UNITED STATES SECURITIES AND EXCHANGE COMMISSION
2nd ANNUAL
MUNICIPAL MARKET ROUNDTABLE

"Bonds in the New Millennium"

Thursday, October 12, 2000
9:00 a.m.

450 Fifth Street, N.W.
Washington, D. C. 20549

Welcome

Martha Mahan Haines
Attorney-Fellow
SEC - Office of Municipal Securities

Opening Remarks

Paul S. Maco
Director
SEC - Office of Municipal Securities

Keynote Address

James A. Lebenthal
Chairman, Lebenthal & Co.

PANEL 1: Current Disclosure Issues in the Primary and Secondary Markets

Moderators:

Martha Mahan Haines
Attorney-Fellow
SEC - Office of Municipal Securities and
Stephen J. Weinstein
Attorney-Fellow
SEC - Office of Municipal Securities

Panelists:

SEC Representative

David Fredrickson
Assistant General Counsel
SEC - Office of Municipal Securities

Bond Lawyer

Andrew R. Kintzinger
Preston Gates & Ellis LLP

Issuer

Robert Donovan
Executive Director
Rhode Island Health & Educational Bldg Authority

Underwriter

Robert E. Foran
Senior Managing Director
Bear, Stearns & Co.

Trustee

Mark Brown
Vice President
Bank of New York

Conduit Borrower

Denny Drake
General Counsel
Iowa Health System

Institutional Investor

Rafael Costas
Senior Vice President
Franklin Templeton Investments

Individual Investor

Helen Gee
President, Metropolitan Washington Chapter
American Association of Individual Investors

Panel 2: Use of Electronic Media

Moderator:

Catherine McGuire
Associate Director
SEC - Division of Market Regulation

Panelists:

SEC Representative

Amy Starr
Special Counsel

SEC - Division of Corporation Finance

Issuer

Jeffrey S. Green
General Counsel
The Port Authority of New York & New Jersey

Underwriter

Roger G. Hayes
Managing Director
Banc of America Securities
Bond Lawyer

Ursula H. Hyman
Partner
Latham & Watkins

Internet Website Operator

Bradley Wendt
President
BondDesk.com

Institutional Investor

Joseph P. Deane
Managing Director
Salomon Smith Barney

Individual Investor

Dr. Harold P. Wittman
Board of Directors, Metropolitan Washington Chapter American Association of Individual Investors

Panel 3: Selected MSRB Issues

Moderator:

Mary N. Simpkins
Senior Special Counsel
SEC - Office of Municipal Securities

Panelists:

SEC Representative

Mark Zehner
Regional Municipal Securities Counsel
SEC - Philadelphia District Office

Financial Advisors

Phyllis Currie
President
Phyllis Currie Consulting

Robert W. Doty
President
American Government Financial Services

Bond Lawyer

Neil P. Arkuss
Palmer & Dodge LLP

Institutional Investor

Leslie Richards-Yellen
Principal and Associate Counsel
The Vanguard Group

NASD

Malcolm Northam
Director
National Association of Securities Dealers
MSRB

Diane Klinke
General Counsel
Municipal Securities Rulemaking Board

Closing Remarks

Stephen J. Weinstein
Attorney-Fellow
SEC - Office of Municipal Securities

P R O C E E D I N G S

Ms. Haines: I'd like to welcome you to the 2nd Annual Municipal Market Roundtable that we put on here at the Commission.

But before beginning the first round, I'd like to take a few minutes to comment what would be very current events here at the SEC.

The next speaker, Paul Maco, as you know has directed the Office of Municipal Securities since its establishment in 1995. And he recently announced that he is leaving the Commission to resume the private practice of law here in Washington. In fact, tomorrow is his last day. Before joining the Commission about a year ago, I spent more than 20 years as a bond attorney in Chicago. As a result, I feel qualified to speak both from an industry perspective and on behalf of the OMS staff as a whole. To acknowledge the debt of gratitude which the industry owes to Paul for all the positive changes which he has caused in the municipal securities market.

During Paul's watch, disclosure practices, market integrity and transparency have vastly improved. This was not accidental. For more than five years, Paul has worked ceaselessly to raise industry awareness of the requirements of the securities laws. He's given more than 250 speeches and other presentations in venues all over the country.

Furthermore, he has vigorously championed enforcement of the securities laws in appropriate municipal market cases. And he's had the courage to take on some of the toughest issues that we face, like pay-to-play.

If you know Paul, he has many other diversions too. Besides teaching law at Boston University and American University, he has served for many years on the board of directors of Traditions for Tomorrow, which is a non-profit corporation supporting indigenous cultural activities in Central and South America. And before the arrival of his star player, he frequently traveled to countries such as Nicaragua and Bolivia to participate actively in its good work. Since his marriage to Lisa and Clare's birth, Paul has become a dedicated family man as well, which is certainly a good thing, as I understand that he and Lisa are expecting a son this spring. I would like to ask you then to join with the OMS staff and me in wishing fair weather and good sailing to Paul in his post-regulatory life.

(Applause)

Mr. Maco: Thank you, Martha, for those very kind words. Thank you all of you. It's been an honor and a pleasure to have worked with all of you in the municipal market over the last six and a half years.

Welcome to the 2nd Annual Municipal Market Roundtable. Once again we open this forum for all municipal market participants to share their perspectives on current market issues and controversies with each other and with the Commission staff.

From the beginning of our nation, states have issued debt to meet their infrastructure needs. They are joined quickly by local governments. Today over 52,000 issuers access this market to finance the very basics of civilized society, school, roads, water and power, sustaining our quality of life and building for tomorrow.

Over $1.5 trillion in municipal bonds are outstanding today. Investors in municipal bonds cover a cross section of the U.S. financial landscape.

The largest category of investors in the municipal market is not the mutual funds, although they're certainly an important category. Nor is it any other class of institutional investor. The investor category holding more municipal bonds than any other is that of the individual investors. And the trend this year has been for an increase in individual ownership. Given the combination of factors I just reviewed, the importance of this municipal market to over 52,000 issuers, the enormous amount of debt outstanding, and the predominance of individual investors, no one should be surprised that the Securities and Exchange Commission, charged with protecting our nation's securities markets, and the investors in those markets, demonstrates a continuing interest in the health of the municipal securities market. It's only appropriate given the magnitude and the importance of this market.

Look at the results. Today many issuers routinely provide annual financial information in the market as well as notices of material events. Seven years ago such information was, at best, the exception rather than the rule. Seven years ago investors had great difficulty in determining the price at which bonds they held currently traded. Today that information is available on a next-day basis. Lawyers can access municipal enforcement materials on our Web site, including a compendium of enforcement actions in the municipal market over the past 30 years, prepared by the Office of Municipal Securities staff.

Private initiative and advances in technology have combined to make all of this information even more accessible through such means as the Bond Market Associations in investing in bonds' Web site.

This morning the continuing Commission interest in the municipal market is manifested in this roundtable. Over the last years, topics dominating the press coverage of the municipal market include continuing disclosure, concerns about issuer's ability to speak to investors without incurring selective disclosure problems, the changes in daily practice and overall structural changes propelled by new technologies and to the growing strength of the retail sector of the municipal market, yes, the individual investor.

Today's roundtable discussions will highlight all these issues and likely many more. As we did last year, Commission staff will listen and learn and, when appropriate, provide comment. You may recall that at last year's roundtable several issues developed that were addressed by the Commission or the staff later in the year. Such as the specific Commission comments addressed to the municipal market contained in this spring's interpreted release on use of electronic media; as well as the recent staff legal bulletin on independent financial advisors.

You shouldn't be surprised if today's dialogue prompts similar results. One factor we consider particularly unique about this year's roundtable is found in the composition of the panels. As I noted earlier, individual investors represent the largest segment of holders of municipal bonds. Rarely, if ever, has an individual investor participated in the document negotiation session or attended a pre-closing. I suspect that, other than perhaps the elected officials in their own communities, they rarely come face to face with issuer officials of the bonds that they own.

Rarely, if ever, are they part of the dialogue at industry workshops and conferences. Yet this group represents the largest segment of those who routinely loan their money for long periods of time to municipalities through the purchase of municipal bonds.

Today you will find individual investors on the panel. We welcome their voice. As I hope you know by now, I and those on my staff hold the health and vitality of the municipal market and the issuers, investors, dealers, lawyers, and advisors participating in it, very close to our hearts. Few people, however, exceed the enthusiasm, commitment and devotion to this market of our keynote speaker this morning, Mr. Jim Lebenthal. Please welcome him.

(Applause)

Mr. Lebenthal: I honestly thought that you were going to say the Chairman because I was going to give my remarks a title. Nobody loves munis more than I do unless it's nobody, but I think it is a contest. I really do believe it is a contest as to whose heart and soul is more deeply involved in this market, and I'm sure that it isn't just a contest between the Chairman and myself. But many of you in this room who are over the last 30-odd years have been in the trenches, and, if not you, perhaps some of your parents have who have been in this industry. I will say that I have given the better part of a life to the crises of the 38 years that I have in the bond business, and I did other things before that. Tax reform in 1969. Back office crunches of monetary policy. I remember when we used to follow the M's, M1, M2, M3, every Friday and look for some divine augury in those numbers.

Lord knows in New York City, fiscal crisis—in fact, you know, this is the first time that I have spoken at the SEC without an American flag and a court reporter in the room.

(Laughter)

I think I spent longer in the hot seat than anyone else except perhaps the Controller of the City of New York. And, yes, I went through a chastening experience then that has affected my love letters and everything else I write. I do no more insupportable superlatives.

You know, we've been—I've kind of sat WPPSS out. As a New York firm, we haven't sold that many WPPSS bonds, so that cost us only $90,000 in the settlement. The New York City Housing Development Corporation unauthorized call. Then the Kansas Highway call. And each one of these events have I think expanded the individual investor's tolerance for pain. Now, when a client calls with a complaint, I simply say, "Screwed again."

(Laughter)

The Social Security tax on municipal bond interests, and there I got involved in finding somebody to pursue an action against the Treasury Secretary to find the tax on municipal bond interest, or at least the calculation unconstitutional. I will say two levels of federal jurisprudence said in so many words, "Jim, get lost. Get lost."

So I let Grady Patterson, representing South Carolina, undo the constitutional basis for the exemption of municipal bond interest from federal taxation. You can't hang that one on me. We all remember the day of the week of the Packwood bombshell. I mean to just go through these things. The '86 Tax Act. A bad name, Matthews & Wright, G-37. I did, on the final day of comment, I did write the Chairman a letter that I was going to hold my peace and never say another word about it again. But I had, for the months prior thereto, been going around giving speeches called "The Confessions of a Political Contributor."

Orange County, such a slap in all of our faces. Arbitrage and rebate, yield burning. Finally price dissemination. At any rate, we have been through a lot. I have given a life to this business, and I'm going to tell you right now, I have only one more life to give it, and I am giving it to that market participant to whom I owe my loyalty, and that is the individual investor and my medium of communication, my new medium of communication, will be www.lebenthal.com, which I believe, not just because of what we're going to do, what we started and released the day before yesterday on our new Web site. I believe that we are in one of those paradigm shifts again, here we go again. And this time it's going to be everything the SEC has been trying to do with its might and mane and at last the individual investor is going to demand it of us in a most innocuous faceless, voiceless way through the autonomy of the Internet.

I spoke of paradigm shifts and that just occurred to me frankly this morning, and I called the office and there were some early birds there who faxed me the newsletter that I wrote in 1974 about a paradigm shift and the title of the letter was "The first five minutes of the post-industrial revolution." And here the first couple of paragraphs is an indication of what so many of us have been through, and this may bring back not fond but hideous memories.

"It's disoriented. No leaders, no gas. The money doesn't work. People streaking. The prime at 11 ½ percent." We had a way to go then. "The prime at 11 percent, 11 ½ percent. And the dog out in the yard chasing its tail around as the darkness descends at noon. Not since the atomic age went off with a bang has a new era crept on us so quickly from behind with so little that you can sink your teeth into. At least in 1945, we had an eminent Einstein, a formula E = MC2 and a fire ball that let you know what's what. But in this case there were no ideals. No spokesman. No divine spark. Just confusion and drift as the old order changes."

Ugly time in America. All right. We are now in a wonderful time. And things as I believe in my heart of hearts are going to change for the good enormously as a result of the Internet, as a result of all of a sudden it being possible that the individual investor can check prices without having to walk into your office and show his face and embarrass himself or herself by saying, "I basically don't trust you."

Trust is going to be forced upon us in many ways. But I hope that as we go into this wonderful and brave new world that we will take with us certain beliefs. And, you know, I am going to talk to you for a while about my beliefs and give you a menu and maybe some of them are feelings that you harbor as well.

This I believe, and that is a borrowed line from Edward R. Morrow, who had a radio program everyday on CBS, and he would interview people and get them to say just what they believed. Well, here's my reply to Edward R. Morrow.

I believe that most of us in this room are in the business of converting people's little rivulets of savings into the stock and bonds that pay for the factories and houses and roads and tunnels and bridges and all those wonderful facilities that get people to work on time and home again in comfort, that increase productivity, that process our effluvia, and recycle things in this land of plenty, back into useful form, that do so much to make this civilized country that we live in the great, great physical plant that it is.

That's what we do. We are a means to an end. And the means that we provide are the financing tools to make this country work, but more than that, we have personal beliefs. We have an obligation, those of us who are in public finance, to make it possible for every

American in his capacity as a local taxpayer, a local rate payer, to borrow for public necessities at the lowest possible cost.

The greatest threat to tax exemption is that wonderful bonanza that we've had recently for the investor where without even taking the tax-exempt feature into account, municipals are yielding so darn close to what it would cost a corporate utility to borrow. The greatest threat to tax exemption is the 90, 95, 100 and then some taxfree to taxable yield ratio.

Because the only justification since South Carolina v. Baker for tax exemption is the cost savings to every citizen in the financing of those things that are called res publica, and res publica are the things that nobody owns that we all want that are necessities of public life. I believe that in a business where yield to maturity, yield to call, yield after de minimis tax, yield after this, is so important. That the yield that is really going to sell insofar as capturing the public's imagination is what somebody once mentioned to me as the yield-implicit in the project. And that is the productive output that you get from a dollar of input in public works. I remember when we were doing something else that is important to me, broadening the market. When we were participating in the sale of the NYC bond, a mini bond, a zero-coupon bond, that could be purchased in a future value of $1000. Investment requires those five/600 dollars. I remember putting up a poster in the subways in reaching the broader-based market, and the poster said, "Put $1000 in, take $2000 out, and pay no tax."

Got a telephone call from somebody who said, "Saw your ad. Put $1000 in, take $2000 out, and pay no tax." How do I get the $1000.

