 individual governments and entities that want to borrow.
15 To the extent that you're making progress, it makes a lot
16 of sense to put it into the documents.

17 MS. JOHONNETT: And, sorry, just one more thing
18 on that. Earlier this morning, Jim Spiotto talked about
19 having a recovery plan if you were issuing debt and you
20 were distressed. I think that is something too, if you
21 have a plan to get back on surer footing, if you're
22 issuing debt because you have to but you're putting your
23 plan in place, this is something that has been discussed
24 at the highest levels of government, that should also be
25 included in disclosure.

1 MR. WENDELL: Thank you very much. One item
2 that we know is maybe not next as in tomorrow but is
3 coming up is the phaseout of LIBOR and the use of the new
4 SOFR index to replace it. We're lucky enough to have on
5 our panel the issuer of what I believe is the first SOFR
6 deal in the muni market.

7 Pat, I'm wondering if you could tell us a
8 little bit about that deal? And focus particularly on
9 the disclosure implications and how you disclosed SOFR
10 and what it is and how it's going to work.

11 MR. MCCOY: Sure. Well, you know, I think I
12 have been honored to sit on the ARRC committee, the
13 Alternative Reference Rates Committee, representing GFOA
14 and our 20,000 members. And that has been a very
15 educational process.

16 We do know and anticipate that LIBOR will cease
17 to be a really valid reference rate after 2021. And so
18 we have been using LIBOR in some of our securities
19 offerings, particularly around the floating rate note
20 market, which are either SIFMA based or LIBOR based.
21 And, you know, we want to have exposure to the short-term
22 market and that's been a very effective way to get it,
23 through either SIFMA or LIBOR-based notes. We don't want
24 to give up on the depth and breadth of a taxable market
25 and issuing bonds as a percent of that.

1 And so we looked very long and hard at SOFR as
2 a reference rate. I think one of the things that gave us
3 a great deal of confidence is looking at the typical
4 overnight investments that are in SOFR which average
5 currently at \$800 billion per night. On a good day, you
6 might see 500 million trades that are keyed to and feed
7 into the LIBOR rates. So the LIBOR rates continue to
8 suffer from lack of really hard, good trades to back them
9 up.

10 And so we want to be ahead of the curve rather
11 than behind the curve in this and we worked very closely
12 again with disclosure counsel, with the underwriting
13 community who we had identified to work on this
14 transaction for us. We did look closely at those
15 corporate deals that had come before us, particularly the
16 World Bank in I think it was the Fannie Mae deal.

17 And we built our disclosure on sort of being
18 very nuts and bolts. This is what SOFR is, this is
19 how -- this is how we are going to determine the rate for
20 this particular security very precisely.

21 And then we put together an investor
22 presentation and had an Internet web call live, so we
23 could take Q&A. We didn't have any Q&A but we want to be
24 accessible to investors. And so we like to do that live.
25 And we had a very strong reception of the bond in the

1 market.

2 So whether you want to do that now or you want
3 to wait for a year or two or three, I think issuers of
4 size that want that exposure, that we know that we're
5 going to get a better rate experience in the short-term
6 markets generally. It comes with volatility and risk so
7 we're going to limit how much we do of that. But for us,
8 it was a very important step and we were very pleased
9 with the outcome of being a SOFR issuer.

10 MR. WENDELL: Great, thanks. Amy, on the buy
11 side, I -- how are you starting to prepare for the
12 phaseout of LIBOR, whether it's LIBOR debt that you may
13 actually hold or whether it's concerns about issuers of
14 debt that you hold that have LIBOR debt outside of your
15 holdings?

16 MS. JOHONNETT: Sure. So I think one question
17 we have, when I think about LIBOR, I think about variable
18 rate debt and I think of swaps. So if we have SOFR now,
19 I think something that we would like to see is volatility
20 analysis as it relates to your swap book, changes to your
21 mark to market. GASB 67, 68 does a really good job with
22 showing us how changes in the discount rate can impact
23 the liability. And I think that is something we would
24 like to see for swaps as well, especially as we phase out
25 of LIBOR and into this new rate, which may be more

1 volatile.

2 And then also as related to disclosure on
3 LIBOR-based deals, making sure it's clear that once LIBOR
4 goes away, what will take its place. Some documents
5 don't contemplate LIBOR going away, some do. So I think
6 if the -- we're hoping to see documents be very clear on
7 that on a go-forward basis.

8 MR. WENDELL: Dee, I'm wondering -- Amy was
9 just talking about disclosure in LIBOR deals. How is
10 that working? What are you seeing? What are you
11 advising for issuers that have outstanding LIBOR debt?

12 MR. WISOR: I think it obviously depends upon
13 the issuer. My school districts with fixed-rate GO debt
14 probably don't care about this and we won't see any
15 disclosure about it. But for those who do have either
16 bank loans or floating rate notes or derivative products,
17 we are starting to see disclosure about the change to
18 LIBOR. And I think that's again become sort of the same
19 disclosure in every document I've seen. So it's still
20 more generic, I think.

21 I guess the good news here is this is going to
22 work itself out by refinancings or document amendments.
23 And the silver lining there is it will be a boon to
24 lawyers.

25 MR. WENDELL: Did you have anything that you

1 wanted to add on LIBOR?
2 MR. FABIAN: No, no. And, I mean, I think this
3 is an inevitable transition for the industry that we're
4 going through. You know, the MTA has been a leader so
5 far -- I mean, we don't see an under risk, necessarily,
6 in the transition. So we think it's happening about as
7 well as it could be expected to happen.

8 MR. WENDELL: Great. Well, speaking of
9 transitions, let's transition into one of the topics
10 which we've talked about throughout the day, which are
11 the amendments to Rule 15c2-12 and how issuers and
12 consumers of disclosure may be getting ready for these
13 amendments.

14 Dee, how are you working with your clients or
15 again through NABL to get ready, get people ready to
16 comply with the amendments?

17 MR. WISOR: Yes. One thing we're going at NABL
18 is we have emailed all of our members and asked them to
19 email us with issues they've identified that could use
20 some clarity, perhaps. And we're going to try and gather
21 that information and hopefully interact with OMS on that
22 before the effective date. So we might see some
23 guidance, we hope.

24 I think we are also going -- at least in my
25 practice, we'll be advising issuers to revamp their

1 policies and procedures with a view towards compliance
2 here. And I think we at NABL have a model of disclosure
3 policies and procedures which we will likely be updating.

4 I think a challenge will be, at least for some
5 organizations that are highly decentralized, how to
6 identify all of the potential financial obligations out
7 there. An example I can think of is the golf course pro
8 enters into a lease-purchase agreement for golf carts and
9 the CFO never knows about it or doesn't know about it
10 until a long time after the fact. So that will be, I
11 think, a challenge for issuers to get their hands around.

12 I know there is this conversation about
13 cataloging all of the covenants and potential default
14 remedies under loan documents. I personally wonder
15 whether that's worth the effort, given the relatively
16 small default, at least in terms of the Section 16
17 material events. I think issuers will know they're in a
18 default situation when they hear from the bank or their
19 counterparty and they can then alert the market as the
20 rule requires.

21 MR. WENDELL: Pat, how are you specifically
22 getting ready?

23 MR. McCOY: Sure. Well, we have what I would
24 characterize as a very limited universe of transactions
25 that apply to the first change that will be coming into

1 play in February. We've been disclosing that since the
2 day we got into it. And so obviously, once EMMA is ready
3 to accept the filings under the new format that Mark
4 alluded to earlier, we'll be doing that on day one.

5 We certainly believe in both the spirit and the
6 letter of the law, the regulation, and believe it's
7 important. Obviously, we want to maintain good, open
8 relationships with the investment community and you can't
9 do that if you're not disclosing everything that's an
10 obligation that might impair their ability to get repaid.

11 So we understand that. We want to be out there
12 ahead of that issue. I think we are. And that's our
13 posture going forward.