(Laughter)

Answer. By somebody else with $1000 investing in productive assets that generate jobs, that generate incomes, that generate savings, that can be spent, consumed, or invested anew. That is my productivity theory. That is what we are in the business of doing. We are in the business in its broader most lofty sense of raising standards of living in this country and the quality of life, bringing it right down to the bottom line of how people live as a result of investing in these productive assets. Do more than just create immediate construction jobs. But create benefits for generations to come.

Now, I am an amateur videographer. On weekends I go out and shoot little stories as though I had a television program. I just did a video on the Flushing No. 7, which is now a national heritage trail. It is an elevated subway line that leaves the depths of the East River and goes out to Flushing, New York, out to Shea Stadium, and it is the line that John Rocker had made the derogatory remarks about of the passengers who use it.

That line brings to light the drawings, the images, that all of us try to find. For what it is that the bonds do, here is a public investment that has made it possible for labor, for workers, for immigrants, to live close to their jobs, 15, 20, 30 minutes away. That line is a pipeline to my prosperity. Those are my workers. And I remember in scoring this little video. The composer said, "What do you want? Hispanic music? Pakistani music? Columbian? What kind of music do you want?" I said, "Give me the music that Aaron Copeland would write in 'Fanfare for Americans.'

And that is what these dumb bonds are to me. That is what we do. We make this. We make the American dream work and what is the American dream? The American dream is simply that each generation will do better than the previous generation. And these tools of production, these tools of productivity, subways, roads, bridges. The bridge that leaps the river,

that makes it possible for people to get to work, and be near their jobs, or conversely, to the factories and the plants to move out of town, where a labor supply can come to them. That is what it's all about.

Let me tell you a couple of other beliefs and desires and wishes that I will take with me into this next life that I am giving to the bonds.

Broadening the market. Broadening the market. Oh, incidentally, 4 ½ percent of American taxpayers love us. That's what the paltry ownership is of municipal bonds. 4 ½ percent of taxpayers. 4 ½ percent of taxpayers are carrying the load for the rebuilding of America. I want to expand that to 5 ½, 6 ½.

Well, I have been running ads, as many of you know, until I'm red, white and blue in the face, trying to talk the virtues of the bonds, and no unsupported superlatives. And I will say that swell as those ads have been, poetic as the copy, persuasive as the sizzle, rich as the facts, great as disclosure has been, and my God there is fantastic information out there.

We have had a failure to communicate. And it isn't your fault and it isn't my fault, and it isn't anybody's fault. People will not read. They will not read especially the information that they claim that they don't understand, they don't know, and there's a reason why they will not read our stuff. And I put on my Web site lengthy research reports. I don't measure what the readership has been, but I'll tell you this. That nobody has ever caught me on any of the typographical errors I've had. They mortify me when I occasionally catch one. I don't even read them. That's not true.

There's a reason why people will not go to the lengths that they should. You know, there ought to be a law, not that we disclose, but that the investor read what we have disclosed and sign off that "I've read it."

Here's why they won't read. In a world of immediate gratification, of doubling your money. Now, that has changed in the last six months perhaps. But in a world where the motive for investing has been to make money, profits, gains, it is hard to get somebody to read a 10-page report on the Nassau County Interim Finance Agency, where at best you may see, depending on what market conditions are when they come, you may see 5 5/8 percent. Yes, tax free. But 5 5/8 percent tax free against 20 and 30 percent that we're shooting for in these other markets, is hardly an enticement to do your homework and read.

So how do we make this essential investment? How do we ingratiate it into the mainstream of people, of investors' lives? One is by dwelling somewhat on purpose -nobody buys bonds out of love for the hometown sewer system. But at least knowing how, built by bonds, that's what these things are all about. It helps make a connection, a link.
In New York, for a number of years, we ran what I called our "Infrastructure Series." "Love my sewer, love my bonds." "Love my towers, love my bonds." "Love my subway, love my bonds." A marvelous series. A marvelous series because it got people's interest in the subject but not enough.

Believe it or not, at the ripe old age—I'm now 72 -- at the age of 70, I discovered Markowitz & Siegel and modern portfolio theory. Why you people kept this a secret from me all these years. Because there is the raison d'etre for a municipal bond being in the portfolio of every investor in America. And that is the balanced portfolio. It is the management of risk, and isn't it interesting how every time the stock market takes a dive, our telephone board lights up with bond buyers.

In the principle of modern portfolio theory, that through diversification and time, diversifying the money truly diversifiable non-correlated instruments. That one can—gosh I've got to be careful how to say this, because I do use words seek, reach for, try, poke, goal, but one can seek to increase return without necessarily increasing risk commensurately or reduce risk without reducing return commensurately.

And when a client called and said, "Lebenthal, for two years you've been talking to me about reducing risk, and saying and saying it," and I say, "Aha, you haven't given it enough time." And if he calls two years from now, I'm going to say, "You haven't given it enough time." But given enough time, and truly diversifying, history has created an expectation—and I might suggest that out of this meeting today we find some new way of wording a latent hypocrisy in the disclaimer that "past performance is no indication of future results."

They gave the Pulitzer or Nobel Price to Markowitz for precisely the creating of more legitimate expectations about the future. And history does tell us certain things. It may bring expectation into life with the reality that has occurred in the past and we've got to work something out there, because every time I go through that line, and I, incidentally, never add a buck to it. I accept it as it is. But I really feel that I am praying to a false god when I do it, but that line needs refinement in the light of so much that is happening in the investment culture, about creating reasonable expectations from the past performance of markets.

But let's move on. I do think that asset allocation, management of risk, modern portfolio theory, complicated as they are, have a certain to me a cultural ring as to why stock buyers should own municipals and municipal buyers should own as part of a balanced portfolio equities. That may broaden our market.

But nothing is going to broaden our market more in my opinion than the Internet. Because at last the investor has autonomy. Not anonymity. I have something on our new Web site that I love. I have spent—and if I seem out of touch, if my remarks seem this guy's been asleep for a couple of years—it's because for the last year and a half I have been hunched over my work processor doing portfolios for people who have been sending in from all over the country, who have been sending in the most wonderful detailed profiles of themselves—and not the sort of profile, if you want a triple A, double A, you want this or that. I don't ask those questions, because they don't know the answers.

But I ask them questions about themselves, their goals, their needs, and from that I have been doing exactly what your heart surgeons, your hernia surgeons, and whoever else has recently operated on you has done. You get wheeled in on a gurney to the room. You meet him for the first time. You've got magic markers all over your belly, and they cut, because they know who's doing, you see in the X-rays. You see in the profile. He knows what you are. He doesn't know what you do. Maybe in the recovery room that he may ask you what you do and you say, "I'm a municipal bond salesman." And he kicks you out.

But for a year and a half I have been that surgeon doing these portfolios for people that I've never met. Reluctantly I have asked them their occupation, because I'm curious about what people do. But everything else that I wish I had known for all of these years about the people to whom I have been selling bonds face to face, I now have in front of me.

And after that year and a half, I've done something—well, I haven't heard of anybody—and this is the old orange Robert L. Ripley "Believe it or not" book. There was a guy who

actually called himself "Fingernail, hair," and what have you, and just horrible things. But he made an effigy of himself out of himself. I have been cloned into a computer.

And these portfolios are now being done by machines. A living monument to me, and I look at them, every one of them, and if one has gone a little berserk, I will quickly send out an e-mail correcting it, but it's a delight to me, it is absolutely amazing, to see what one can do to match bonds to people.

I have promised myself that I was not going to use the word, the "S" word, suitability. But that's what this thing is all about. But suitability is not something being forced down my throat. Suitability is a marketing plus. It is something that all of a sudden is going to show a sensitivity to the client. Not something I'm trying to sell. And incidently, it's a wonderful thing to be able to walk in, seemingly anonymous—whatever anonymity is—but with the autonomy to say who you are, what you think you need from investments, and to get a portfolio.

Our site, and we've only just begun marketing it on radio, and there is a television commercial, our site dwells on the proposition that we've going to match you up with bonds that fit, and up on the screen will also pop the face and voice of something at Lebenthal that you can talk to when you're good and ready.

Isn't that marvelous? That is what—not me, but that "good and ready" phrase, so patches up what is happening with the Internet in so many areas. It really puts the ball in the investors' court.

So I anticipate wonderful qualified leads coming back. People calling that broker. Oh, incidently, I'm sure I'm getting a lot of "Have you got Prince Albert in the can? Well, let him out." I'm sure I'm getting a lot of those hits. That's fine, because I'm not going to waste my time anymore dialing around America at the dinner hour trying to find somebody who wants to buy $100,000 Nassau County Interim Finance Authority bonds.

Maybe the cold call is dead. Maybe it's not dead. Maybe the cold call is going to come the other way. Maybe what we have invented, those of us who are going to be using the Internet, is a municipal bond 7-Eleven Store. The 7Eleven Store does not call you at midnight and say, "Do you want a quart of milk?" You know where you can go at midnight to get a quart of milk or a Torpedo or Submarine or whatever, at 7-Elevens.

So there will be cold calls. I hope they come in the other way. I hope this market broadens. I hope that we extend the face of municipal bond ownership. And the reason I hope that is it's going to mean income to Lebenthal, but it's also going to fulfill my dream of bringing down the cost of borrowing for issuers and for every taxpayer in his capacity as a local taxpayer or rate payer.

I see various things happening as a result of this wonderful new world of the Internet. Some good, some may be bad. The SEC has broken its neck to get this industry to have greater transparency on price. And it's there. It's on Tradinginbonds.com. And I see spreads and I wish I was working for it. I don't know who's visiting the site. I don't know whether investors are looking at it yet. I've only had one person question us on the offering of bonds, a major, major investor, that as a result of his questioning, brought our spread in the bond down to somewhere between an eighth and a quarter. I'm not exactly sure, but this was an individual investor, who had checked.

What is going to happen when all of our prices are up on the screen. Because when the engine drivers, the inventors of these inventory systems that are going to let you have access to everybody's inventory all across America and put it on your site, they all kind of suggest and can move the market up. We ain't going to be marking up bonds. We are headed for a period of marking down. We are headed for a period in which the municipal bond industry, as every other industry, that has played with the Web, it's going to be free bonds. It's going to be no-spread pricing or damn little pricing, or damn little spread.

And so changes may come. We may all be working for a fee. But there's a fee per transaction, whether it is managed fees or what, but that's going to come.

Something else is going to come. And the way to avoid it is just be so darn good on your Web site, to be so sticky that I do such fabulous tutorials and make information not only accessible but fun to get. If we don't do this, the following may happen.

Some issuers, as already Pittsburgh started doing, but some issuer is going to say "Why not just keep the window open all the time and let me know what materials we may need and homogenize the product." The product is going to change to fit this new pipeline. And simply go directly to the issuer.

How it gets paid? How does that work? -- my pretty head about the business or the business. Only about what I think are possible developments that could happen as a result of market demand and making bonds easier to buy.

I think we are not like this terrible time in 1974. I'm also willing to concede that these times are not times of virtual prosperity, but times of real prosperity. I'm willing to concede that. -- have to be somewhat dour. But it's getting through to me. And I think we're going to have a great, great time broadening the market, positioning the municipal bonds as what they are, part of a balanced portfolio.

Yes, the tax-free virtue will survive as long as it is worth the while of issuers to borrow in the tax-free market. And as a result of increased volume, we'll both make money on the volume as well as bring the cost of borrowing down, which I think is our first obligation for the building of the great public works in this country that make it a great country. I hope, I hope, I hope.

Thank you very much.

Ms. Haines: We'll take a 15-minute break now. (A brief recess was taken.)

Ms. Haines: Welcome back.

The first panel put together on various disclosure issues in the industry, and we have a number of eminent people from the industry who have agreed to participate.

I'll go through their names quickly. As I do, raise your hand or something.
Mark Brown is here. He is the vice president at the Bank of New York in the corporate trust department, who will give us the perspective of a bond trustee.

Rafael Costas, the senior vice president at Franklin Templeton Investments. And, of course, will be sitting as the institutional investor perspective.

Bob Donovan is the executive director of Rhode Island Health and Educational Building Authority, an issuer.

Denny Drake is the general counsel of the Iowa Health System. Both an issuer and a lawyer's perspective. Bob Foran is the senior managing director of Bear, Stearns & Co., and will give us the underwriter's perspective.

Drew Kintzinger is a partner at Preston Gates & Ellis, a law firm in Seattle, who will give us the nonlawyer's perspective.

Helen Gee is the president of Metropolitan Washington Chapter of the American Association of Individual Investors and will give us the individual investor's perspective on these topics.

And finally Dave Fredrickson is an assistant general counsel here at the SEC. And my co-moderator is Stephen Weinstein. He is also an attorney-fellow in the Office of Municipal Securities.

Please keep in mind my comments here today reflect my own point of view, which is not necessarily shared by my colleagues on the SEC staff, or by the Commission. And this is true of the statements made by all of the Commission staff here today.

Before we start, I just wanted to mention that we encourage you to give us your questions. In order to manage it a little bit, we have put cards and pens out on the table over at the side, and you should just pass them up or bring them up here to the front and we would very much like to hear from you.

Mr. Weinstein: And I guess just a word to my colleagues up here. There's this little button on the microphone and if you don't flip it nobody can hear you. And I'm the worst violator of that rule.

I guess Jim Lebenthal really set the tone for what could descend into a great technical conversation here among all of the market participants and professionals. But I think we should keep the big picture that he raised. This is why we're all here. What the bonds and other securities that are sold into the market really do. Keep that big picture in mind, because we're really talking, as we use all these wonderful terms, like continuing disclosure, low 15C2-12, and 10b-5, et cetera, we're really talking about communicating. That's the system that Congress mandated in the 1930s for the municipal market, and that's the system that it reaffirmed in the 1970s for the municipal investor.

Communication is the goal here. So I urge all of us to focus not just on the minutia or the prevailing practice, but to keep asking ourselves the question, "Are we getting through? Are we complying with the spirit of the law, the spirit of the rules, as well as with the specific?" And if we accept that as a standard for all of us in this discussion, let me start by asking Mr. Costas to really begin to answer that question. Is communication working from the standpoint of the institutional investor? And let's ask Helen Gee to answer the same question from the perspective of the individual investor.

Mr Costas: Thank you again for having us.

I think in our experience communication has been working. I mean it's been working slower than I think a lot of us would like to see, but it's working positively and I understand—

I've been involved with the SEC now for about five or six years working for the NFMA. There has been hesitation in some of the members of our industry to move to where we wanted them to move, yet I think over the last three years they've taken a baby step here and there and have taken a step and nothing bad happened. Take another step, nothing bad happened. And you're seeing now even people that NABL, who were sometimes at odds with us, actually also started coming around from our perspective, continuing disclosure, increased disclosure and voluntary disclosure and secondary market disclosures. So we've been generally pleased.