14 MR. WENDELL: Great. Amy, we heard a lot about
15 compliance with the new amendments to Rule 15c2-12 from
16 the underwriter side, from the issuer side. As a
17 consumer of disclosure, maybe talk a little bit about
18 more generally how you consume continuing disclosure and
19 what you may be looking for once the new amendments
20 become effective.

21 MS. JOHONNETT: Yeah. So, you know, thank God
22 for EMMA and the emails that they send us on continuing
23 disclosure. You know, we're happy that we now get email
24 headlines that say, you know, it's financial disclosure.
25 You know, the other material disclosure, if it could be a

1 little more descriptive in the headline, because we do
2 get a lot of these emails every day, that would be
3 helpful.

4 But I can't complain. It is a really good
5 vehicle for us to consume information. You know, we want
6 more information and we welcome it.

7 We're pretty excited about the new amendments
8 coming in February. Private placements have always been
9 a black hole for us. So we are very excited to see, you
10 know, that information disclosed, especially as it
11 relates to, you know, I think it's 16 where amendments
12 are made because an issuer is in financial distress. I
13 think that's super important for us to know about in a
14 timely manner.

15 So, yeah, I think EMMA has come a -- EMMA helps
16 us out a lot and we are very thankful for her. And we're
17 excited for, you know, the disclosure to come.

18 MR. WISOR: Amy, I'm just curious, when we get
19 into this regime, are you going to prefer to see the full
20 loan document posted on EMMA or some summary of it?

21 MS. JOHONNETT: A summary would be great, and
22 the loan documents. You said if I ask, I'll get it.

23 MR. WISOR: True.
24 (Laughter.)

25 MR. WISOR: Hoisted on my own petard there.

1 But I guess I worry a little bit about the
 2 summary, because there is potential for missing
 3 something.
 4 MS. JOHONNETT: Yeah.
 5 MR. WISOR: And I personally would recommend
 6 the clients post the full agreement, redact what you need
 7 to.
 8 MS. JOHONNETT: Yeah. That's where both would
 9 be handy, I suppose.
 10 But I don't -- you know, you worry about this
 11 disclosure getting mired down in, you know, we have a
 12 copier and a lease for the copier. You know, I don't
 13 want it to be so cumbersome that no information is
 14 disclosed because they're trying to figure out like what
 15 is a financial obligation.
 16 So I don't know if issuers will need more
 17 advice on that. And I just hope that it isn't too
 18 cumbersome for them because I'm hoping they can
 19 understand what a material financial obligation is.
 20 MR. WENDELL: Matt, maybe -- we talked a little
 21 bit about compliance with these and Amy just mentioned
 22 understanding what a material obligation is. You talked
 23 earlier, we've talked earlier about the cost pressures on
 24 issuers and obligated persons to comply with disclosure.
 25 Do you have any concerns that these pressures

1 are going to be problematic as we get into February and
 2 the compliance date for the new amendments?
 3 MR. FABIAN: No, actually. I mean, on the --
 4 from the issuer side, you know, beginning a new protocol
 5 to disclose, obviously there is a transition that's
 6 happening, that they will get -- you know, that there is,
 7 you know, working with their counsel on what to disclose
 8 and when.
 9 On the investor side, I'm not worried at all.
 10 In general, more information the better. And there is a
 11 large ability to consume more information.
 12 You know, we -- you know, at MMA, one of the
 13 things we do to populate our database of defaulted and
 14 impaired bonds is just literally troll EMMA, the other
 15 event notices, so the non-financials. We just go through
 16 every single one that's posted every week, there's
 17 thousands a week that are posted, and we just look
 18 through almost all of them.
 19 So does it mean on Lisa and I directly that
 20 we'll have, you know, 500 more to click through?
 21 Probably. But, you know, in the effort towards finding
 22 that government that has extended the maturity on a
 23 private loan or something, you know, that's the kind of
 24 information that we want to get.
 25 So it doesn't worry me about integrating it on

1 the investor side. I don't know that it's possible that
 2 issuers could overwhelm the buy side's interest in this
 3 information.
 4 MR. WENDELL: And I think we do -- Pat, do you
 5 need to be excused at this moment? Yes.
 6 Pat is leaving us because he has to go back to
 7 New York to be honored by the bond buyers. So it's a
 8 good thing.
 9 (Applause.)
 10 MR. FABIAN: And now we can speak clearly,
 11 right? We can be open.
 12 MR. WENDELL: Matt, sticking with you but
 13 changing topics, another trend that we've seen in the
 14 market over the past several months, maybe a little bit
 15 more than that, is the trend toward fewer ratings per
 16 issuer. And I know that you've looked at this a lot and
 17 that you've spoken about it before. But I was wondering
 18 if you could talk a little bit about what sectors of the
 19 market this might be happening more in and what on a
 20 disclosure level could be done to mitigate that? Is it
 21 being done and what kind of need is there?
 22 MR. FABIAN: Okay, so, yeah, we -- there are
 23 definitively in the muni market trends toward fewer
 24 ratings. Year to date or at least through the first
 25 three quarters of this year, single-rated bonds or bonds

1 with only one rating were 25 percent of the total
 2 issuance. And that's up from I think it was in the
 3 teens, 15 or 13 percent 10 years ago. So it's a fairly
 4 sharp increase.
 5 In part, it is because you could say that the
 6 rating agencies have done a pretty good job of
 7 establishing, you know, that the presence of a rating
 8 conveys safety, right? Out of the -- there's 440
 9 municipal bonds currently in payment default. And I
 10 think only 50 of them -- I think it was actually 50, a
 11 round number, including Puerto Rico, were rated. So 90
 12 percent of the things that are currently in payment
 13 default are nonrated.
 14 So there is some more comfort generally with
 15 that trend. It is -- you know, it has been safer sector
 16 credits generally that have seen, you know, fewer ratings
 17 but going more towards one rating, the skew is more
 18 towards what we call risky sectors or sectors where there
 19 is a presumption of a built-in risk, health care and
 20 similar.
 21 So that's a trend. I think that it points to
 22 sort of the evolution of the muni market generally,
 23 towards being more a secular trend toward being more --
 24 I'm not going to say risk aggressive but risk inclusive,
 25 where we have acted on the muni bond side as, in effect,

1 the captive finance arm for the state and local
 2 governments. So we have provided capital market access
 3 to most governments or essentially all governments for
 4 essentially all purposes at pretty good terms. That's
 5 continuing.

6 And because of, no, it's not just the credit
 7 cycle, it's not just that yields are low and that supply
 8 is relatively tight. It's, you know, long term,
 9 permanent adjustments in our market. The movement of
 10 assets from retail-oriented investments or
 11 retail-oriented investors -- retail-directed investors to
 12 asset managers. There has been a tremendous flow over
 13 the last five years towards professional management. We
 14 are a much more institutional market, a much more
 15 professionally managed market. And that means that money
 16 is being spent on a more rational, from a default risk
 17 perspective, on a more rational basis.

18 So some of the spread that we sort of mourn is
 19 not here is not coming back. Some will because of
 20 cyclical issues. But in the long term, our market has to
 21 adjust to a more tightly spread, lower yielding market.
 22 And in part, that means that things like the rating
 23 agencies -- I mean, the ratings are, because of the
 24 extreme complexity of our markets, they're the main way
 25 that people -- that investors navigate what to buy and

1 what to sell. That's only becoming more the case going
 2 forward.

3 MR. WENDELL: Amy, how is this affecting your
 4 decisions and your interactions with investors?

5 MS. JOHONNETT: Sure. So Fidelity does their
 6 own internal research. But the rating agencies are a
 7 very helpful source of information for us. They are our
 8 partners. We don't agree with them always but they do
 9 provide us good information.

10 Ratings are important in our market because
 11 they drive price and liquidity. You know, the market
 12 doesn't care when Fidelity makes a change on a bond
 13 because they don't know about it. But they do know when
 14 Moody's, S&P or Fitch make a rating change.