The one sector that we've had most trouble with, at least at Franklin, have been to the health care sector. And even there we have seen some improvements as well, in particular when it comes to providing quarterly financials and access to CFOs and industrial relations people. So I think in general, yeah, I'd give the market positive marks.

Mr. Weinstein: Just a quick follow up to that. How much of that comes by virtue of the operation of rules and practices and how much of it comes because of the leverage that you exert by virtue of your institutional position.

Mr Costas: I can't quantify, of course. I know that a lot of it does come from leverage, especially with pricing, but you'd be surprised how little leverage institutional investors have had also on the secondary market, which is some of the reasons why the NFMA was so active on this. And coming to see Paul over the last few years, is because he knew we were having problems and what I didn't like sometimes was the feeling that I was getting information because I was bigger than the rest, and that's not right either.

We've always called issuers and we share the stuff with the SEC. Is that you should be telling me anything that you should also be telling an individual investor, should they ever call. I mean as Mr. Lebenthal said, sometimes it's people at the individual level who don't read the materials or don't bother to call. But if they do, they ask the same questions that I ask. They should get the same answers that I get.

Now, we at the institutional level get paid to do that, and we make it part of our job to call and get information but we always want to make that clear, that whenever there is hesitation to get information, we do always refer them to any language that comes with the regulations, from the regulatory bodies or that's out in the press. And say, you know, "This is being backed by the Government now, and you need to do this."

And the issues we have had is—and I'm sure we'll talk about this later—is you get to a minimum level of disclosure whereas what we say is you should follow the spirit of the law and not the word-by-word interpretation of the thing, given bare minimum. That's almost useless sometimes.

Mr. Fredreckson: Could I ask a question?

That if you talked to an issuer and get some information, have you ever seen the issuer then put out a press release or give that information out to the marketplace?

Mr Costas: I have not seen that because I usually don't follow through on that. I mean I get my information. I'm assuming, I'm hoping, that the next person who calls asks the same question and gets the same answer. But, you know, I'm trying to get a competitive advantage too. I'm not going to go tell all my other competitors, "Call them, because now they're telling you this." That's the nature of argument, being competitive. So I don't see that, but I honestly don't know—

Mr. Weinstein: And, Helen, I think Jim Lebenthal referred to what I would call the phenomenon of sending the message but you can't really receive the message of people. That's up to individuals.

From your perspective, as somebody who represents people investing in the market on an individual basis, is the message that's being sent clear enough and broad enough for a reasonable investor to receive it?

Ms. Gee From my own perspective? Most assuredly. I'm really here, however, to listen and to give their perspective on the municipal market because one doesn't discuss this kind of thing very much in our investor groups. So we need information of this kind.
I must say, I'm tremendously impressed with what the NABL has done in discussing the issue and in making it available, a general discussion of the status of affairs at the present time. I think following through on that is of great importance.

I also would like to raise the question of whether or not the SEC has ever considered whether or not there ought to be a broad program, an evaluation program, to assess any major changes in the direction of requirements. We used to do that kind of work, so I'm especially interested in whether or not it might be a feasible kind of issue to proceed.

Mr. Kintzinger Steve, I was just going to comment that I think the transition, hearing from Rafael and then from Helen, is a telling one because for many market participants in this room who have worked on primary and secondary market and disclosure issues over the past 10 years. I think back in the late '80s there was a realization that the market was shifting from a traditional institutional-only buy market to an increasingly retail investor market. And in concerns about timeliness of disclosure and dissemination of disclosure in the late '80s led to Rule 15C2-12. And then subsequent to that time, and as a follow up to that rule, concerns about continuing disclosure became a preeminent importance.

And many of you in this room in '93 and '94 that worked together as market participants to work with the Commission in some kind of plan to enhance the flow of information to the secondary market.

And the underlying premise of that was that not only the institutional investor had concerns about receiving information, but also the retail investor as well. And we've now progressed to a point where the questions that market participants are dealing with are questions pertaining to annual information, material event disclosure under Rule 15C2-12.

Secondly, how to deal with the ad hoc inquiries that are coming in to issuers and to underwriters, how to deal with those. And, third, the whole concept of disclosure beyond the continuing disclosure requirements of 15C2-12 and in that context, with the National Association of Bond Lawyers did approve and release a paper just last month about voluntary communications with the secondary market on this information.

But the spirit I think was in 1994 with the continuing disclosure amendment, came up with a reasonable regulatory scheme that so happened because of the unique situation of state and federal common issues with the avenue for that was through Section 15c in the broker-dealer side, but the Commission came up with a regulatory scheme that market participants shared in the development of and combined that with an enforcement scheme as well, so that hopefully the combination of reasonable regulation and responsible enforcement would enhance disclosure.

And I think we've gotten there. I think the experiment—well, it continues to be fine tuned and is a successful one.

MR. FREDRECKSON: I think responding back to Helen's question about the SEC. I think what's changed and the SEC has always been interested in disclosure issues, including the municipal securities industry. I think until recently though it was more driven by crisis. That it was New York, it was WPPSS, it was a variety of market failures that prompted the SEC and Congress and others to examine practices and say how can we do better.

I think what's changing now, what's driving it, is both technology and the availability of information as well as, as has been mentioned, the presence of individual investors, which is changing all the securities markets. And those two forces are now driving the analysis as opposed to how do we correct the next big failure.

Mr. Weinstein: Thanks, David.

I think the first three or four speeches here have pretty much set the stage for what should be a lively interchange of views, to take that phrase out of the diplomatic community. We are here, the SEC is here. We're hosting this. Martha, David and myself are on this panel not to espouse our position, which most of you have heard most of us do over and over, but to facilitate—we're here as facilitators, to get the industry folks who don't get a chance to come before this kind of a group very often, to talk to one another, to talk to you and to talk to us. We are here as much to hear things, even more to hear things than to say them.

We heard from bond counsel a very good segue I think into—and from David, what's driving the sense of change, the sense of broadening the market, the sense of new information, new ways of transmitting information. And we heard from bond counsel a rather encyclopedic reference to very useful best practices that are being developed by PFOA, NABL, the lawyers, the finance officers, TBMA, the Bond Market Association, and the National Financial Managers Association.

And we heard from Helen that perhaps we, the Commission, ought to be taking this all in and thinking about what's happening in the market, and I would like to encourage that part of the discussion as we go forward.

Martha, do you want to pick it up?

Ms. Haines: As you all know, disclosure deficiencies most often seem to come to light when investors actually go back and read that document, which is when it deals with defaults, or when an industry is undergoing a particularly stressful time. And right now hospitals and health care systems have been experiencing what Moodys recently called "ongoing credit deterioration."

And, Denny, I wondered if you could speak to this. Denny is associated with a very healthy health care system in Iowa. But, you know, many of the issues like labor shortages and increasing drug prices and struggles between providers and payers, affect everybody in the market.

How have these new stresses influenced your disclosure documents or your voluntary ongoing investor relations program?

Mr. Drake: Well, the difficulties of the industry make those disclosure documents more difficult to draft. Our approach to disclosure, and we just were in the market earlier this year, and this changing nature of who the buyers might be work together to I think in a positive way create a broader scope of information that's made available on a more regular basis. You know, we are a quarterly, pursuant to this last issue, at the market buyers' requests, making quarterly financial information available and this document from the Association of Bond Lawyers is very useful for an organization such as ourselves to figure out how to most appropriately make that additional information available.

But the stresses on the industry in relation to what is disclosed and when is it disclosed makes difficult questions for our bond counsel and myself at times, depending on what the nature of an inquiry from the Government, as an example, might be and is that, under a continuing disclosure agreement, something that needs to be disclosed or not. And we look at those words very carefully and try to make the best judgments that we can.

So the industry stresses are there in our predictive, and they're likely to continue, and it just requires vigilance on what the disclosure documents say to assure that the obligations are met. And the instruction that this panel or groups here can lend to a borrower, such as ourselves, come to that. We're interested. We're generally interested in making that information available to investors, and as the investor groups become more retail, we want to be able to provide additional information as needed so long as we can do it within the constraints of resources that we have so long as we can do it within the regulatory framework for accuracy and timeliness.

But from our position, we are not reluctant to make the information available from a disclosure standpoint.

Mr. Fredreckson: Could I ask how you make the information available? If it's not 15C2-12 material, what other ways do you usually get the information?

Mr. Drake: Well, two things on that. One, we're new at the process, as the issue just went in April, so from a quarterly disclosure standpoint, our whole method and process, because we're putting that disclosure on the Internet, we're still refining it.

But we disclose information in working with bond counsel to determine what the nature of the information is in relation to the scope of the information, materiality information that needs to be provided.

Currently what our quarterly disclosure responsibilities include are consistent with what the rules require. And beyond that, I don't think we're disclosing anything other than what the rule provides right now.

Now, anecdotal inquiries and so on, NABL guidelines are very useful. We have, of course, a disclosure person identified, but some of the information there about record keeping and further disclosure and so on, I can't give a very good definition to you. I don't know of any inquiries we've received that would require broad disclosure.

So I probably don't have a very good definition at this point about how we would acquit our responsibilities if an inquiry is made.

Ms. Haines: Denny, does your continuing disclosure agreement require quarterly as opposed to annual information release?

Mr. Drake: No, it doesn't.

Ms. Haines: But you're doing that on a voluntary basis?

Mr. Drake : Market driven, yes.

Ms. Haines: I've seen a lot of that on your Web site, utilization statistics as well as unaudited step-period financials.

Mr. Drake : Yes.

Mr. Kintzinger I think that's an important point that under the regulatory scheme what was contemplated was that there would be so called annual financial information, implying that this updated financial information would be on a once-a-year basis and no specific time frame was set for when that annual financial information needed to be provided.

Yet we've seen in the housing area, a single family and some multi-family now in the health sector, response from these borrowers and issuers to provide the continuing information on a more frequent basis voluntarily. In effect, proof again that the voluntary nature of the market participants, which was assumed in the rule, is working.

Mr Costas: Well, I would say to that, while I'm happy for that, I'm also not going to kid myself, and I know that the health care sector in particular has to do that to sell their bonds. They're been having a tough time the last two or three years. And while we appreciate it, they weren't doing it voluntarily when things were going really well for them.

And usually it's going to be the other way around. When you have a system that's doing really well, they have no problems disclosing information, there's a good story to tell. But it's the people who are having problems, the little issuers, that eventually had the likelier chances of defaulting that that is where we have the problem, both on the institutional side, and I'm sure that if I'm having problems, the individual is doing the same.

So it's been a seller's market in munis for the last few years, but it hasn't really been a seller's market in the health care market, and because of that, we've been able to finally get some of the things that we've been asking for, well, before 1994.

Mr. Weinstein: Part of this discussion, I'd like to hear from you in a second, but part of this discussion brings to the fore the precept that the federal securities laws in the area of municipal securities set a threshold, set a minimum for compliance, but that issuers and other participants are free to go beyond the requirements of the law, into the area of voluntary disclosure, so long as it meets the standards set by the Commission and the courts.
And what I'm beginning to hear in this discussion, that there is a reaching out on the part of both sides of the transaction to meet greater expectations from this more democratized market and I think it would be helpful to us to hear the other participants' views on this disclosure, continue disclosure, beyond what Rule 15C2-12, by its own terms, requires.
And I'm sorry to cut you off.

Mr.Foran: The real concern that's been expressed to me by people on our research area, who really do not do primary market research, but the secondary market research. There's bonds available in the marketplace. Can you tell me a little bit about these bonds? That type of inquiry comes from salesmen or customers.

The concern has to do with issuers that want to limit the disclosure to existing known bondholders. And we'll put forth information, not the annual information statement information, or even quarterly financials. But we'll do a periodic conference call, but then limit the conference call participants to people that they know own bonds.

Now, one, if you know anything about the marketplace, you never know who exactly owns your bonds at any point in time.

Two, you don't know what broker-dealer might have bonds in their inventory that they're going to be offering to customers.

Three, you don't know what institutional investor currently owns bonds and plans on selling those bonds for another institutional or individual investor who is considering purchasing those bonds, might like to have that information made available to them. Particularly in an area like health care, I can understand why there may be some concerns about having just a broad-based open forum -- in that there might be a concern that some type of strategic information, competitive information, might get out there. One could argue it doesn't affect bondholder security perhaps, but it certainly does affect the current operating strategy of a hospital or a system.

Now, I can understand those types of concerns. But I really don't understand how we can have information being made available and then limit it in these conference calls to only people who are pre-approved. It's just something that we're going to have to work our way through.

I think probably one of the best ways of addressing that would be if the institutional investors, who hear about it often before even other broker-dealers hear about it, because the banker may not know about it, or something like that. Would say, "If I cannot participate in this conference call because I don't own your bonds, I'm certainly not going to participate in a conference call the next time you have one," being a broker-dealer-sponsored conference call, "if you want me to participate when I do own the bonds."

So I think that's about the only way, other than just saying, "Fair play, fair dealing." Information should be made available to everyone if information is being made available at all. We just need to enforce it by having the institutional investors saying, "I'm not going to participate when I do own the bond, which is helpful to the issuer, helpful to me, if you don't open it up even when I don't own the bond."

And that really is about the only major concern about secondary market information that we're hearing on our desk.

Ms. Haines: We've had two questions passed up about Reg FD which relates to selective disclosure. And as you probably know, Reg FD does not apply in the municipal market.

On the other hand, it does raise all of these issues of giving preferential treatment to one group of investors or individuals in the market over others.
And the Commission did state when it released it, that basically it's an issue of fundamental fairness. It wasn't made a rule, but isn't it only fair that more information be made available on an equal basis?

I'm wondering what Mark Brown—what have you been seeing from the trustee's perspective as we're going through this changing time?

Mr. Brown: Now, I think the trustees initially when the Rule 15C2-12 came out. And our role is primarily limited to secondary market disclosure where we are the continuing disclosure of the dissemination agent.

And we're finding a heightened interest in the topic but we're finding that there hasn't been, or it appears to us there hasn't been, a significant amount of compliance with the continuing disclosure requirement.

We did an analysis of bond issues in the State of Georgia since the middle of 1995 forward, and took the issues that had come to market and compared that with the NRMSIR database, and we found that only about 15 percent had actually complied with the 15C2-12 filings.

You know, that said, we have heard more and more about the continuing disclosure issue and felt that we needed to become more proactive from a corporate trust perspective, which includes educating our administrators to be asking questions at the time of closing. Who was going to be the dissemination agent? Who's responsible for continuing disclosure on this issue?

And you'd be amazed at the variety of responses that we do get. Sometimes it's the trustee. We found that about 15 to 20 percent of the issues that we're trustee for we're asked to be the dissemination agent. But other times, it's the issuer and our research has shown that there really hasn't been broad compliance with the continuing disclosure requirement.