15 So, you know, in some cases, more ratings can
 16 be better. Because if, you know, there's a methodology
 17 change that results in a downgrade, then you have two
 18 others that may be kind of sticky where they are. But
 19 then one rating or no ratings can be investment
 20 opportunities. So, you know, I guess it depends on what
 21 you're looking at, what the investments are.

22 But something that we have discussed is
 23 disclosure as it relates to single issuer. You know, we
 24 do see it in the distressed area. You know, single
 25 ratings can be symptomatic of a frugal issuer or they can

1 be a distressed issuer. And I think this is wishful
 2 thinking. But disclosing whether or not you got a rating
 3 and then decided not to take it would be great. But
 4 again, that's wishful thinking, but yeah.

5 MR. FABIAN: And to follow up on that point,
 6 which is exactly right, if you look at the actual content
 7 of -- we have been talking a lot about financials and
 8 XBRL and similar solutions. If you look at the actual
 9 financials, what in the financials indicates that that
 10 government, regardless of what type of government, is
 11 headed toward default or not is really the presence of
 12 the financials at all.

13 And so at MMA when we look to screen credits
 14 for some of our clients like banks of, you know, what
 15 is -- you know, what needs a review earlier versus later,
 16 credits -- we don't care so much about what's in the
 17 financials; it's more about are there financials. And
 18 when we start thinking about innovations in our market
 19 towards better and easier-to-use financials, which is
 20 great, but having financials for every government, for
 21 every issuer, would be a fine first step, you know,
 22 before marching into sort of the brave future of XBRL.

23 MR. WENDELL: All right, I do want to save a
 24 little bit of time for questions but there is one more
 25 topic that I would like to talk about which Amy touched

1 on in her answer to the first question, which is the use
 2 of plain English.

3 I guess we can start with you, Amy. As an
 4 investor, what are you looking to see? And do you think
 5 that, as an institutional investor, what you are looking
 6 at might be different than what a retail investor is
 7 looking at?

8 MS. JOHONNETT: Yeah, absolutely. You know, we
 9 have lawyers on staff that help us muddle through some of
 10 the security language, which can be very tricky.

11 You know, I think about lease appropriations, I
 12 think about guaranteed debt. You know, sometimes even
 13 appropriated debt in a tax-backed space security, when
 14 you read through the securities section, it's not always
 15 clear. We do have lawyers that help us read through it.
 16 And I do think the plain English initiative would benefit
 17 the household investor in the disclosure of what the
 18 bonds are secured by.

19 MR. WENDELL: And, Dee, as a former bond
 20 lawyer, I know that when you're drafting a disclosure
 21 document, there is this tension between making sure you
 22 describe everything accurately and completely and shortly
 23 summarizing it or briefly summarizing it. How do you
 24 navigate that tension and how do you try to provide plain
 25 English when you can?

1 MR. WISOR: Yes, that's a great point. And,
 2 you know, there was a --
 3 MR. FABIAN: I think you don't have a lawyer do
 4 it. No offense.
 5 MR. WISOR: Don't you have someplace to go?
 6 (Laughter.)
 7 MR. WISOR: There was a buzz about plain
 8 English in the municipal market in the late '90s, early
 9 2000s and there were some people doing some plain English
 10 OSs but haven't seen it much, I don't think. Partly, I
 11 think it is, Adam, you know, as the -- it's a bit of the
 12 inertia. You took the last official statement and marked
 13 it up for the new one. And if that's where your starting
 14 point is, it's hard to go through the plain English
 15 process.
 16 And circling back to the resource question we
 17 started out in this panel with, is the issuer going to be
 18 willing to pay for that plain English effort? In
 19 preparation for this, I read the SEC plain English manual
 20 and it's great. But I think, you know, it would take a
 21 lot of work to recraft an entire official statement to do
 22 that.
 23 I think another problem would be bond documents
 24 themselves, engineering reports, feasibility studies,
 25 they're not necessarily written in plain English. And so

1 then you get into this challenge of, well, am I going to
 2 summarize that? And in summarizing in plain English, am
 3 I missing something that's material? And, of course, the
 4 bond lawyer is being asked to give a fair and accurate
 5 summary opinion at closing about the summary of the bond
 6 documents. And there are some firms who are pretty
 7 stringent about it's got to be exactly the words that are
 8 in the indenture before I give that opinion.
 9 And Amy, maybe I'd ask you. I've seen go back
 10 and forth -- in some parts of the market, I see the
 11 actual indenture attached to the offering document as
 12 opposed to an attempt to summarize it, which might help
 13 on this plain English front. But I'm curious about from
 14 the buy side your perspective on that.
 15 MS. JOHONNETT: Yeah, you know, sometimes we
 16 need the full indenture. And getting a full indenture,
 17 it can be really hard. You know, the summary is fine but
 18 I think, you know, when we're looking at event-of-default
 19 language, if we're, you know, trying to figure out
 20 certain covenants, they're not always disclosed in the
 21 summary and we do have to go digging for the indenture.
 22 MR. WENDELL: Matt, did you have anything you
 23 wanted to add? Otherwise, I will open it up for
 24 questions.
 25 MR. FABIAN: No, no. We're short on time, we

1 should move on.
 2 MR. WENDELL: Okay, so we've got just under 10
 3 minutes for some questions. Go ahead.
 4 AUDIENCE PARTICIPANT: I wanted to plug into a
 5 comment that Matt made at the outset. So 0.08 percent of
 6 issuers are in default. So that means that 99.92 percent
 7 aren't. Many of those are either unrated or have ratings
 8 well south of triple A. I find, from my research, that
 9 issuers that have high general fund balances relative to
 10 their expenditures, a positive, unrestricted net position
 11 and a low, relatively low ratio of debt to revenues are
 12 very, very likely to be in those 99.92 percent.
 13 And I think that if issuers were given the
 14 opportunity to bring forward those financial statistics
 15 from the 300 pages of their CAFR so that investors can
 16 see them, they would be able to tell their story and
 17 maybe get better liquidity in the market. What do you
 18 think?
 19 MR. FABIAN: I don't disagree with your point.
 20 And in theory, right, more fund balance -- I mean, we all
 21 know, we've all been trained, that more fund balance is
 22 better, right, and that in theory it's safer.
 23 You did have a default this week or late last
 24 week, Platte County, Missouri, which is a double A county
 25 that walked away from an appropriation bond, letting it

1 default on principle. No good reason, other than they
 2 chose not to pay.
 3 So not to say that that would have been
 4 indicated by the financials in any way but that defaults
 5 don't necessarily happen -- they're not necessarily
 6 calibrated as closely as that.
 7 I think that one of the issues, my principal
 8 issue with XBRL isn't even necessarily that it's sort of
 9 the informational side. I think that we have -- we are
 10 using it now. We have the equivalent. Credit Scope is a
 11 private service that provides summarized financials
 12 beloved by, you know, many investors out there. Well
 13 used.
 14 I don't know that there is -- if it were under
 15 such demand from investors, it would be a much bigger and
 16 better-known product. Bloomberg has, you know,
 17 financials also electronically that are extractable and
 18 usable through their API function. I don't know anyone
 19 that uses them. I'm sure it's great but I don't know
 20 anyone that uses it.
 21 So on the investor side, I think most large
 22 investors would trust their own numbers instead of ones
 23 extracted by others -- not to speak for you.
 24 And on the issuer side, you know, Detroit
 25 borrowing at below 5 percent is -- it's hard to make an

1 argument that issuers need better market access. Like
2 what is the upside for the issuers to -- I mean, it's
3 fine, governments -- if Congress wants to give several
4 billion dollars to the muni industry to make XBRL happen,
5 let's do it. But from a financial perspective, putting
6 it on the issuers, I think, is just a hard -- it's just a
7 hard argument right now. And they should be looking at,
8 you know, Credit Scope, Bloomberg, how is that data being
9 used, as the experiment. Sorry.