Mr. Donovan: If I could just follow up as an issuer. I mean truly we're a conduit issuer. So we have somewhat less controls. But when we do a bond issue, you know, we have the borrower, would be the hospitals, universities, signing the agreement with the trustee. Also providing continuing disclosure information. And also the trustee acts as the dissemination agent.

What we're seeing in some of the health care areas and to get back to what Rafael said, it is investor driven.

I mean the quarterly financial statements for the hospitals is something that we're just standing back at it's going to be a requirement that they provide the insurer or the investor, or they're not going to provide the bond. And it's getting, you know, because of the crisis in health care, it's been more difficult to sell health care bonds.

Now, the cycle might change, you know, and five years from now where, you know, they won't be requiring quarterly statements anymore and go back to the annual ones.
But I just wanted to make a point about the Regulation FD that when they did come out with it and it doesn't apply to the municipal marketplace, but clearly if an institution is providing quarterly information to the investors, I mean it's something that they should just adopt and provide to a much broader base.

I mean I know there's a panel later today on the Internet, but I know every hospital in my state, you can go to the Internet and you can find out about their doctor quality, about their competitiveness, you know, so there's so much information out there that it's almost sticking

their heads in the sand if they don't really take an active investor relationship position, and provide as much information as they can.

Mr. Kintzinger One comment, briefly, Mark.

I think that one thing we're hearing is that—I mean this municipal market has always been one of diversity. The figure of 52,000 issuers keeps being used. In fact, I've seen more recent figures that suggest governmental issuers number as much as 70 to 80,000 now. And, in fact, the NFMA, in their best practices for health care, reflected they're in the single stand-alone hospitals, there can be more complex hospital systems, there can be obligated groups and the like.

But the legal playing field, given this diversity, is that we know we have Rule 15C2-12 with annual financial information, and material event notices that should be recorded. And in connection with those requirements, there has been uncertainty on the issuer side about how to deal with ad hoc inquiries about that information. How to know that selective disclosure to some but not to all is appropriate or not appropriate. We deal in an area that's governed really by case law and concerns about selective disclosure and insider trading, an area that's not easy to define precisely for governmental issuers from small townships all the way up to very sophisticated court issuers, for example.

But I do think, and NABL reflected this in their recent paper, that there is some growing consensus that in connection with 15C2-12, continuing disclosure obligations, that once that information is in the market, clarifying that generally available information may very well be appropriate.

I think it's also pretty well accepted that if there were erroneous statements made in connection with primary disclosure, you'd correct those statements.

If there were perhaps in the context of getting ad hoc questions, you realize that something may have been misleading, it's appropriate to supplement the disclosure to correct any misleading statements.

Beyond that, we get into the whole area of a duty to update. And there is uncertainty there. But what I do see is between the market participants and the enforcement actions, an approach that NABL also reflected in its paper, which says there aren't rules that tell you you have to do it, and there aren't rules that tell you you are prohibited from doing it.

The best place to end up is the happy medium of perhaps it's something you should do because the more information you get into the marketplace, the better off everyone will be legally and non-legally.

Mr. Donovan: And just one more point I just want to make about 15C2-12, is that that only applies, or we've been told, is that only applies to our fixed-rate transactions. We're seeing more and more variable-rate bond issues. And I know in areas such as industrial development bonds, even some of the companies aren't providing financial information because of the variable-rate issue. And there's no requirement for continuing disclosure.

Now, in some of our variable-rate deals, we include an agreement but it's almost like a stringing agreement, where if they were to convert this variable-rate bond to a fixed-rate deal, then they'd have to follow in a disclosure. But we're also seeing more and more in lower

thresholds in terms of dollar amount to, you know, quote/unquote "sophisticated investors" of variable-rate bonds, which is subject to the continuing disclosure area.

So I mean there's a whole area out there that isn't being addressed by this particular continuing disclosure area.

Mr. Weinstein: What I find most interesting about the discussion so far is that it has almost unanimously and instantly defaulted from issues of primary disclosure and even sector that might be stressed to the whole host of questions around continuing disclosure. Well, 15C2-12 involving practices, involving expectations, questions.

Now, Mr. Donovan and Mr. Kintzinger have just put a rather impressive agenda on the table. Is there a view at that end of this table that perhaps the industry, the underwriters, the lawyers, the brokers, the issuers, ought to take a concerted look at 15C2-12 or more specifically the principle that underlies it, the principle of continuing disclosure to investors? Andrew?

Mr. Kintzinger I mean I will offer experience from both the primary disclosure point of view and the secondary market disclosure point of view. I have never seen the level of participation in the primary disclosure process higher. That's not to say it's perfect. But in terms of working groups, going through the analysis of what will be important to an investor in making an investment decision to buy this bond, the materiality analysis, I think there's a high level of engagement in that primary disclosure process. I for one anecdotally, I have not seen to date any effort in a drafting session to minimize primary offering disclosure in hopes of subsequently minimizing the continuing disclosure obligation, i.e., you know, curtailing financial information and operating data initially to avoid those concerns later.

If anything, I've seen primary disclosure grow and increase in body to the point where I sometimes have a concern that too much is being put in, that it will confuse rather than inform the investor.

On the continuing disclosure side, a more cynical view would be that continuing disclosure has become boilerplate, that it shows up in pretty routine covenants in bond documents, gets disclosed in a routine format in the Official Statement. After the deal closes, it's presumably in the hands of the trustee or the dissemination agent, and it happens, and no one knows precisely when and how it shows up and it's used, but that the process works. I think that's an overly cynical view only because in daily practice, I, and I know others, are routinely asked questions, "The issuer called with this question. Do we think we have a material event notice? Is this something that's one of the 11? Even though it's not one of the 11, should we be going to the market and saying something about it?"

I see that process happening, so I don't feel that I—my sense overall is that 15C2-12, both in primary and in secondary is pretty well gauged to what was anticipated when it was promulgated, which is that market participants, like many of you here, will respond to that rule if it's by the investor side prompting, "We need more," or if it's by the issuer side saying, "We're going to offer more." There seems to be a voluntary effort to get there without further regulation.

Ms. Haines: I have a question.

Under 15C2-12, we set up the NRMSIR system. And perhaps, Rafael, you could address this first. But what's your experience been with the NRMSIR system?

Mr Costas: None. I will never pay for information. That's my right now. I am an investor. I lend you my money. That's $25 please.

From the beginning I have never like the NRMSIR idea. We didn't have a use for it because of our size, to be frank. We didn't really need to use it as much as a smaller participant or a retail participant. I understand why brokers would use it and make a market in the secondary issues.

But for us, we are on record. I'll take it back. I think one time we had to pay. And it tasted like you can imagine. But it was over my dead body pretty much, and we still hit it. It's just, you know, any other stake holder of any business in the United States, especially in the corporate world, has the right to get free information of other stock holding quarterly. They can get it when there are material events. They don't have to pay for it. If they did, I doubt very much any of you here would buy a bond issue if you knew up front that you had to pay $25 to get information about your investment.

These issuers are accessing public markets. Up until this year, they pay less to access that market than any other issuer in the corporate world, and now they want us to pay to get information. And absolutely we will not pay them for that information.

This is the standard we had before the Internet. The Internet has been a blessing for both sides because it makes it easier toward the NRMSIR issue. At very low cost I think, an issuer can establish a Web site where they can post that information and we can access it for free, print it. And all that does is whenever we do call you as an issuer, it makes the conversation a lot smoother, a lot more efficient. We're not fishing around for ideas in the middle of a call. We've read your statements and we know what we want to ask and we'll waste less of your time. So the NRMSIR for us has been a non—

Ms. Haines: Well, we appreciate your candor. Let me just ask the question that you just answered but I'd like all the non-SEC people at the table to take a crack at this plain English question. Does the NRMSIR system work?

Mr. Kintzinger Yeah, I want to answer that and follow up on Rafael. I think that we really are seeing a shift in the issuer community and in the counsel community away from concern about NRMSIR and much more about the Web page and the Home Site and the electronic disclosure aspect of it.

We close a bond issue, and the continuing disclosure obligations fall into the hands of the trustee or into the hands of the disseminating agent and but for the situation where an issuer is actively involved with the financial advisor who's carrying out disseminating information duties, a lot of issuers say, "It went in but we don't know where it ended up. And we don't know where it's being used."

What's very real to them is the electronic disclosure aspect which will be another panel this afternoon, but that's a fundamental shift. And my friend, Dean Pope, wasn't being cute when he said in September at the bond attorneys workshop, just to paraphrase him, you know, "A lot more people have access to the Internet than to the NRMSIR systems." So let's shift the focus to the electronic side of this equation. The NRMSIR is there and it carries out the rule but the issuers don't feel in touch with it. They do feel very much in touch with the electronic disclosure.

Mr. Donovan: Yeah, I have to agree with that. I mean the only thing that's changed really in our continuing disclosure agreement has been the list of NRMSIRs. I mean it's gotten smaller and smaller. And the information is probably dated, and I have to agree that the Web sites, the Internet, is really what's having more impact on the dissemination of the information for all the issuers and the borrowers.

Mr.Foran: Well, being the regulated party here, I have to say the NRMSIRs are critical to our business because we have to check and make sure that nothing has occurred if we're going to be offering something in the secondary market.

That doesn't mean that it's the best information and the easiest way of getting information. But it is what we have to deal with in a regulatory environment. So, yes, we use it.

Mr. Brown: From the trustee's perspective, in those situations where we are dissemination agent, our relationship with the NRMSIRs has changed. As someone pointed out, the number went from seven originally down to two and now I think there're four.
A lot of the information that we forward to NRMSIRs heretofore has been paper based. Some of the smaller issuers provide us with annual reports that we would send to the NRMSIRs, and there is a change going on at the NRMSIRs where they want to receive the information electronically. And that may speak to why the statistics that I mentioned earlier in Georgia, seeing that there's such a low rate of compliance, is that perhaps some of the paper information that has been sent to the NRMSIRs hasn't made its way onto the NRMSIR databases.

Ms. Haines: A question about smaller issuers, which I think makes up most of the municipal market of the 52 or however many thousands.
In REG FD, for example, there was the suggestion that if you had something, some information to release, you put out a press release, among other things.

But who's going to pick up the press release about the increased water rates in small town America? What the NRMSIR seems to me to be useful for issuers like that on a voluntary basis, issuers that maybe don't have a Web site or are very unsophisticated, can any of you address if you've seen it used in that way by the smaller issuers or other small issuer concerns? Bob?

Mr. Donovan: And just speaking from a conduit issuer standpoint. It's a good avenue and it gives somebody a benchmark to provide the information to. Whether it's an increase in water rates or—I don't think any small municipality or small local government really sees it as the type of information they need to provide to the NRMSIRs except on an annual basis.
So I don't know how interactive they are because with any issuer or with any borrower, that's something they have to do but it's not their day-to-day business.

And I really—I think we need it and as Bob says, you know, he needs to use it continuously, but I think it's just really a starting point.

And the other information, you know, you mentioned the water rates. I mean you can probably go to that local town newspaper and see how the city council was lynched because of the increase in the water rates.

So I think, as everybody says, it's just a starting point and I think 15C2-12 is just a starting point. And, you know, we're basically using other people's money and if we're going to keep that system working efficiently, then I think borrowers and issuers, you know, just have

to realize that demands are changing for the information, and we just need to accept it and try and do it in the most efficient way.

From our operating standpoint, I mean I know the analysts came out with some suggested practices. For some small issuers that's a little more burdensome than others, but I think it's a step in the right direction. And so it's just the way the market's going. I think we just have to accept it. Nobody is just using municipal bonds these days for building a new courthouse. I mean the municipal bond is being used for everything, and I think the investors need to know, you know, what they're purchasing, what the source of repayment is, and to be continuously updated, you know, "Did you get that football team you were going after?" So I think it's a good starting base for it. There's a lot more to be done.

Mr. Kintzinger: Martha, one thing that NABL tried to do in its September statement it released on communicating voluntarily to the secondary market was to reflect the reality, at least in NABL's ranks, its members advised issuers who, again, range from small townships to the most sophisticated, and in this paper they have a list of nine factors to use in developing an ongoing disclosure program that may step beyond the four requirements of Rule 15C2-12. And to me, the most important factor in those nine was the recommendation that in developing disclosure beyond Rule 15C2-12, like press releases or the like, be careful in how you extend your resources and don't over extend your resources.

If you're going to develop a voluntary disclosure program, develop one that's commensurate with what your resources are. I mean we work with issuers who are small infrequent issuers who have half-time finance staff, to those who have a designated person whose full-time job is to do nothing but monitor continuing disclosure and press release disclosure to the market just as if they were a corporate issuer.

So there's quite a spectrum out there.

Ms. Haines: Bob Foran, what have you seen with the smaller issuers in continuing disclosure?

Mr.Foran: I really don't have that much experience with smaller issuers just because of the nature of our practice at the firm.

But it is a burden. What I hear through trade groups that I'm associated with where there are small issuers, it is just a question of the burden. So what Drew is saying in terms of don't commit yourself to deliver something that you know you can't deliver in an appropriate manner, I think is right.

I think that the marketplace, investors in the marketplace, if they're going to be buying small issues, they need to understand that they are probably not going to get the same type of information flow that they will get by buying a security from a major large frequent issuer of debt. And whether that has been reflected in the price that the issuer gets when they sell their securities, I think it probably is, and that is a trade off.

But you can't expect someone to deliver the same type of ongoing information that is expected from a large issuer. You can, I believe, expect the same level of disclosure on the primary offering. And that is something I feel very, very strongly. If you want to borrow money in the public market, you have an obligation to delivery a quality document to the potential investors that lays everything out.

I really don't buy the fact that we can't hire lawyers who can deliver the right type of product for us because we're a small issuer and we're just borrowing a little bit of money. No, if you're borrowing in the public market, you have an obligation to have exactly the same standards being met in your disclosure, whether you're a small borrower or a big borrower. And if that costs you a lot of money, well, maybe that drives you to borrowing in the private market. But I really do think that the primary market is where the standard is exactly the same. The secondary market, the investor should understand you're buying something perhaps with low liquidity. That should affect the price. And they cannot deliver the same type of ongoing investor relation service that maybe a large issuer can.

Mr Costas: Can I make a couple of comments on that?

Yeah, I agree. I'm never going to expect from some million-dollar issuers, the same kind of disclosure I get from New York City, which I can keep out of my office. There are extremes. And we understand that. And so for those guys, you know, we kind of usually just take the minimum requirements of 15C2-12, especially their essential services, water and sewer or electric utilities.

Water and sewer—you remind me of an event under 15C2-12, when I was actually—when I was doing more research as a water and sewer analyst, I was calling around to the small issuer down in Alabama and I was having a tough time getting them to return my calls and give me information. And when I finally got them to give me information in the last year's audits, which usually will include everything about rate increase and whatnot. I said, "Well, I can have last year's figures?" "Well, those are unavailable." "Unavailable?" "Well, didn't you hear? They got destroyed in the fire?" I went, "The fire?"