10 AUDIENCE PARTICIPANT: This is a question for
11 Amy. You mentioned copier leases on disclosures. And I
12 know municipal analysts always want more, more, more.
13 But materiality and how do we answer that question as a
14 municipal adviser when our clients are calling us?
15 They've got a \$100 million budget and they entered into a
16 copier lease. First of all, do they even know they
17 entered into a copier lease? And, secondly, why would
18 you want to know that if, under GASB 87, it's going to be
19 like maybe six months, nine months, you're going to see
20 it in the financials that are coming out in the near
21 future.

22 Where do we start drawing the line on
23 materiality? And so if you're a community with a \$2
24 million budget, maybe a copier lease. I don't know. But
25 definitely maybe a fire truck. But where do we draw

1 those lines? And as municipal advisers, we're already
2 starting to get these questions.

3 MS. JOHONNETT: Yeah, no, that's great. And I
4 think that's one of the concerns, you know, that I have
5 about 15 and 16, about the financial obligations. I
6 guess this is not the best answer but if it's something
7 that you guys are contemplating and wondering whether or
8 not it's material, then disclose it.

9 You know, I think you would know if, you know,
10 you have a \$20 million budget and you have a copier lease
11 then you probably -- you know, it's not material. But
12 again, I'm not an adviser.

13 But I think if you're, you know, sitting around
14 trying to debate what to include as an adviser, I would
15 include it.

16 AUDIENCE PARTICIPANT: That's what I'm saying.
17 I think you're going to see these things like snowflakes.
18 You're going to get buried in these really meaningless
19 disclosures.

20 MS. JOHONNETT: Right.

21 AUDIENCE PARTICIPANT: So somewhere, it's got
22 to have some value or it becomes no value.

23 MS. JOHONNETT: Right. Well, that's -- our job
24 is we get tons of information and we're always trying to
25 figure out what's important and what's not important.

1 So, you know, we welcome that information. If you think
2 it's material, then we want to see it and we'll figure
3 out how it impacts our analysis.

4 AUDIENCE PARTICIPANT: Well, that sounds like
5 then you'll get a lot of snowflakes. Thank you.

6 MR. FABIAN: That's how we do our analysis,
7 too, when we're looking at what to include or not include
8 into our defaulted and impaired database, is if the
9 issuer has felt compelled to disclose this, we should
10 take it seriously. So if it's something that issuers
11 believe we should be taking seriously, then we will.

12 MR. WENDELL: Go ahead, please.

13 AUDIENCE PARTICIPANT: Hi, yes. I would just
14 like to elaborate on one of Dee's questions about what to
15 disclose in terms of bank agreements and whether we want
16 to have a summary of the terms or the agreements
17 themselves.

18 As another investor, I do agree with Amy that
19 we would like to have maybe both. But the more material
20 information, in my opinion, from those loan agreements is
21 the performance of those financial covenants. And like
22 Amy indicated, if a borrower is providing information to
23 a rating agency, why not go ahead and provide that same
24 information on EMMA or some other source? It's easy, you
25 don't have an administrative burden. Same thing with the

1 performance of the financial covenants that are being
2 reported to banks.

3 You're already reporting it to a financial
4 institution. A creditor, which is supposedly on parity
5 with bondholders, we'd like to have parity disclosure for
6 parity debt. And I think it would be fairly easy to do
7 and of great value to do. Even though the incidence of
8 defaults under those agreements are low, they are high
9 impact. And in fact, over the summer, I can name at
10 least two or three borrowers in the 501(c)(3) space that
11 violated financial covenants under bank agreements and
12 faced multi-notch downgrades to below investment grade.

13 So it's material to us and, you know,
14 downgrades are material to us as well as payment
15 defaults. Even if you're not in a payment default, a
16 deterioration in the credit or the impending
17 deterioration of the credit or a lack of impending
18 material credit deterioration, all of that is material to
19 us. So that would be really, I hope, an easy way to
20 solve that problem.

21 MR. WENDELL: I think we have time for one more
22 quick question.

23 AUDIENCE PARTICIPANT: In relation to more
24 disclosure, the general fund is obviously the largest
25 fund and the most budgeted fund. Most people pay

1 attention to that fund. GASB is currently deciding
2 whether we should continue to do the general fund
3 accounting on a cash basis, proposing inflows and
4 short-term inflows and outflows statement.

5 Do you see value in including that, but also
6 providing more information on a full accrual basis at the
7 general fund level, so people would know how much pension
8 expense was incurred in the general fund or other funds
9 during the budgeted year or other expenses or revenue
10 that might not appear on a cash basis statement?

11 MR. FABIAN: We -- I think a best practice
12 would certainly be a full accrual for government budgets.
13 And provide government budgets or the general fund and
14 provide that perspective of, as pension or other benefits
15 are awarded on a long-term basis, that could be somehow
16 fully incorporated into the budget documents.

17 There's a transition issue with that. But in
18 the interests of full transparency, I don't see why that
19 would be a bad thing.

20 MR. WENDELL: Okay, great. Well, we need to
21 get off change for the set change. So thank you all
22 very, very much.

23 (Applause.)

24 (Recess.)

25 MR. ABONAMAH: Okay, everyone, welcome back.

1 Sorry for the delay in the setup.

2 But I now have the privilege to introduce our
3 final discussion of the day, the Commissioner Roundtable.
4 Joining the roundtable are Commissioners Jackson, Peirce
5 and Roisman, while the Director of the Office of
6 Municipal Securities, Rebecca Olsen, will be moderating.

7 Before we dive in, I'd like to briefly
8 introduce the commissioners.

9 Commissioner Jackson was sworn in as a
10 commissioner in January 2018. He came to the Commission
11 with extensive experience as a legal scholar, policy
12 professional and corporate lawyer. His academic work was
13 focused on corporate governance and the use of advanced
14 data science techniques to improve transparency in our
15 securities markets.

16 In addition to his academic work, Commissioner
17 Jackson served as a senior policy adviser at the U.S.
18 Department of Treasury, working with the special master
19 for the Troubled Assets Relief Program, Executive
20 Compensation, where oversaw the development of policies
21 designed to give shareholders a say on pay, improve the
22 disclosure of executive bonuses and encourage TARP
23 recipients to more closely tie pay to performance.

24 Commissioner Peirce was also sworn in as a
25 commissioner in January of 2018. This is not

1 Commissioner Peirce's first tour at the SEC. She
2 previously served as counsel to then-Commissioner Paul
3 Atkins and as a staff attorney in the Division of
4 Investment Management.

5 Between then and now, Commissioner Peirce
6 served as senior counsel on the Senate Banking, Housing
7 and Urban Affairs Committee, where she oversaw financial
8 regulatory reform efforts following the 2008 financial
9 crisis and conducted oversight of the regulatory
10 implementation of the Dodd-Frank Act.

11 Immediately prior to joining the Commission
12 this year, Commissioner Peirce served as senior research
13 fellow and director of the Financial Markets Working
14 Group at the Mercatus Center at George Mason University.

15 Commissioner Roisman was sworn in as a
16 commissioner in September of this year. Commissioner
17 Roisman joined the Commission from the Senate Banking,
18 Housing and Urban Affairs Committee, where he served as
19 chief counsel. In that role, Commissioner Roisman
20 counseled committee members on securities, financial
21 regulation and international financial matters.

22 Prior to his time in the Senate, Commissioner
23 Roisman worked here at the SEC as counsel to
24 then-Commissioner Daniel Gallagher, focusing on
25 enforcement and policy relating to the U.S. equity and

1 fixed income markets, among others.

2 Please join me in welcoming Commissioners
3 Jackson, Peirce and Roisman.
4 (Applause.)

5 MS. OLSEN: So first, I want to thank you for
6 joining us for the final and much-anticipated event of
7 the day.

8 A few words on format. I have a series of
9 questions and each question has a little bit of
10 background or municipal securities marketplace context.
11 And I thought I would just go around and give everyone an
12 opportunity to chime in on the questions. And at any
13 point, I'm happy to repeat all or part of a question.