After two heart attacks and a hernia, I'm thinking, you know, this is why we need something like 15C2-12. Is that the minimum thing, this guy didn't think it was important enough because they were insured. Everything was rebuilt, and so they didn't really miss any debt payments, and in his view, there was no need to tell me that there was a fire that destroyed the water plant. "My Lord."

So it's a matter of education for the small issue. And I just recently, less than a month ago, was traveling and I went down to Mississippi, because, again, I had something there who was somewhat reluctant to give information, they're not comfortable. And when I got there, they're looking at me like I had just stepped out of a UFO. "Oh, we've heard of bondholders. We've never seen one before." They're like poking at you, and I said, "What are you looking at?"

(Laughter)

But, you know, we always want to see the project that we own, which we're very happy with, and ask some questions that I think he was surprised about how general they were, to get a feeling of their strategy and so on going forward, and their strengths and weaknesses and competition. And after spending all day, we're best buddies now.

You know, it is a matter of going to the field and getting in front of investors and investors in front of issuers. And letting them know what our expectations are. You find that most people—I found that most people in this business are very reasonable and are willing to help you. You just have to help them come along and give them some assurances, you know, they're not going to lose their hand for giving you some kind of information. They might be worried about giving it.

Mr. Weinstein: Well, I think that's what important, about not losing your hand. There's a difference between the message and the messenger. What the federal securities laws focus on, of course, is the message and not to wave the banner unnecessarily here but picking up some of the conversation in the last couple minutes, there is, of course, a set of minimum requirements for continuing disclosure, and that applies to all issuers, unless they fit one of the "excepted" categories.

So I think if we could focus on what we do, what our clients do, what the community does, beyond the minimum that's required by 15C2-12, I think that's a very helpful forward-looking exercise.

I appreciate your story, Bob, about the fire. Fires can be actual. They can also apocryphal. And I encourage everybody who doesn't everyday pick up SEC enforcement actions as morning reading material to look at what the Commission has done in the last 12 or 18 months in the area of enforcement, because of those fact situations are very much more informative than we could ever be in front of the room. And the job of continuing disclosure, the precepts that underlie the particularities of 15C2-12 can really be seen in operation.

I would like to go back to this topic of best practices. And repeated references have been made to the NABL paper, the bondholders paper, that was put out in September. There are also specific industry guidelines from NFMA, the Financial Managers Association. GFOA has guidelines.

How do you guys, meaning the professionals who make the market work—it's a big market—and it's big everyday. How do you guys deal with best practices? Do you weigh a disclosure document, the guide, a discussion, with the NABL document or the GFOA document, the NFMA document, at your elbow? And if you don't, how do you use it, or how might you use it, or what can be done to bring practice more into the realm of the electronic age?

As everybody has said, we have a separate hem on that, and we're going to try—we do recognize, however, the continuity of some of these concepts, but we're going to try to stay away from the specifics of electronics.

But what do we do to bring things more in line with the technology—to bring practices more in line with the technology that is more and more at our disposal and the expectation of the individuals who are becoming quickly a majority in the marketplace?
Bob, do you want to start it off?

Mr.Foran: I have to say that when I raised the issue of best practices and papers that are out there with various people in our department, the response I got was what I expected. The people in the health care area were very familiar with the paper out from NFMA on best practices. It's a hot area.

I would venture to say that the firms that are out there that do land-based deals are very familiar with the papers that are out there. It's current. It's something that people are looking at.

Frankly, I don't pay a lot of attention to them because the type of clients that I cover, which are more the general infrastructure, large issuers, I am more concerned about knowing

the specifics of that issue and not having a checklist that people in my department would go through to say, "Well, we've covered that, we've covered that, we've covered that."
My feel is that my bankers who work for me do not fully understand the credit, they're not going to be able to lay the document out in a way that represents all of the material factors that an investor should be able to use to evaluate the credit.

So in a sense, that's kind of a difference in how people might use papers that are out there. I just believe that we have to look at the issuers that I cover, on a fact and circumstance, case-by-case basis.

I do like the ability though to be able to use the electronic media that's out there, and start incorporating more information by reference. And I am a big proponent of that. Some who want to carry a full document in their briefcase and go home and read it on the train or do something like that, may object to being required to go back to a difference source to bring information in.

But what I think is really important is that we have an offering document out there. If people are not intimidated by its size and will actually perhaps take the time to read the document. Institutional investors have research departments and analysts who will go through and read everything.

The individual investor, which we've heard before, will certainly most likely not read it, is not certainly not going to read a document that encompasses a lot of very, thick weighty documents that frankly I don't think they need to go through for their investment decision. What I think we ought to really do is spend a lot more time in our intellectual capital to take these weighty documents and put a really good summary right in the front of it. And that I would say is one of the kind of horses that I would like to continue to ride.

My firm's practice is not a retail practice per se, but I think it makes so much sense to take the extra time to try to condense this big document down into a three-page summary. Because if we as professionals can't come up with something that summarizes the document, right in the front of the document, that lays the credit out, we're never going to get anybody to read it. And frankly, if we know they're not going to read it, I think we're asking for trouble ourselves.

And so I would just encourage—let's take the ability to electronically incorporate by reference—electronically available information, incorporated by reference, get the document down to a manageable size, and as professionals try to come up with a summary. It's not complete and it'll have all the caveats, you know, all around it, and it will refer to other sections of the document, but something that an investor can look at and understand the credit that's available.

The objections that we've gotten is it's hard to do. That really has been the primary objection. The secondary objection is it's not going to be completely accurate.
But you know what? It is a summary. And so it's not going to be complete but it sure is something that somebody can look at. And I'd rather take comfort that somebody could read a three-page document and understand the credit they're buying, than to give them a 200-page document that I know they're not going to crack open. And then I'm going to say, "Oh, yes, they're fully informed and they understood the credit they were buying."

Mr. Weinstein: Andrew, if you're bond counsel sitting at Bob's side doing a deal, where do you take that conversation?

Mr. Kintzinger Well, a couple of comments.

And to start with your leading question, Steve, about moving towards electronic and how do we deal with the body of voluntary disclosure guidelines that are out there. The GFOA guidelines. The disclosure roles of council publication that the ABA and NABL adjoined together on. The NFMA, primary and secondary market disclosure forms and their continuing disclosure forms.

All of these voluntary compliance-type efforts underscore something that's very important as we head into electronic. They tell issuers and help issuers and counsel along with the underlying legal premises of, okay, how do you build an Official Statement? How do you come up with an appropriate primary offering document and how do you disseminate it, and, in some way, how do you update that for secondary market purposes?

Those same underlying practices and principles are applicable to electronic disclosure; hence, the recommendation from NABL and the lawyer community that when it comes to electronic disclosure, well, sir, there are differences. The legal treatment should be no different than the paper disclosure document. Because those principles of what is an Official Statement, how does an issuer rely on third parties, how does it use third-party information, how does it pull that together into an offering document? All of those principles are the same paper or electronic, avoid staleness. Have current information. Be careful with their disclaimers about what you've relied on or what is your own.

All of those principles, paper or electronic, are shared.

Ms. Haines: 10b-5 doesn't change based on your media figures?

Mr. Kintzinger: Absolutely. Absolute. And I think that that's why it is a mantra right now. But electronic should be treated no different from paper in those significant legal ways. In response to Bob's concern. I do think that, at least I in working groups, am seeing more of a trend toward summary statements. There will always be the concern that somehow in applying plain-English principles or in applying summary statements, that one way or another, while the attempt is to inform rather than confuse the investor with that information, something is going to be missed. That there will at some point be, you know, that a plaintiff's claimant suggests that, "Well, this is important and it wasn't in the summary statement." I think that tension is a healthy tension. I think summary statements we will see more of.

Ms. Haines: This kind of leads into question about the plain-English initiative in the corporate area.

I've heard discussions with individual investors and with institutional investors who had very different perspectives on the usefulness of plain English.

And I wonder, Rafael, if you could give us your perspective first.

Mr Costas: Plain Spanish would be great for me. We have no problems with that. Obviously it would make it easier for the individual investors, but institutional investors are so used now to the gibberish that we had on these things. Actually we know our way around Official Statements, and I think that would have little value added for the institutional investor versus the individual investor, who would be totally put out by an Official Statement. And I

don't know many individual investors who would read one cover to cover and then know what they just read.

So I would welcome the move to help the market, but it is not something that I think that we are insisting on at the institutional level.

And I'm not sure Jean Kennedy has anything. Nod your head or shake your head on that.

Ms. Kennedy: I agree with you.

Mr Costas: She's the NFMA chair.

Ms. Haines: Wait, I've heard some other institutional investors say basically they don't want plain English because they know where they can find the stuff now and they know what those awful sentences actually mean.

Mr Costas: Well, Jean is good too—

Ms. Haines: Okay. A little more flexible.

Mr Costas: Yeah. I think, you know, the other participants in the market have been asked to put up with a lot of change, and I think if this happened, I think the market would adjust.

Mr. Weinstein: Additional observation on that? Denny, from the issuers perspective or Mark for the trustee?

Mr. Drake: Well, we look at the disclosure document as having a variety of legal requirements for accuracy and so on but it's also a marketing document as well. And plain English I'd be neutral on. It's market driven. You know, will meet the regulatory requirements, plain English or gibberish, you know. Maybe with more difficult with gibberish—with plain English rather.

But if the market indicates and the buyers indicate that's what is preferred and if a summary statement in front becomes the mode, we'll fall in line. I think we can accommodate either, so it really don't make to me much difference.

Mr. Brown: I think from the trustee's perspective, we look at it maybe a little bit differently.

Our government document is the indenture. And we basically follow the indenture to the T. And so we like to have things spelled out in great detail as to what our role is, what actions we should or should not take.

So while conceptually I think I agree with the common language, I think from a trustee's perspective, we would rather have a need to have very definitive direction in carrying out our responsibility.

Mr. Drake: You know, my comments are directed probably more towards the Official Statement. Yeah, making plain English out of—you know, my normal joke is that if you can find a bond lawyer's statement less than about 60 words in any of these documents, then, you

know, you get a prize for the day, because I never can. But thinking about converting all of those documents into plain English, or plain language standards, would be a huge change. And I'm interpreting the plain English scope to be the Official Statement as opposed to bond indentures, you know, bond purchase agreement, all the rest of the legal documents that flow from that.

If it's intended to be broader, I'd be more hesitant in terms of comments about willingness and ability to comply because that would be a—you know, that would be a big change I think.

Mr. Kintzinger: And I think this is going to be the next leap or the next wave in this process, both Official Statement and indenture, should an issuer decide that it wants to undertake a voluntary disclosure or market communication program with the secondary market beyond Rule 15C2-12.

Where is that implemented? Is it in provisions in the indenture, where that program is laid out? How will it be described in the Official Statement in a manner that's commensurate with what the issuer intends to do with a voluntary program?

I think the implementation phase following the NABL position paper will be very interesting. And we'll need to again give this some learning curve time. As issuers become more sophisticated about development programs for voluntary disclosure, how will they be implemented in the documents?

Mr Costas: And one thing on too much legal language. I don't object to legal language. It is a legal business. But also too much legal language, it does raise in me a skepticism that these guys are trying to hide something.

So it does take—when you start to see too many long sentences in one paragraph or one page about a rate covenant, you know, it shouldn't take that long.
And so I think that's one thing that I do share with other institutional investors is if you want to indemnify yourself of liability for this, then say so. You don't have to write me two pages of language for me to figure that one out.

I think that is something that institutional investors have a problem with.

Mr. Donovan: I just want to bring up to Rafael that my bond lawyers tell me that the investors demand those long sentences in the documents. They would make it much shorter. No, you know, I think the plain English on the Official Statement, some of the documents, the summaries that are included in the Official Statements—I mean try to get it as simple as possible, but they're so complex, you know, a little confusing. But I think also other sections of the Official Statement can give possibly the individual investor because they're written in a straightforward English, describing the project, the source of repayment, the security for the bond, I think those are areas that we can keep and simplify so that the individual investor—and I think it addresses Bob's point—can look at the front part of the OS and get a sense of exactly what they're buying in terms of a municipal bond.

Because some people are out there, they see these are governmental bonds. And that's all they need to know. They're tax-exempt. They're governmental bonds.
I mean I get calls from people who have bought bonds 25 years ago. They want to know what happened to it. And I have to tell them it was refunded in 1990. So their money hasn't been earning any interest since then.

So it's that sort of thing, you know, that for the individual investor I think we need to keep the jargon down. But give them a good summary where they might look at the first few pages and get a good sense of what the project is.

Ms. Haines: You know, I recently received a prospectus from a mutual fund, in plain English. It's very easy to read. It was incredibly short. That's a really very simple security compared to what we do in the municipal area I think. And which really leads to our longer documents, although probably not our longer sentences.

What are your thoughts on trying to simplify these documents? Are we going overboard? Are they really that complex?

Mr. Weinstein: Martha has put exactly the right question to this group as we all address that, really covers some additional focus here by taking the pressure off those of us at the table and even this industry and even the field of securities in general.

There is a very popular non-fiction book at your local book store which shall remain nameless, by a very well known author, who shall remain nameless. And it has nothing to do with securities, municipal or otherwise. And it has on a page number I will keep to myself, a sentence that goes on for more than two printed pages. It is part of a paragraph that goes on for more than five printed pages.

So in a sense, we're living in a time of a super technological everything, and jargon is a byword. There is, and it's illustrative because we're not talking about anything in the securities business, there is a point at which precision becomes non-communication. And it's something we ought to all keep in mind in all of our personal endeavors as well as our professional lives. So with that as a kind of a reliever of pressure here, what do you think about Mark's question? Who wants to go first?

Mr. Kintzinger: Well, I will respond first by offering the anecdotal experience of the public finance partner used to doing municipal bond deal after deal after deal, who lends himself or herself out to the corporate securities area to help out with a deal and they go through a corporate debt transaction with a short sheaf of documents and a routine set of definitions and they say, "From a document point of view, this was so simple. This was so straightforward. This was so easy to implement, and it's the world of Regulation SK, and straightforward disclosure."

The fact is that the tax-exempt instrument and security is a complicated instrument in security. It is a device that is governed by very complicated and arcane provisions of the tax code and a working group in putting together an offer of securities is not just dealing with disclosure about the credit that repay that security. It's also involving and engaging tax lawyers in an analysis of the prospects for that instrument bearing interest that is exempt from federal income taxation, tremendous complex, risky at times, but what is fair to say is that a straightforward tax exempt instrument, if the several regulations and rules are not satisfied, is subject to draconian remedies. I mean loss of tax exempt of the interest.