14 So starting with the general benefits of
15 disclosure. Periodically, we receive feedback from some
16 municipal market participants, including municipal
17 issuers, questioning the benefits of disclosure. With
18 respect to primary market disclosure, some market
19 participants have told us few investors read the entire
20 document.

21 With respect to secondary market disclosure,
22 given the buy and hold nature of the municipal securities
23 market, some issuers question why they are required to
24 provide continuing disclosure, while others question
25 whether secondary market disclosure has any impact on the

1 pricing and liquidity of bonds. Indeed, the municipal
2 securities market traditionally has been described as a
3 buy and hold market because many retail investors buy
4 municipal securities and hold them until maturity.

5 So two questions. I guess first, what is your
6 view on the value of disclosure and, in particular, the
7 role it plays in the Commission's oversight of the
8 municipal securities market? And in your view, is there
9 a different value assigned to primary versus secondary
10 market disclosure?

11 If I could start with you, Commissioner Peirce?

12 COMMISSIONER PEIRCE: So I will start and I
13 will give a disclaimer, which is that the views that I
14 represent are my own views and not necessarily those of
15 my fellow commissioners or the Commission. But actually,
16 I think, in this area -- and that disclosure, I'll just
17 give it on behalf of my colleagues, as well.

18 But in this area, I think that we're much more
19 likely to see things from a unified perspective. Because
20 obviously, disclosure is the core of what we at the SEC
21 do. And it's no different in the municipal securities
22 space. Disclosure is very important. The fact that this
23 such a retail-heavy market, I think, makes it more
24 important than ever because it's more important to push
25 for disclosure if you're a retail investor.

1 Welcome, Commissioner Jackson.

2 COMMISSIONER JACKSON: Thank you, Commissioner
3 Peirce.

4 COMMISSIONER PEIRCE: You brought me a cup of
5 coffee, too. That's great.

6 (Laughter.)

7 COMMISSIONER PEIRCE: So, you know, I think
8 that it's really important for us to get information to
9 investors. Even if they might not necessarily themselves
10 look at it, it's important to have the information out
11 there so that it can factor into the pricing. And I
12 think as our technology changes, it's going to be even
13 more likely that the information that gets out there is
14 actually going to get factored into prices and matter.
15 So I think it's very important in both the primary and
16 secondary context to have good information out there.

17 COMMISSIONER ROISMAN: Sure, I'll just do the
18 shortened version of the disclaimer. What Commissioner
19 Peirce said, the same applies to me.

20 But I do think, you know, as she noted, I think
21 disclosure is kind of the bedrock of what this agency
22 does. Certainly, it's true, we require adequate
23 disclosure in almost every market we oversee. Granted,
24 we have much more limited authority in this particular
25 space than in others.

1 But that being said, the goal is, I think in
2 any place, any marketplace, is to provide enough
3 information to investors for them to make informed
4 decisions. And that means both on the primary side and
5 on the secondary side.

6 I think disclosure and, frankly, dissemination
7 has improved over the years. I think there are still
8 potential places for improvement. But I also think that
9 fundamental to what we do is truly just ensuring that
10 there's a balance. We want to provide what is, quote,
11 unquote, material information to the marketplace, being
12 conscious of the fact that it does cost issuers and
13 certain information may be extraneous to many investors.

14 MS. OLSEN: So maybe I might move to the next
15 question and have you kick that off.

16 COMMISSIONER JACKSON: Was your question about
17 the

18 MS. OLSEN: Just the general value of
19 disclosure.

20 COMMISSIONER JACKSON: -- desirability of
21 disclosure.

22 MS. OLSEN: If you want to --

23 COMMISSIONER JACKSON: Yeah, no, I'd be --
24 first of all, let me start by apologizing to my
25 colleagues and all of you for being a little bit delayed.

1 I was on a call that ran long. Apologies for that.

2 I'm delighted to be here. There's three of us
3 so, like, that's a quorum, right?

4 MS. OLSEN: Sunshine Act notice, it was posted.

5 COMMISSIONER JACKSON: Let's do it. Don't tell
6 Jay, we'll just pass some rules, it'll be great.

7 (Laughter.)

8 COMMISSIONER JACKSON: It sounds like my
9 colleagues gave you the standard caveat, which is that
10 these reflect my views and not those of my colleagues.
11 Although I like to give a caveat to the caveat, which is
12 to say that these are my views and I'm going to try and
13 convince them that I'm right. And in the fullness of
14 time and wisdom, both Hester and Elad usually conclude
15 that I was right all along. That happens a lot, right?

16 COMMISSIONER PEIRCE: I started out by saying
17 we're all on the same page anyway.

18 COMMISSIONER JACKSON: We are.

19 COMMISSIONER PEIRCE: It seems like you don't
20 have a lot to convince me of in this area. Your job's
21 easy.

22 COMMISSIONER JACKSON: See, I can just observe
23 the correlation between our views and then claim
24 causation. It's my move.

25 COMMISSIONER PEIRCE: Is that what your

1 empirical work does?
 2 COMMISSIONER JACKSON: Yeah, pretty much.
 3 (Laughter.)
 4 COMMISSIONER JACKSON: Wow, too soon. Ouch.
 5 So I think my colleagues are, of course,
 6 absolutely right. And Commissioner Peirce is quite
 7 correct to point out the fact that on these issues, we
 8 often all agree about the incredible value of the
 9 transparency that the market has achieved and that there
 10 is more work to do.
 11 My own view about the value of transparency in
 12 the space emphasizes less the degree to which a
 13 particular disclosure is read and in what detail. And
 14 instead, my own view, from talking to market
 15 participants, that the presence of the Disclosure Rule
 16 has important ex ante effects to the way the issuer
 17 itself thinks about its finances, its obligations to its
 18 investors, the kinds of things it's prepared to agree on
 19 and the kinds of things it's not.
 20 You know, certainly my experience in corporate
 21 practice and on Wall Street was that when people are
 22 really forced to know, hey, you're going to have to write
 23 this down and really explain it to your investors, that
 24 leads to thoughtful conversations that are very
 25 beneficial. And my sense is very much that that's true

1 at the municipal level.
 2 So I think it's been -- the market has
 3 considerably strengthened as a result of this
 4 transparency. I am looking forward to the work we have
 5 ahead.
 6 MS. OLSEN: Great. So the next question is on
 7 the costs and burden of compliance.
 8 So the municipal securities market is very
 9 diverse, with over 50,000 unique issuers, located in and
 10 subject to the laws of 50 different states as well as
 11 U.S. territories. And this diversity is also reflected
 12 in issuer size and frequency of accessing the capital
 13 markets. For example, an issuer may be a small school
 14 district with a part-time staff overseeing debt
 15 management that goes to market every five to 10 years, or
 16 a large state or city with a professional, full-time debt
 17 management staff that goes to market several times a
 18 year.
 19 Irrespective of their diversity, all issuers of
 20 municipal securities have to comply with the federal
 21 securities laws, including the antifraud provisions. And
 22 periodically, we receive feedback from municipal issuers
 23 that municipal securities' disclosure regime is too
 24 burdensome and expensive for them to comply with,
 25 especially in light of competing needs for public funds.

1 And, you know, we definitely heard some of this sentiment
 2 today.
 3 I think Kenton Tsoodle talked about the cost of
 4 compliance on Panel 2 on enforcement. You know, and Ben
 5 Watkins also in his remarks from the audience said, you
 6 have to be careful about how you apply your resources.
 7 So what is your view on how to balance the
 8 burdens and costs of compliance on municipal issuers on
 9 the one hand and the need to ensure investors have access
 10 to information material to evaluating an issuer's
 11 municipal securities both in the primary market and on an
 12 ongoing basis on the other hand? And as a follow up, do
 13 you think our current disclosure regime achieves this
 14 balance?
 15 COMMISSIONER PEIRCE: Well, I'm sensitive to
 16 the fact that there is a wide variety of issuers and I
 17 think we need to take that into account as we think about
 18 our rules. But at the same time, it's important that we
 19 think about the need for investors to have the
 20 information they need, right? So if you're going to the
 21 markets, you have to be willing to provide information
 22 that's material to investors. I think that's very
 23 important.
 24 I think, as we think about rules, we're
 25 thinking about can we do this in a way that allows the

1 flexibility, that affords the flexibility so that a large
 2 issuer that's going to the market all the time is
 3 obviously going to be doing something more than a smaller
 4 issuer that's only periodically very, very rarely going
 5 to the market? I think one value that we see is that,
 6 you know, we need to get input from the full range. So
 7 we put things out for comment and we're serious about
 8 getting those comments. And I think all of us are
 9 serious about taking a look at what commenters say and
 10 will look at commenters that themselves are small or
 11 maybe are representing smaller issuers and saying, hey,
 12 here are some of the things that are going to be unique,
 13 uniquely difficult for small issuers. So that's one part
 14 of the process that's very important for us. We can't
 15 necessarily know what your experience is going to be
 16 unless you come and tell us about it. And so we will
 17 take that into account.
 18 And we try and build in flexibility wherever we
 19 can in our rules. But, you know, ultimately, we do have
 20 to think about the investor, too, and what the investor
 21 needs. So I think we're always trying to make that
 22 balance right.
 23 COMMISSIONER ROISMAN: Sure. It's always hard
 24 to follow either Robert or Hester. And I should probably
 25 make my full disclosure. Yes, my views are my own. And

1 hopefully will be the same as theirs.
2 But, look, I think this is the constant tension
3 we always have in the market in terms of issuers are
4 trying to, and especially in the municipal space, they're
5 trying to maximize, you know, public money. And
6 investors need to have at least some basis for, you know,
7 trusting the market and purchasing that security.

8 I think, you know, the private market has
9 actually done a pretty good job of trying to determine
10 what's material. I think, you know, the basis of our
11 authority, kind of in 15c2-12 is, you know, in the '90s,
12 we came up with a proposal for it and we gave a very
13 prescriptive definition of materiality and the public
14 came back and said, absolutely not, that's too much. And
15 so we've had this kind of flexible definition. And I
16 think that's great because each issuer has its own
17 varying needs and own, you know, issues and they can
18 determine what's material or not.

19 And our rule set, I think, has a little bit of
20 flexibility to recognize that. You know, we don't
21 require, you know, 15c2-12 doesn't really apply to
22 things, I think, under a million or a duration of less
23 than 18 months. So we're conscious of size.

24 I think it's important for us to continue to
25 kind of listen to the public from both investors and from

1 issuers to determine whether the current framework still
2 works or whether we need to kind of improve. This will
3 always kind of ebb and flow, given the way the markets
4 work. But I think, you know, we are conscious of the
5 costs associated and it goes to bear in every rulemaking
6 we do. We try to weigh the cost and the benefit. And
7 it's important for us to continually kind of do these
8 retrospective reviews.

9 COMMISSIONER JACKSON: So I think maybe a
10 slightly different view than what's been described so far
11 on this subject. My own thinking is that there's no free
12 lunch in finance. So if we have a series of disclosures
13 that are difficult to parse, difficult to compare,
14 difficult to examine, that shows up in the cost of
15 capital for the issuer.

16 So that if we reduce the burdens of disclosure,
17 that does reduce some cost but will have an offsetting
18 cost for the issuer in the form of higher cost of
19 capital, which just follows. Unless one concludes that
20 the information is completely irrelevant or immaterial to
21 the investor's investment decision. And I certainly
22 don't see anything in our rules at the moment in this
23 area that meets that definition.

24 I think in this market, especially a market
25 with a great deal of heterogeneity as to issuer, not

1 only -- within issuer, you have a great of heterogeneity
2 as to the underlying security type. My thinking is that
3 we have an important role to play in providing
4 standardized, timely disclosures to the marketplace. And
5 that that has a crucial benefit for issuers that can be
6 hard for them to see in the long run cost of capital that
7 they raise.

8 Now, just to be clear, I'm not against
9 flexibility. I think we can do what I just described in
10 a way that is thoughtful and flexible. I think we have
11 been doing that.

12 But I think it's time to get more timely, more
13 thorough, more complete disclosures in this market. And
14 I think if we do, investors will respond by pricing risk
15 more accurately in this space and lowering the cost of
16 capital overall in a way that will have very important
17 long-term benefits for issuers and fundamentally for the
18 things they finance. And in this conversation, as
19 important as any other capital-raising conversation in
20 America, you're talking about raising money for
21 infrastructure, for all the crucial things in our
22 nation's future.

23 So for me, I think it is time to get a timely,
24 very clear set of disclosures in this space. I think
25 we've been making great progress on that front. But I'm

1 a little less concerned -- I mean, I'm always worried
2 about the costs of this. But I also think it's worth
3 considering the benefits and those benefits certainly
4 include lower cost of capital for investors who have an
5 easier time analyzing this information.

6 COMMISSIONER PEIRCE: I mean, I would just say
7 that in this space, as in the public company space, I am
8 going to think about the size of the issuer and say, is
9 there anything that we can do to make it easier for these
10 smaller issuers? We do want, as Commissioner Jackson
11 said, we do want to make sure that the information is out
12 there for people, no matter what size you are. But at
13 the same time, I think we can work with these smaller
14 issuers who are struggling, I think, with a whole
15 different set of challenges than their bigger colleagues
16 are.

17 MS. OLSEN: Thank you. So the next question is
18 on the big M, disclosure and materiality, which I think
19 some of you have already started to speak to a bit in
20 your commentary.

21 In addition to the diversity among types of
22 municipal issuers, the municipal securities market is
23 also diverse in terms of types of issues and sources of
24 repayment for municipal securities. The Commission
25 recognized this diversity when it adopted amendments to

1 Rule 15c2-12 in 1994, providing for ongoing disclosure to
2 the secondary market, including notices of material
3 events. The rule is structured in a manner that leaves
4 it up to the parties to the transaction to determine
5 which obligated person will be responsible for providing
6 secondary market disclosure and what information is
7 material to an understanding of the security being
8 offered.

9 While this framework accommodates the diversity
10 of municipal issuers as well as the diverse types of
11 issues and sources of repayment for municipal securities,
12 it also makes it difficult for municipal issuers as well
13 as other municipal market participants, such as
14 broker-dealers or municipal advisers, to assess their
15 compliance with the antifraud laws. And indeed, we heard
16 that sentiment expressed today.

17 What are your thoughts on the role of
18 materiality standard in the federal securities laws, and
19 particularly in the municipal securities disclosure
20 regime? And, as a follow on, do you think municipal
21 issuers could benefit from more specific guidance
22 regarding what is material in the context of the
23 municipal securities market, and is this something we
24 could even provide while still accommodating the
25 diversity of issuers, type of issues and sources of

1 repayment for municipal securities that characterizes the
2 market?

3 And maybe we will start down the end,
4 Commissioner Roisman, with you for this one.

5 COMMISSIONER ROISMAN: Sure. I thought it
6 would be Rob since he came late.

7 (Laughter.)

8 COMMISSIONER ROISMAN: No, I think this is, you
9 know, the constant tension we always have. I think
10 guidance is always helpful. But I think materiality
11 changes, given the times. And I think -- I didn't do
12 this at the outset but I think you did an incredible job
13 bringing such an array of different views of the muni
14 markets today, and you heard some really good ideas. But
15 it's also a testament to the fact that there are a lot of
16 people here who are willing to kind of work with each
17 other to try to provide what's best for the market.