Hence that leads to more complicated disclosure. And in working group after working group, you see them struggling with "We need to simplify and describe the credit somehow we also need to account for all the rules and regulations on the tax side."
So that somehow defies satisfying plain English at all times.

Mr. Drake: I will contribute and agree with what Andrew said. There's a—similar to common law—there's a known custom and practice in these working groups that no one understand these documents. And modifying slightly a document has a ripple effect to several other documents typically. And when I think about issuance costs of converting that legend of documents and 60 files in a closing table laid out, you know, of all the documents that need to be signed, into plain English, that would be a really significant project to do and then you would have to renegotiate I think all of the history that has led these documents to where they are and how they read today. Because it's not by accident that they are what they are.

And so I would be reluctant to want to convert all of the transaction documents into plain English. However, their description and depiction in the marketing document and the disclosing documents in the OS I think can be effected and simplified.
So that would be my contribution.

Mr. Donovan: And just to follow up on that.

I think, you know, there are a lot of technical and legal issues when the documents are developed. However, there are things, I mean just going through the definition section of some of the loan and trust agreements and such. I mean three and a half paragraphs on describing what the revenue is to pay back a bond. I mean I think there are areas that we can maybe simplify with just a little plain English, so someone like Helen can understand that, you know, the money that's paying back these bonds only comes in Thursday after 2:00 on a month with an R in it.

I mean those are the types of areas that we need to simplify. And I think it's just better because I agree, there's a lot of technical aspects to it that just need to be addressed and don't lend themselves to simplified language unless Congress is going to pass legislation with simplified language.

So I think that's where we are. But I think there are areas that we can look at trying to simplify it, and, you know, address these for the individual investor.

Mr. Frederkson: If I could ask an industry question.

And let me re-emphasize the disclaimer that I'm speaking that I'm speaking for myself and not for the Commission. But what are OS's for? To what extent are they litigation documents and to what extent are they marketing documents? And I assume that it's, you know, a broad range of answers as to who're the purchasers and depending on the issuers. But to what extent are individual investors reading these things before they are making an investment decision, and to what extent should that drive the debate as to how much we change these documents?

Mr Costas: Well, I can tell you from our perspective. I mean can see a plain language statement, but we, as the institutional buyers, are going to ask you for all the other documents that come with it. We would have to take a look at the indenture because for us it is important to know ahead of time where the flow of funds are, what your remedies in the default, what happens if you violate the reg covenant, trustee duties and how they'd defined, how we get affected if you start filing for bankruptcy. Do they withhold money from the reserve fund, which was a surprise to me. But, you know, it probably is in there though.

And so that's the kind of thing that we need to know as a fiduciary to our shareholders, and because we're more likely to own—well, we do own a lot more than any other individual would own. We own something like eight or nine thousand bonds in our shop alone, so odds are that even with point one default rate, that you're going to have a couple of situations in your portfolio that merit an investigation to the legal language. And we do a lot of our own legal work as analysts and then defer to our own corporate attorneys. But it does become an issue and we can't just say to our shareholders, "Well, we looked at the two-pager and there was nothing there about that stuff."

That's just not going to fly. It's not going to hold in a court of law. In a court of law, we have to prove that we did read the Official Statement cover to cover and that we did read the indentures and all the supplements we should have read, so that we have a case. Because if we don't, a judge is going to throw us out of court. He's going to say, "It's on there. You didn't see it."

Does the retail investor go to into that detail? I'm sure they don't. But do they also own that many defaulted securities, and when they do, do they rely on people like us to take the lead at the institutional level on the work-out, which has been our experience. On a bunch of these issues that we've had to work out, there is maybe a couple of retail people, there might be even 100, but we own 65 percent of the issue and somebody else owns another 25. So tend to be the ones working it out. And the retail person is happy with the work-out. They couldn't have done any better themselves.

So that's one of the issues that we need to be proud of in this kind of discussion.

Mr. Brown: And that's a good point. You brought up the issue of the debt service reserve funds and that's been in the paper recently.

And, you know, without talking about any specific issue, we do have situations where what's in the OS is different than what's in the indenture. And so that situation, and it kind of goes back to what you said, Denny, that it ties to other documents, or doesn't tie to other documents necessarily, or specifically. But it is important.

And I can just tell you that on the default situations and the work-outs that I've been involved in with retail holders, most of the conversations I have with them indicate that they really don't review the prospectus at a very deep level.

Ms. Haines: I think in the documents as well, there can be a certain tension among the participants on the working team between the sort of wanting it to be in more plain English and dredging through these horrible things. I know every bond lawyer I know has a story like this. But there were times when I did not, in private practice, when I was concerned that no one was reading these documents that I was killing myself to make as perfect as possible. And so I would draw the Shakespearian sonnet.

Who has some sort of boilerplate provision? And the trick usually was remembering to take it out before we closed.

(Laughter)

I mean the tension I think is not just in the Official Statement. They can be dreadful to deal with prior to the litigation or the default.

Mr. Weinstein: We all have stories. To pick up on this theme, and I was nowhere near as poetic. I was looking for somebody on the team to insert what I call the obligatory typographical error to see whether anybody read a critical section of one of these documents. And like our speaker this morning, never got a phone call on things I should have gotten a phone call on.

Again, we can't perceive messages for investors. We can only send them and comply with the federal securities laws in doing that.

There is this tension that Martha referred to us. All of us in the Office Municipal Securities have had other lives and worked in the marketplace. And in one of those earlier lives, I was engaged in translating a document from its preexisting form into what—the term wasn't around but what we call today "plain English." And I think it was a fairly successful attempt.

But somewhere in one of these drafting sessions, about 2:00 or 3:00 in the morning, an argument developed among counsel from competing firms as to whether the proper phrase was "A year" or "per annum." And I did not believe that that advanced the cause of plain English. And I think we all ought to remember little stories like that, not only talk about these very big important complex precise topics.

Mr.Foran: Yeah. I was just going to say. To me you're never going to be able to take a document and put the entire document into plain English, because I'm afraid it just won't be accurate.

I view this document to be a liability document. This is something that I want to point to, and I want to say it's exactly the way the indenture reads. It's exactly the way that the statute reads. Everything is there. However, that doesn't mean that we can't have a document that has layers.

I'll give you a great example, I think. We've been getting rating reports from a variety of rating services for a long time. Some of those were helpful. Some were less helpful. One of the rating services, more of an upstart, if you will, in our business years ago came out with a document that had a highlight summarizing the credit. Then they had a section that went into more detail. And then they had a full-blown analysis in the bulk of the document.
The reader could read the document in its entirety and understand everything that was going on from the rating agency's perspective. Or they could read as much as they needed to become comfortable that it was something that they wanted.

So to me when I try to think about a document in the marketing standpoint, I just want to have something there that I feel conveys the essence of the credit so a reader can look at it. Certainly, you know, refers the reader to other sections of the document for more full discussion.

But I still want that document for protection to have everything exactly right, and I think you're going to be driven to staying with those legal—you know, the legal language and the 60-word sentences and things like that. Because sometimes you just can't describe it any other way.

But, again, to think of the document in terms of, this is going to be the essence of the credit. Maybe we have more full discussion, and then we have a more detailed discussion. In a sense, we've sort of been doing that all along in that we have a summary of the indenture for

those that are driven by indentures. We have a summary of the indenture in the back of the document. That gives us comfort that, yeah, when we summarized it up front, we may have not gotten precisely to the point, but we can refer back to the section where it is, you know, elaborating more fully.

So to me that's the concept we ought to be working toward. It's just something that lets readers read enough that they understand it and if they want to go further, they can go further. But at the same time, we're all protected because everything is in there.

Mr. Kintzinger Steve and Martha, I think the next generation on plain English is really going to be in the context of electronic disclosure, which we'll lead into this afternoon, but in response to the Commission's interpretive release on electronic disclosure, both the NABL subcommittee and the board in commenting on that offered that what's going to be important going forward in part are framing in plain English references to what comprises the preliminary Official Statement or the deemed final or the final plain English and fair disclaimers about what information is part of the offering document that has been relied on but has not been supplied by. In fact, there are even some offers in those comment letters of plain English-type language that may be suitable or worked for. Hyper-link text and the like.

But I do think the next generation of plain English discussion needs to be in forming some improved guidelines on electronic disclosure, so that issuers will have that available to them.

Ms. Haines: And we're in a transitional phase right now. I mean in order for an underwriter to deliver information on the corporate area electronically, they need to get consent from the investor to whom they're supplying it that way. And the reason is it's less than half, the country apparently is on the Internet yet.

And so, Bob, you made a reference about incorporating by reference, which I think the incorporating by reference stuff that's on the Web site would be obvious way to go. But we're not quite there yet. It's going to be the issue of the decade I think as we deal with the new technology.

Mr. Weinstein: I think a point that's been made here several times, but to make it explicit near the wrap-up of this session is that we are talking about practices and the requirements and enforcement actions that apply to all segments of the market. Two-thirds or three-quarters of all the new issuances out there are $1 million or less.

To pick up Paul's theme of this morning, 40 to 45 percent of holdings now are in the hands of individuals or individual trusts, and that number is growing more rapidly than any other segment of the market. And we ought to keep that in mind as well, that we are not addressing by law only institutional investors or primarily institutional investors, but in practice, the market is largely composed of individual holders. And I think as we talked about all these fundamental and important concepts, the continuing requirements of 15C2-12, the requirements of Rule 10b-5, the clarity and precision of communication without confusion, reaching investors, actually communicating to people, we really should all keep in mind, to a large extent, we are talking about relatively small issuances and we're talking about individual portfolios, individual investment decisions.

So that not everyone, by any means, is the sophisticated investor and the federal securities laws are not aimed at sophisticated investors, but investors all of a kind.
And I'd just like one additional observation from Helen Gee, as we close out the session.

Are you looking for something out there that isn't happening in the marketplace?

Ms. Gee: I can't tell you whether I am or not at the moment because from my own personal standpoint, this issue has not arisen until I was exposed to this whole consideration. And now I am—I'm very much interested in the nature of the concerns expressed by various people around the table. And I find myself saying the important issue for us is that we play on an open playing field, that we get a fair amount of exposure to the information that is important in making an investment decision. And that that information be available not only to the highly sophisticated investor, but also to the very simple individual who makes important decisions from his standpoint about what kind of investments he's going to make.

What constitutes a fair playing field for the individual investor? I think that's where we need to be focused, and I see more and more concern about that on the part of out participants. So I'm kind of pleased to see the way things are going.

Mr. Weinstein: Thank you very much.

I'd just like to say, take 20 seconds out here. We are all here engaging in this discussion. This roundtable is happening for the second year in a row. The last half decade of enlightenment of the Commission's enforcement with its customary light hand in the municipal securities area is really is due to two people. Arthur Levitt, our chairman, and Paul Maco, the director and founder of this office.

And, Paul, we wish you well.

(Applause)

Ms. Haines: I'd like to change gears for a second and just bring up the next issue that I think we're all going to be dealing with, at least in the traditional governmental area. There's new accounting rules coming out, FASB 34, which may make it difficult to compare prior year's results, financial results, to current.

Does anybody have a comment on that?

Come on. I know you do.

Mr.Foran: Well, there is a concern that I have, and it is partly based on not having full information as to the implications of this pronouncement or this new standard.
But we have issuers that are out there that have made commitments to provide ongoing disclosure of certain information. And that information is derived from audited financial statements prepared in a certain manner. And if that information is no longer going to be prepared because the auditors are saying we cannot deliver an audited financial statement in this manner because, you know, our professional principles will not allow us to do it, where are we?

The second issue for me as an underwriter. I am concerned that I will not be able to get the kind of information I need for my due diligence if that information isn't derived through an audited financial statement that I can easily trace back to. So for me it's an issue.
There are other issues that are out there with regard to will we continue to have consolidating financial statements or will we have consolidated financial statements for a governmental entity that has many different enterprises or many different functions that are now being brought together.

We are all familiar with issuers that are out there that sell bonds underneath the airports, sell the bonds underneath this agency or sell bonds underneath this, you know, fund. What happens to the existing bonds that are out there when we do go to either a consolidating, you know, where everything is still there and we end up with eliminations, so we can track information back, or will it have to be more of a consolidated.

So, you know, if you've got greater knowledge and information, I'd love to talk with you to learn more, but these are issues that I think we have to address. And they're coming up with some of the deals, transactions, that we're working on now because even my clients can't tell me where their auditors are going to come out.

So I think it is an issue that can have implications for primary disclosure responsibilities and ongoing disclosure responsibilities for preexisting transactions.

Ms. Haines: It sounds to me like this is a good subject for next year's panel. And we should maybe defer it until then.

We're out of time now, and we'd like to thank you for coming. We're going to take a lunch break and we'll resume at 1:30, 1:15? 1:30.

(Whereupon, a luncheon recess was taken.)

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

Ms. McGuire: I'd like to welcome you back from lunch.

The SEC, with its fine budget, has, of course, not sprung for lunch, but I hope you found the eateries. I personally was at McDonald's. We're not allowed to lobby for pay parity, but be nice.

Seriously, and apropos of that, the views I express today are my own and not necessarily those of the staff of the Commission, although that last one probably is—the Commission, as a whole, they are my own. And that disclaimer also goes for Amy Starr, my colleague on the staff of the Commission.

I am the chief counsel of the Division of Market Regulation. And I have been with the Commission for 27 years. And I began working in the municipal securities area with the enactment of the 1975 amendment, which gave the Commission authority to regulate municipal securities dealers. And at that time, enacted the Tower Amendment, an amendment widely believed to preclude the SEC from having anything to say about municipal securities disclosure. But John Evans, a man who's still alive, Commissioner John Evans, who negotiated the Tower Amendment, knew better and he left in speeches clear guidance that he believed that the Tower Amendment did not preclude the SEC from doing what was necessary to prevent fraud, and the municipal securities market, including in the area of disclosure, and that belief was the genesis of Rule 15C2-12. First the first original 15C2-12, which related to Official Statements, and developed that disclosure system, and then the amendments to Rule 15C2-12, that modified that to extend to a continuing disclosure system.

So we look back 25 years ago and see John Evans and his colleague, Al Summer, who both gave speeches about the need for disclosure in the muni market, and see what has come

today to now this panel, which is about the Internet and the implications of the Internet for the municipal securities market, the regulation of the dealers. Brokers I think have more of a role than ever before. And investors who trade, there's a bigger opportunity for data dissemination than we've ever seen in the past.

The buy side has access to more information more cheaply. Probably never as much information as they would like, never as cheaply as they would like.

The sell side has probably, I hope we'll find out, access to more customers. And hopefully prices are more competitive. We'll learn more about that.

So I think that this is a very, very interesting opportunity.

I'd like to ask the panelists today to introduce themselves, because I know that—I've just told you about my history with the muni market and how I came to Internet issues, and I think each of you has an interesting history and approach to.