18 And I think the market has done a pretty good
19 job of determining what's material or not. As I said at
20 the outset, I think, you know, there is a reason the
21 Commission, I think, in the '90s determined not to do a
22 prescriptive definition of materiality. Issuers are best
23 placed to actually determine what that is. That being
24 said, you know, when issuers fail to disclose certain
25 material information, it becomes pretty apparent and

1 pretty clear to folks.

2 I do think that there are still things that
3 maybe the market can improve upon. I think, you know,
4 there is certainly the issue of unfunded liabilities not
5 necessarily being disclosed for certain issuers. That is
6 something I, as an investor, would appreciate having a
7 better understanding of.

8 So I think the dialogue needs to continue in
9 terms of what is actually, you know, information that's
10 material to investors, not only for the primary market
11 but also for secondary.

12 And I hope I didn't, you know, create too much
13 of a problem, because I just see all these people being a
14 little shocked.

15 But I do think that, you know, we do have a
16 very limited role, as I said, due to the Tower Amendment,
17 and we certainly don't control GASB. But I think this is
18 something that, you know, people are looking at. And
19 this will be something I hope to kind of get more thought
20 on.

21 COMMISSIONER PEIRCE: I mean, I think
22 Commissioner Roisman makes great points. The only thing
23 I would add is I think we do need to be careful when we
24 are doing rulemaking in this space not to send messages
25 to people that might confuse them about what's material.

1 We don't want to suggest that there is a lower bar, lower
2 standard for materiality, than there actually is. So
3 that's something that I try to be conscious of. So you
4 try to balance, you know, providing some sense to people
5 of what might be material but not leading people to think
6 that every little -- every little detail is material.

7 Again, this is a challenge that we face in this
8 space. It's a challenge we face in other disclosure
9 contexts as well.

10 COMMISSIONER JACKSON: I'm a little less
11 worried about issuers and investors being confused about
12 materiality. I think the market has a very keen sense of
13 what is and isn't material here. And I think we have a
14 very important role to play, well within the confines,
15 understanding the Tower Amendment, to help investors and
16 issuers understand that.

17 And I am wary of something else, which is the
18 prospect of we, at the Commission, decreeing from on high
19 what's important to investors. I don't think my view of
20 what's important is what's important. I think your view
21 of what's important is what's important. I think the
22 view of the investors who fund municipal finance across
23 the United States is what's important.

24 And I worry that there is a tendency to sort of
25 make a broad pronouncement, this seems material, that

1 seems immaterial. And what the person is really saying
2 is, it's not important to me. And my answer is, well,
3 with all due respect, I don't care. What I care about is
4 what's important to investors. And here, I think we
5 really can learn from the market in a meaningful way.

6 And that's why I thought it was so important,
7 Commissioner Roisman is right, it's great that you
8 brought together the group that you did today because I
9 think we have a lot to learn from what is important. And
10 so, for example, we've already begun to understand that
11 sources of repayment and clearer information about that
12 are very important to the investor community. And I
13 think that it's important that kind of signal reaches us
14 and that we respond clearly to the marketplace by saying,
15 this is what we're hearing from the investor community
16 and these are the things that are important to them.

17 I think one thing to remember is that we play
18 an important role in facilitating communication between
19 issuers and investors. It's not that they're looking to
20 us for answers in a space like this. One thing we can do
21 is say, this is a consistent set of feedback we're
22 getting from the marketplace. And I think when we do
23 that, we do both issuers and investors the great service
24 of understanding what people are going to care about when
25 they go to market.

1 Certainly, that was my experience on Wall
2 Street. You know, I certainly wasn't looking for an
3 answer every time, but I was looking for guidance and
4 understanding about what investors were going to
5 prioritize. And I think when we provide that, we do the
6 right thing for investors.

7 MS. OLSEN: So let me ask one quick follow up
8 on that for whoever wants to answer.

9 You know, in the absence of specific guidance
10 regarding disclosure obligations for municipal issuers,
11 many look to guidance that the Commission has put out for
12 corporate issuers. And a couple of examples that come to
13 mind is the guidance the Commission put out on corporate
14 issuer use of websites and I think more recently on
15 cybersecurity. And I think, you know, as soon as it
16 comes out for the corporate issues, I see the municipal
17 folks looking at this and saying, well, what in this is
18 relevant for municipal issuers?

19 I was wanting to see if you had any thoughts on
20 that practice and if you do think it can be a relevant or
21 useful resource for them?

22 COMMISSIONER JACKSON: Yeah, I came across that
23 more than once in practice. I think, you know,
24 thoughtful counsel, issuers, investors, can use that as a
25 sort of a launching point, a way to think about things, a

1 framework.

2 But look, I think everybody in this room knows
3 that trying to do one-size-fits-all work in this area is
4 very hard. It's just the wrong thing, it doesn't work in
5 this market. And it especially doesn't work
6 transplanting lessons from, you know, Corp Fin or
7 whatever the source of that background is to this area.

8 So it's not that I think that's not important
9 guidance. I think it is. I know for a fact that
10 practitioners use it. I've, you know, been on those
11 conference calls. But on the other hand, I think, the
12 folks I know were sort of like, do the considerations
13 raised by the Staff, does it really bear on us, on this
14 issue, on this thing we want to go to market with? I
15 think that's a healthy and useful kind of perspective
16 that people put on any time you're taking corporate
17 guidance and applying it to this context.

18 MS. OLSEN: Anything to add, Commissioner
19 Peirce or Roisman?

20 COMMISSIONER ROISMAN: No, I think, like
21 Commissioner Jackson said, I'm not sure it's always
22 apples to apples. So, I think, you can see what's top of
23 mind for us but it may not be applicable to every kind of
24 asset class or to every type of issuer. That being said,
25 I also think it's important for you guys to constantly

1 check in with us and see what you think, you know, is
2 best practices and whether things need to be improved.

3 COMMISSIONER PEIRCE: I agree that you can't
4 just transport corporate side over to the municipal side.
5 But at the same time, we also don't want municipal
6 issuers to hide behind the notion that people in the --
7 investors in the municipal market don't have some of the
8 same concerns that investors on the corporate side do.
9 So, you know, there is information -- you can't just say,
10 well, we're not going to give this information out
11 because these investors are somehow radically different.
12 And so I think we have to take that into account.

13 MS. OLSEN: Thank you. So our next question is
14 on voluntary disclosure initiatives.

15 In addition to the Commission's investor
16 protection efforts in the municipal securities market,
17 market participants have played an important role in
18 improving disclosure in the municipal securities market
19 over time. Participants in the municipal securities
20 market have historically worked together to develop
21 voluntary disclosure guidelines and best practices
22 designed to improve both the level and quality of
23 disclosure in primary offerings of municipal securities
24 and continuing disclosure in the secondary market.

25 Existing industry guidelines and best practices

1 relate to, among other matters, the content and timing of
2 financial statements and financial information,
3 disclosure of pension liabilities, industry and financing
4 specific guidelines, disclosure of controls and
5 procedures of a municipal issuer and methods of providing
6 disclosure.

7 Do you have a view on the role of voluntary
8 industry guidelines and how they inform disclosure
9 practices in the municipal securities market?

10 COMMISSIONER PEIRCE: I mean, I love the idea
11 that the industry is working on fixing problems that are
12 out there and helping. Again, this is an area where I
13 think the industry can be much more sensitive to the fact
14 that there are different types of issuers out there,
15 different sizes and different types. And so the ability
16 for voluntary guidelines to develop and then the ability
17 for them to be flexible and change is a really valuable
18 part of making them more effective.

19 So I think they're very important and I'm glad
20 people in the private markets are thinking about these
21 things, and that it doesn't always have to be coming from
22 the government but can be developed organically.

23 COMMISSIONER ROISMAN: I clearly agree with
24 what Commissioner Peirce said. I think in many ways it
25 can either be in place or in lieu of, you know,

1 regulatory action, because you guys have satisfied
2 whatever concerns investors have and we look at it.

3 I also think though sometimes there is just an
4 inherent -- we look at it also and see to make sure that
5 it's adequate. Because, you know, if you guys have
6 created it, we have to make sure that it's also -- we're
7 looking out for investors and that it's satisfactory.

8 But I am all for private ordering. I think you
9 have done a very good job in terms of delineating what's
10 required. And we've had, I'd say, very minimal intrusion
11 into this space.

12 COMMISSIONER JACKSON: So I think that's
13 absolutely right. In this space, the development of best
14 practices has been especially useful, not just because of
15 the unique nature of the muni space from a legal point of
16 view but also because the issues are so bespoke and so
17 unique, that it's uniquely amenable to learning from the
18 marketplace.

19 The problem with voluntary disclosure, of
20 course, isn't what it does but what it doesn't do and the
21 areas of the market it doesn't reach. And that's why it
22 doesn't strike me as at all surprising that it hasn't
23 been a complete answer to all the issues in this market.

24 And in particular what I worry about is things
25 that are important to a particular pocket of investors

1 who don't have an especially loud voice in the
2 development of industry practices, issuers that don't
3 have a particularly prominent place at the table in those
4 industry conversations, not getting what they need from
5 disclosure. Moreover, voluntary disclosure has a
6 disadvantage which is that you might end up with a less
7 standardized set of information that puts more burdens on
8 investors in terms of processing that information.

9 And that's why I think, to me, the best way to
10 think about this is for us to be learning from those
11 voluntary practices. For sure, they are crucial to the
12 development of especially this market. But then taking
13 those signals and distilling them into standards that
14 make sense and doing that in a timely and clear fashion,
15 so that every pocket of the market, those issuers who are
16 keen to disclose, everyone who is here today and everyone
17 who's not, understands what their obligations are to
18 their investors.

19 MS. OLSEN: Thank you, those are some very
20 interesting perspectives.

21 Our last question I am going to pose for the
22 day is on retail investors.

23 So a notable characteristic of the municipal
24 securities market is the concentration of municipal
25 securities in the hands of retail investors. I think as

1 noted in remarks provided by Chairman Clayton earlier
2 today, retail investors hold directly or indirectly over
3 two thirds of the market.

4 Notably, some municipal issuers see a benefit
5 to having individual investors. Individual investors
6 tend to buy and hold their investments, supporting the
7 issuers' long-term goals for raising capital. Likewise,
8 municipal issuers may see value in having local investors
9 have a stake in a local project financed by bond
10 proceeds.

11 But in the past, we have received feedback from
12 municipal market participants that retail investors don't
13 read the disclosure documents. And even if they do, it's
14 unlikely they will understand many of the unique, bespoke
15 characteristics that may be associated with a particular
16 issue of municipal securities, such as the call features.

17 What are your thoughts on the role of the
18 retail investor in the municipal securities market and
19 how does it inform your approach to regulation? And, as
20 a follow on, what are your views on the use of clear,
21 easily understandable plain English in disclosure
22 documents, which was a topic touched on by Panel 4 today?

23 And who wants to start this one?

24 COMMISSIONER PEIRCE: I'm all in favor of plain
25 English. I think it's not always easy in our area. It's

1 not even easy for the SEC. If you read our rules,
2 they're not usually in plain English.

3 But I do think it's important for issuers to
4 communicate with their investors and to try to make it as
5 clear to them as they can, you know, to make the
6 disclosures as clear as they can. Retail investors are a
7 huge part of this market and we have to -- we can't just
8 say, well, they don't read it so we're not going to worry
9 about it again. Disclosure that gets out there can be
10 distilled by third parties which then that can be
11 valuable to investors.

12 Yes, investors might be buy and hold investors.
13 But if they start reading disclosures that they're able
14 to understand, they might decide we're invested in this
15 bond issue but we might not want to invest in the next.
16 So I think there's real value. And I think, again, we
17 can't allow people to hide behind the high retail
18 concentration to say that there shouldn't be disclosure.
19 I almost think it's more important that there's high
20 disclosure because of the high retail concentration.

21 COMMISSIONER ROISMAN: I agree with everything
22 Commissioner Peirce said. I think, you know, we've had
23 pretty robust retail participation in this market for a
24 long period of time and that's, you know, in many ways a
25 good thing because it's great that people are in our

1 markets and especially supporting, frankly,
2 municipalities. So I think that's all well and good.

3 I do think that while every retail participant
4 may not read every single, you know, information packet
5 or part of it, they do, many do. And while they are, you
6 know, for the most part, buy and hold, there is also a
7 point when they sell. And when we have kind of this
8 generational move now, where people are retiring and they
9 have to sell, it's important to have this ongoing
10 disclosure so people can actually have accurate pricing.
11 And it's through these third parties that actually read
12 this and try to compare and have an understanding.

13 So I think it's important for us to have, you
14 know, accurate and, to Commissioner Jackson's point and
15 to the Chairman's point earlier today, it's accurate and
16 timely information. You know, I think that's been kind
17 of a bedrock for all markets to make informed decisions.

18 In terms of easy, plain English, I think that's
19 everyone's dream. It's really hard, especially when you
20 get lawyers involved, to keep that. But, you know, it's
21 something we should all aspire to. And I think
22 especially in a place where, you know, people are just
23 trying to have a basic understanding of the bond or of
24 issuance, you know, it's something we should strive for
25 even more.

1 COMMISSIONER JACKSON: Yeah, I mean, I
2 completely agree with my colleagues. I think
3 Commissioner Peirce is just right, that the presence of
4 retail investors in this space makes the disclosure
5 issues all the more pressing. And Commissioner Roisman
6 is right that it's -- I'll paraphrase -- so when I was in
7 legal practice, that was in 2006, and at the time the SEC
8 launched a plain English project with respect to proxy
9 statements, which I used to write.

10 So that didn't happen, right? That's not a
11 thing that happened in America. I mean, we tried. But
12 it's complicated. And we really tried.

13 But boiling down complicated decisions is
14 enormously challenging. And I know it's hard for issuers
15 in the room. You know, I've been on those conference
16 calls where people try to do this. It's really hard.

17 That's why I was so pleased to hear the
18 Chairman's comments this morning about the need for
19 timely and clear disclosure. And I am so looking forward
20 to working with your office on developing things that
21 people can really begin to digest and understand.

22 I think we're getting better at it. I just
23 think it's a longer-term project where we really try to
24 work on putting together a series of disclosures that an
25 ordinary investor can engage with and understand and make

1 sense of.

2 In the meantime, I think my colleagues are
3 right that intermediaries do important work digesting
4 that information and making sure retail investors
5 understand it. And I'm not against that. I think it's
6 really very prescient, and this is why your work is so
7 important. Because as more and more Americans begin to
8 move into these kind of securities -- and it's important,
9 and I know this is something we have talked about and I
10 know this is important to you. They do it because they
11 want tax-shielded fixed income to fund their retirement
12 or their educational goal. This is the most sort of
13 precious thing we touch, the most important thing we do.

14 And for me, that makes it really, really
15 important that we get it right. Which is why it's so
16 good that the views on the Commission tend to be very
17 carefully aligned and why the Chairman's leadership and
18 yours have been so important to us.

19 MS. OLSEN: Great. Well, I think we're out of
20 time. We've gone a little bit over the allotted
21 conference time today. But I want to thank all of you
22 very much for taking the time to come down here and share
23 your views on the municipal securities market with the
24 conference attendees. I really appreciate it and do look
25 forward to working with all of you on some follow up to

1 this conference. Thank you.
 2 COMMISSIONER PEIRCE: Rebecca, I want to thank
 3 you. And I want to thank all of those of you who came
 4 for today's conference. Although I wasn't able to be
 5 here for much of it, I did watch some upstairs online but
 6 I didn't have a chance to come down. I will go back and
 7 watch it afterwards.
 8 And so we really value the fact that you put
 9 this together and we value the fact that all of you came
 10 today, as well.
 11 (Applause.)
 12 (Whereupon, at 5:07 p.m., the conference was
 13 concluded.)

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