And perhaps we can start with you, Mr. Wittman. And just kind along through over to you, Mr. Deane, and we'll begin the panel that way with an introduction of your background.

And start there, and then we'll begin our discussion.

Thank you.

Mr. Wittman: My name is Harold Wittman. In the financial world, I'm a certified financial planner. And I'm secretary and a member of the Board of Directors of the American Association of Individual Investors. I personally am involved in buying and selling equities and municipal bonds for myself and for other people and clients and advise them in reference to this particular matter.

Mr. Hayes: I'm Roger Hayes. I'm with Banc of America Securities in Charlotte, North Carolina. I started in the municipal business as a municipal salesperson in 1972. I know lots of you here weren't born then, but that's how old I am. I've been involved with trading, underwriting, public finance, and obviously sales.

In the mid '90s, I was on the Municipal Securities Rulemaking Board and chairman of that I guess in '96 or '97, somewhere back in then. And currently I'm on the Bond Market Association. I serve as vice-chairman of the municipal division right now, and am chairing a task force on electronic delivery or e-commerce issues in the municipal market.

While I was chairman of the MSRB, I will never forget making a comment to Lynn Hume, over at the bond buyer. She questioned why the MSRB didn't just make a rule about this or that. And I said, "Lynn, the MSRB wants to be very judicious and careful about any rule it makes. As a matter of fact, there are people in the industry who already believe we've got too many regulations. It's just almost too complicated."

The next morning, in the Bond Buyer, there was a headline that said, "MSRB Chairman Hayes believes the municipal market is over-regulated." By 9:00 that morning—fortunately I didn't pick up the phone, because had I done so, I'd have had a heart attack. But on my voice mail was a call that said, "Roger, this is Chairman Levitt from the SEC. I would advise you to call me immediately."

And so it is with some trepidation that I am here speaking on an SEC panel but I hope everything is going to work out okay.

Mr. Green: My name is Jeff Green. I'm general counsel of the Port Authority of New York and New Jersey. And before I go into my background in defense of my friend, Lynn, who just walked in while you were talking, Roger, she would tell you that she didn't write the headline.

Mr. Hayes: Oh. Oh, okay.

Mr. Green: I've been involved in the municipal market since 1969 through my activities both at the Port Authority and with GFOA. And I was very active with GFOA from about 1979 until the present, including chairing their disclosure task force and with my good friend, Robert Doty, who's on the next panel. We basically co-authored the last set of disclosure guidelines, which were referred to in this morning's panel.

I've also worked with the 10 and 12 groups that assisted the SEC in the adoption of Rule 15C2-12, and some of the implementation issues that have come up since then.
Ms. Starr: I'm Amy Starr. I am a special counsel in the Office of the Chief Counsel in the Division of Corporation Finance. I have been at the Commission now for about eight years, and actually had my first experience with the muni market with the interpretative release from '94, and the amendments to 15C2-12 in '94.

So have had the wonderful opportunity to work with Jeff and others in this room since then, and I am what one would call the point person in CorpFin for muni issues and work closely with Kate on all these points. And I will be 100 giving you the CorpFin side of the world in the electronics areas.

Mr. Wendt: My name is Brad Wendt. I am president and chief operating officer of BondDesk.com. BondDesk.com is an Internet-based platform focused on retail distribution of fixed-income instruments. BondDesk.com has two broker-dealer subsidiaries. One for trading taxable products, which is called BondDesk.trading. And also one broker-dealer for trading municipal securities called MuniGroup.

I've been in the fixed-income markets for 15-plus years, both at Goldman Sachs and at Merrill Lynch. We are not trading as of yet in either broker-dealer subsidiary but we hope to be trading in the not-to-distant future.

Ms. Hyman: My name is Ursula Hyman. I'm a partner at Latham & Watkins out of the Los Angeles office. I'm also a member of the State of California Debt and Investment Advisory Technical Task Force and we'll be looking at many of these issues this year as well. In addition, in the wake of the Orange County bankruptcy, which is where I first came to know Paul Maco, I chaired a municipal task force on Chapter 9 reform.

Mr. Deane: Good afternoon. My name is Joe Deane. I'm the managing director at Salomon Smith Barney in New York. I've been managing money now for about 17 years. I've been in the business for 30. And at the moment I'm managing approximately seven and a half to $8 billion in long assets and about $14 billion in short-term money market instruments. And after listening to this panel, I'm assuming that I'm representing the plain English version of investment at the moment.

We're pretty well known in the industry for being fairly aggressive managers of money. And there are a number of issues that I think it's going be very interesting to discuss today in terms of the Internet. I think there are some real positives. I think there are some real questions and I would hope that we get to address both of them today.

Thank you.

Ms. McGuire: That's great. Would you like to tee up? What are the positives?

Mr. Deane: You know, it's funny. I think probably, you know, Harold and I represent what I would refer to in our industry as the end users of the product. You know, you can issue them. You can talk about, you know, disclosure. You can underwrite them. You can bring them to market. You sell them and everybody basically is giving each other high fives. And then our job begins. We own them and we have to follow them and we have to find out what's happening with the credit, what's happening in the secondary market.

And I think—I would say just from a market perspective, and I'm not sure exactly how Harold comes out on it. I think from a positive perspective, I think that the individual investor, I think it is going to, if they're knowledgeable enough with the Internet, to have access to a lot more information perhaps than they've been involved with before.

I will tell you from an institutional point of view, if you are a very plugged-in, you know, large manager of money today. The only difference that the Internet provides you with is that it may provide you with an electronic means of obtaining what you're already getting. I mean if you are well plugged in to most of the people on the street, if you have your own research department, which we do, then a lot of what the individual investor, you know, may get the initial access to across the Internet is probably something that we've been getting for a fairly long time.

I think the question, the positive question, that has to be asked is, will this give you the opportunity to access more individual investors out in our marketplace. And I think if it does, I think that potentially could be a positive. But I don't think that's a given. I think that's a question.

Ms. McGuire: Harold, do you have a view on that?

Mr. Wittman: We're all essentially speaking, I agree with what you have to say. The marketplace has gotten very affluent for the average person in light of the economic condition. People are looking more and more into two specific areas. They are looking for income capability that, quote, "has some tax advantages on their behalf."

The information for these sorts of things is very difficult to come by because it isn't made public. But the advent, however, of the electronics and the Internet, the whole picture I feel definitely changes. Especially by virtue of the fact that recently electronic signatures now aren't considered valid and legal in a sense of documentation.

Personally the difficulty in bond instruments or any type of lending instrument has always amazed myself and the people I deal with that while equities constantly update their information, give out quarterly reports, annual reports, without being asked to do so, the municipal bondholders seldom, if ever, get any kind of information or documentation as to the status of their holdings.

I mean if something could be rated AAA when they buy it, and it might get down rated for credit to a B, the average holder of that municipal bond has no idea that such an event even occurred, which is certainly detrimental to his basic interest.

Ms. McGuire: Oh, I'm sorry. Go ahead.

Mr. Wittman: And I think the Internet will certainly serve the purpose if full disclosure is permitted with Safe Harbors that maybe this will help alleviate that type of a situation for those that are interested.

Ms. McGuire: Jeff, do you want to describe how you use your Web site maybe to meet these informational needs?

Mr. Green: Well, yes. We really at this point are not using our Web site to the maximum potential that it's there for because really the use of Web sites for this purpose is in its infancy.

I think one of the things that we have to look at, and I'd just like to set out a few general principles, if I might, is that one of the things the SEC needs to consider when it considers the municipal market and electronic disclosure is that most investors have access to the Internet. I realize that some of the statistics are that maybe half the country has access to the Internet, but half the country does not translate into half the investors. I mean the vast majority of the investing public and the users of the information or the intended recipients of the information probably have access to the Internet.

Second, that information on Web sites and other electronic disclosure should be treated no differently than paper disclosure.

Third, and it was a point that was made this morning. The fact that information is available on a Web site or over the Internet could mean that there's more information available. And that should not mean that there will be more confusion in the market. And we have to be careful to have a proliferation of information result in confusion to the investing public. We must be careful not to over-regulate the use of the Internet. And I think that the SEC really needs to take steps to clarify the controversy over whether Official Statements or other archival material on a Web page is republished every day or every time somebody accesses it. And most important perhaps is we have to make sure that the costs to issuers are kept to the bare minimum. Particularly for the small general government issuers. The large frequent issuers, the cost are not likely to be a major factor. For the conduit issuer, the cost is not likely to be a major because somebody else is going to be paying for it. But for the small general government, the small town, the small village, that most of us are taxpayers to, we have to make sure that their costs and their access to making the information available is kept to an absolute minimum.

And lastly, I think the SEC needs to permit reasonable disclaimer language so that you can clearly segregate what information is market-based information and what information is marketing information for the municipality

And with those general principles in mind, I think that the use of the Internet disclosure will grow dramatically and will help facilitate trading in the market because I believe that more information in the marketplace leads to greater liquidity.

Ms. McGuire: Ursula, did you have something you wanted to add to that?

Ms. Hyman: I think Jeff's point is somewhat built off of Harold's point. The republication issue is very serious. And the idea is that every time you open up a document on the Web site, it's as though it's republished and so the Statute of Limitations starts to run again with respect to that disclosure.

However, if you went to a NRMSIR, and you took down the original OS, under which a security was issued, you don't start a new publication. And yet we're saying—or we're actually providing a disincentive to our issuers to not make information available to our individual investors, like Harold.

Harold and I were talking before this panel, and he said "Well, all the continuing disclosure is there. The problem is with the NRMSIR and the individual investor doesn't have access," and he said something which is a challenge to the two bankers here, and said, "You call your brokers and you say you want the continuing disclosure information, and they can't be bothered." There's no money in it for them to get it. There is no incentive to provide the service.

And yet in the way the rules are starting to be generated, the envelope concept with respect to how things are included, the issues with respect to hyperlinks and what happens if you're linked to another site, inclusion of information. All of these if we aren't careful will actually provide disincentives to our issuers to use this medium.

Ms. McGuire: Joe, I want to give Amy a chance to drive a stake through the heart of these things if she can. Do you have something short or long?

Mr. Deane: Just very brief, very brief.

Because I know what we were talking about before is, you know, granted only 50 percent of the people have access to the Internet, but a lot of them aren't investors. I want to make a distinction here between access to the Internet and the ability to use it.

Ms. McGuire: Right. I can't tell—

Mr. Deane: I mean the ability to play solitaire on your computer does not make you Internet accessible. And I think that there's a very, very big difference between people who are competent on the Internet and people who are investors with the ability to access it.

Ms. McGuire: Harold, do you have something quickly?

Mr. Wittman: I just want to add one more comment, and it may be premature but I'm sure you'll address it.

Not only do you have to have access to the Internet, not only do you have to be capable of utilizing the access, but the language has to be legible for the average investor. Legalese just drives me crazy. They want it in simple plain English.

Ms. McGuire: Right. I think we should take that one up next. There's been a lot of words thrown around here, envelope theory. I think Ursula did a really good job of explaining republication. And a few others.

Maybe, Amy, can you go through that list?

Ms. Starr: Yes, I want—

Ms. McGuire: And talk about what the SEC has said and this in reality.

Ms. Starr: Yes. What I want to do is—I'm going to start with the republication issue that I know is in the forefront of everyone's mind.

As you probably are all aware, the Internet release came out of the Division of Corporate Finance. And one of the issues that there was a question raised on to solicit comments was the concept of the ability to access historical information.

The discussion in the interpretative release that mentioned the republication issue was only intended to acknowledge that the republication issue existed and to solicit the thoughts of market participants and others as to how issuers can set up procedures, such as archiving, dating, putting exit screens, et cetera, to avoid investor confusion of what the historical information is intended to communicate.

The implication that the Commission was endorsing republication was not the intention of the interpretative release. The question is how do you post historical information, allow it to remain on Web sites, and avoid investor confusion.

I have been advised to advise you that at this point we should not expect the staff, or at this point I don't know that the staff would recommend that the Commission would take action to repudiate any discussion that was in the interpretive release, but it was not intended to have the Commission sanction republication, the republication theory as necessarily applicable to all Web site content and accessing historical information.

To the extent that the staff recommends that the Commission do anything in this area, it's going to be most likely to provide guidance on how issuers can use archiving and other means to minimize investor confusion and any implication of a duty to update historical information.

I hope that that clarifies somewhat the bogeyman that's been out there that the Commission said that republication exists in every case, that there's never anything that you can do to avoid an issue that the courts have raised in the context of whether there's a duty to update or a duty to correct information.

Our goal in the interpretative release, as I note, was to solicit thoughts and comments. I think that everyone recognizes that the electronic medium and the Internet is a very dynamic and changing medium. And the Commission and the staff of the Commission has every intention to make sure that we keep up to date and keep current and keep accurate with how the use of the medium fits into the liability and disclosure schemes that we're charged with regulating.

Mr. Green: Without putting you on the spot or trying to pin you down, we're trying to help clarify the issue, Amy.

If I could just read you two sentences and maybe ask you to clarify one of them.

Ms. Starr: Are you talking about from the release itself?

Mr. Green: From the release.

Ms. Starr: See, that—I think—if I know what you're going to refer to, you're referring to the exact language from the release that talks about republication.

Mr. Green: Yes.

Ms. Starr: As I understand that perhaps the language was not as carefully crafted as it might have otherwise been, because there was no intent to give the implication that the Commission adopt the republication theory as the legal theory of the Commission. And this is as I understand it.

From my folks on the electronics side in CorpFin, and so they wanted me to be sure to get that message across.

Ms. McGuire: So basically what I'm hearing, and remember, these are my own views, not the views of the Commission, but what I'm hearing is that in writing this document, when we got to the question section, we reported about a legal theory that the courts had adopted and we asked people to comment about how to deal with that.

Ms. Starr: Well, it's not even that the courts had adopted because I don't even believe that there's been any courts that have necessarily spoken to the issue of republication to date. I think it was issues that were raised by a number of legal commentators as to a potential issue that might arise when you transfer the paper world in the electronic world and accessing information.

Ms. McGuire: So with just the talking heads.

Ms. Starr: Based on my understanding perhaps, yeah.

Mr. Green: The sentence that seems to trouble most people, and I think you've dealt with it, is there's one sentence which is the second paragraph of the questioned paragraph dealing with access to historical information, which begins with the words "Commentators have suggested that if" statement. But it's the immediately prior sentence in the prior paragraph that begins—and this is one that's not been commented on much, "In effect, the statement may be considered to be republished each time that it is accessed by an investor, or for that matter, each day that it appears on the Web site."

Without putting words in your mouth, I take it you're saying that that is not the position of the Commission.

Ms. McGuire: It may be considered by those commentators that we're going to refer to in the next paragraph.

Mr. Green: Yes. That's what I thought I understood and I appreciate your expressing your personal views on that, both of you.

Ms. McGuire: I think there are two other really good words used that I'd like you to describe, Amy, if you would. The next word is the word "hyperlinking." And actually we received this specific question, which I could read to you maybe—

Ms. Starr: Okay.

Ms. McGuire: -- so that you could get a chance to have a drink of water or hear somebody else's question.

An opinion. "It is useful for investors to access information linked to issuer's Web site. Please discuss the status of linked information vis-a-vis Official Statement and information directly published by the issuer. In the Internet medium, why shouldn't links be allowed and let the investor weigh the source of the validity of the information?"

Ms. Starr: I think the first answer is, is there's no prohibition on hyperlinking information from your Web site to another Web site. You have a couple of issues that arise in the muni context as well as in the registered context, because they arise under the anti-fraud provisions of the federal securities laws.

If you have information—if you have a Web site up and you hyperlink to other information—I'll give two examples. One is you'll hyperlink to analyst report saying how great the bonds are. And another example is you hyperlink to the community calendar. In looking at the information that you're hyperlinking to and the reason for the hyperlinking, the questions become why have you hyperlinked? And do investors understand what you hyperlinked? The next issue that relates to it, and what have you done to protect yourself so that people don't think that this is your information? So that you're putting into context the reasons for the hyperlinking.

One of the issues that comes up in the first example where you're hyperlinking, for example, to an analyst report, is have you, by the hyperlinking, effectively made that analyst report your own.

And some of you may be familiar with—there are two legal theories under which an issuer can have liability for analyst reports and others, and it's known as the "entanglement theory" or the "adoption theory," depending on when you are involved with an analyst report. But, you know, are you effectively saying, "Look. I'm going to tell you to look at the analyst report because they're providing information about my bond. So really haven't I said, you know, focused you for purposes of, you know, as an investor to this report because I want you as a trading market to understand specific information."

The issue is am I liable for that information? You know, if you are cherry picking, you're saying, "Look at this analyst report but don't look at the negative guy." The likelihood is is that you may be in a situation where you in fact, you know, are becoming liable for the information depending on the role that you play.

I think there's another issue though is what is—if you're hyperlinking to another site, and have you adequately described or viewed the other site to determine what's on there. One of the areas that's discussed in the electronics release again is the liability or responsibility for information on somebody else's site.

Somebody asked me the question, "Well, if I hyperlinked to one site and they have hyperlinked to a second site? If I get comfortable with the first site, am I going to have liability for the second site?" And generally we would say that, yeah, you know, you probably should be concerned to the extent that there are hyperlinks, but I think the farther away from the issuer that you get, the more remote it is that anyone could really claim that they relied on that information in, say, buying your bond.

Ms. McGuire: Isn't there a rule of reason here though again. First of all, the way I read the electronics release, you look at hyperlinks that are included in offering documents are looked, scrutinized, very carefully because that's something you consciously put in. You said, "This is a part of my presentation to sell these bonds."

Ms. Starr: You've actually made a part of your Official Statement if you have a hyperlink in your OS.

Ms. McGuire: So as I understand it, the main focus is really understanding, you know, what's the context and what's the potential for investor confusion. And so the more removed it is, if it's a community Web site with a lot of information, some labeled financial, some labeled community calendar, then the link from the community calendar aren't going to be viewed as of a concern because you've already labeled it up in front that—

Ms. Starr: There are some areas that you look at, right.

Ms. McGuire: You're not—I mean this is not rocket science here. I mean first of all, we've only got 800 enforcement guys. We're not going to make it all the way to the end of the community calendar in the fourth hyperlink. I'm here to tell you. So at some point you have to apply a rule of reason. Amy can't give you a pass. For that, neither can I.

Ms. Starr: I mean I think you also do need to make a big distinction between the information that you're hyperlinking to from your Web site that may be sitting next to your OS. And hyperlinks that are actually what we'll call embedded hyperlinks, those are the ones that actually are contained in your electronic OS. You pull up the electronic OS. There's a line WWW. You click on that and you go to somebody else. Well, by having that active hyperlink in there, you've now taken all that information and put it into your offering document. And by putting that into your offering document, you're assuming the responsibility for it and the liability for it.

I think that's something very important for people to understand. The fact that you have any link to your community calendar sitting next to the link to your Official Statement on your Web site is a separate issue from when you have hyperlinks that are contained within your document itself.

Ms. Hyman: But, Amy, isn't there even a difference there? I mean you can have an embedded hyperlink, but if the appropriate disclaimer is around it, and perhaps you jumped to an intermediate screen, it makes it clear—

Ms. Starr: Well, we would never say that an embedded hyperlink can be disclaimed.

Ms. Hyman: In the '33 Act?

Ms. Starr: In fact, from a '33 Act standpoint, absolutely. I mean for purposes of 15C2-12, to the extent that you have an embedded hyperlink, it's effectively you are in fact making that document that you're hyperlinking to cross-referenced into your Official Statement. So that you are in fact then making it part of your Official Statement because your Official Statement is a document or set of documents.

Ms. Hyman: Well, this is where the challenge becomes with respect to, again, making the ease of the information and the securities laws—we always are all pleased to say, "Well, this is the process and the procedure and it doesn't affect the law," but what's happening as the

process and the procedure in and of itself is having an impact on whether or not we've got a fraudulent disclosure rather than the disclosure itself.

And so let me use the example of there are four or five analyst reports out there. You, as a good issuer -some are good, some are bad—you as a good issuer though want to make sure everybody has all of the same disclosure. You embed those and you go to an intermediate page that says, "These aren't ours. You understand you're leaving our Web site. You're going to another site. These are independently prepared." Having that be an ease for the—

Ms. Starr: But the thing you have to always keep in mind is you're selling securities. And in selling securities, I must—my personal reaction is if I saw any document offering securities that had an embedded hyperlink to an analyst report, one of my first phone calls would be to the issuer saying, "I suggest that unless you want to assume liability for everything that's contained in that analyst report, you may want to consider redoing your Official Statement and redoing your offering."

And if the answer to that is, "Well, no, I'm not going to do that," then my next call may go to the eighth floor to Enforcement, to say, "I think there's a significant problem here. We need to assess whether or not there's going to be liability to the issuer because—and what I'm talking about is embedding it in your OS. Not having it on your site.

Ms. McGuire: Ursula—

Ms. Hyman: We actually haven't used it because of the concerns that Amy has raised. But we were doing some hypotheticals earlier today and it seems as though, again, if there are four or five analysts' reports, we were talking to some individual investors who said, "I don't have access to get four or five. I can't get the rating agent to report. I can't get this. Gee, I'd like it, that I could go to the Web site and then reading one document and it could take me back and forth and I could read them."

So the idea is, again, can we—I mean this is a new age for all of us. Can we find a way of using the process and the procedure in such a way to ensure complete disclosure but without enhancing liability for our issuers who are—and that I think is a challenge that none of us have answered.

Ms. Starr: Well, I think that you have to distinguish between information that's hyperlinked from your Web site and information that's hyperlinked from your Official Statement. Because notwithstanding the fact that you want to have more information out there for people in order to have the totality of information. As I say, you are offering securities. The fact that you're doing it electronically is no different than you're doing it on paper.
So I would look at it and say by having that hyperlink in there, as if you took the paper analyst report and slapped it to the back of your OS and delivered it.

Mr. Wittman: I would never do it. Ms. Starr: And you'd never do it. Mr. Wittman: Never do it.

Mr. Green: But if you accessed it from another part of the Web site with appropriate disclaimers, maybe with a separate page or a pop-up screen, that would be okay.

Ms. Starr: And you have—well, I think the electronics really did deal with the issue of having hyperlinks to sort of the whole broad range of every type of report available on a company with—right, exactly. With the various exit screen, et cetera, as mechanisms to avoid

you taking the responsibility for the information that you're accessing through because you're going from one site to another.

Mr. Green: Let me ask you a question. Let's assume that I ignore your advice not to embed the hyperlink into my Official Statement, and I do it anyway on the Internet. And the embedded hyperlink contains another hyperlink, and it's not to a community calendar. Am I adopting that as well?

Ms. Starr: It could all be part of your—I mean in looking at it?

Mr. Wittman: What if there's no embedded hyperlink on the day I put it in the Official Statement. I put an embedded hyperlink into my Official Statement but there's no second hyperlink embedded in the second one, but one is embedded subsequent to my putting the embedded hyperlink in.

Ms. McGuire: I want to let Ursula explain what the envelope theory is, but first I want to let Harold—I'm not going let Amy answer this question yet, Jeff. I want to let Harold talk for a minute about his reaction to the individual investor's need for these analyst reports or whatever else he wanted to say, because he's been waiting awhile.

Mr. Wittman: In reference to what Amy had to say about these hyperlinks. It's easier to issue—one is the disclosure of the issue and marketing of the issue. I think we're talking about two separate entities, to be perfectly honest and to use your term, Amy, it is selling securities.

Now, if Safe Harbor language is used correctly, you can hyperlink in my opinion to any place you want to to providing you preface the entry to the hyperlink with a disclaimer, if you will, or with informed consent, if you will, to protect the issuer from having to take ownership of that particular issue.

Ms. Starr: Well, the only thing I'll modify in that is you don't have a Safe Harbor.

Mr. Wittman: All right.

Ms. Starr: There's nothing safe about it.

Mr. Wittman: Okay. What I was trying to say, of course, is the fact that you're trying to disclaim ownership to particular opinions referenced by the hyperlink. Because one is definitely a marketing thing. The other one is disclosure of the issue itself.

Ms. Starr: I think the only thing that the electronics release also dealt with was the validity of disclaimers and the circumstances under which they actually can operate to reduce, mitigate or eliminate liability, and I think that that really is going to depend on the specific facts and circumstances of what's being hyperlinked to, where it's being hyperlinked from, what's involved in the information. So I think it's hard to make a generalization that disclaimers don't work in all cases or work in all cases. It really is two facts and circumstances dependent.

Ms. McGuire: How many people in the audience are bond lawyers? Show hands. Not enough.

I find that bond lawyers really love these debates. Really. I've never found a group that could—really, just step back. And so I'm going to exercise the prerogative of the chair and cut off the hyperlink discussion. We can continue among the bond lawyers afterwards.
So we won't explain the envelope theory. And we won't answer the question about embedded hyperlinks on a written OS. They are all good questions.

I think what we're trying to say is that outside of the OS, there's a rule of reason. Inside the OS, it's really dangerous. Okay? Simple rule for simple people. For more complex, afterwards in the corner.

Joe, you had some positives and some negatives, and I'd asked you to start with the positives. Could you give us a negative?

Mr. Deane: I think when you look at the Internet as a medium of marketing, okay, especially when you take it down to the level where the individual investor is. Any question they need answered, I can get answered. Any perspective I need to get, I can get instantaneously. I don't have to really worry about getting them.

I think people on Harold's side, the Internet may be able to help you a little bit in getting some of that information that I can get instantaneously. But the thing is, once you start and you get past all of this stuff, and they're out in the secondary market, there are two or three things that kind of strike me.

And number one, if there's a new issue that's coming out over the Internet, which has happened once or twice, the first question as an investor I ask is, "Who did the due diligence on this deal?" And, you know, speaking of the mayor of the city that issued the deal, on the phone with him one day, I couldn't get that answer. Except "Me." And he goes, "If I've got to go sue you, what good does it do me? You're city hall." And if the whole theory is correct, you can't sue city hall. Then I'm in trouble.

Number two, it actually brings up a host of questions. I'll give you the simplest one in the world. As a fiduciary, I have a very, very large dealer operation. I own one of the two biggest in the industry. We're Chinese. We don't talk to each other. You know, we have no conversation other than "Hey, hey, nice day. Hey, nice day." Other than that, we don't do any business.

The question is, if you're going through some form in the future of an electronic medium, especially to the extent where the person on the other side of the trade is a blind trade individual, you could very easily be doing trades with your own dealer operation, which, number one, at the moment, technically are forbidden.

I'll give you another one that really concerns me. There are firms in our industry that I have cut off permanently for doing some really rotten things. I wouldn't want to give them the benefit of a single trade for the rest of my life. Even blindly. Certainly not stupidly.

Those are two questions I've got.

And number three—look, I'm not going to make the point too obvious, but, come on. I mean I know what bonds are worth. I know what bonds are worth better than most people in this business on a daily basis. So if I see something and it's an eighth or two higher or a quarter or two higher, I'm going to know that. I mean there are going to be people buying bonds over

the Internet that wouldn't know a bond from a cow. And they're not going to get within 25 or 30 or 40 basis points of what the bond is truly worth.

You know, the classic example is, you know, you go around and you talk to your friends. You know, everybody -not everybody, but a lot of people have access to the Internet and you'll find that people are going, "Oh, you know, I did a trade across the Internet, but I really know stocks." "Oh, you really do?" "Oh, yeah. I'm really knowledgeable." And you'll hear some people say that.

When was the last time you went to a cocktail party and some guy came up and said, "You know, I'm really knowledgeable on municipal bonds. I know them like the back of my hand." The question is, I think you're dealing in a medium that I don't believe personally, especially for the individual investor, sets up real well.

I think the U.S. Treasury market, for one, and perhaps the Ginnie Mae, you know, Fannie Mae-type of market, because it is a single generic issuer. You have Uncle Sam and all of your other issuers are Uncle Sam. In most cases, 85 to 90 percent, probably 95 percent of the debt that's been issued by the Federal Government is non-callable.

So you have a phenomenally generic bond that if you do know anything about interest rates, potentially you could know something about a straight U.S. non-callable Treasury in two years. But you start talking about housing bonds with prepayment calls. You start talking about bonds with letters of credit backing them up. And then you generate that down to Mom and Pop Jones out there.

I don't think mathematically on earth there's any way that they are going to be all that knowledgeable about it. I truly believe that municipals over the years—and I think it will continue to be—these are bonds and these are products that are sold with a lot of information behind them and not just bought. And I think that's the question here.

Ms. McGuire: Brad, maybe now would be a good time for you describe the focus of your business. Is it institutional?

Mr. Wendt: Sure. I'd rather just speak more in generic terms than terms and what I've witnessed over the last 18 months—

Ms. McGuire: That would be great.

Mr. Wendt: -- in the fixed-income and electronic market.

And I think it gets down to the question of who are you really empowering with the Internet. When I first started looking at this space and it's as recently as 18 months ago, we looked at a research report and we said, you know, what does the Internet really lever? And we came up with some key things. Information-intensive purchase, obviously municipal bonds. The tactile approach is not important. That means you don't have to touch the sweater in the store. And no one I think is too excited about touching bonds. The end user must be computer savvy. And finally, delayed gratification is acceptable I think, a delayed gratification is the definition of a bond, in terms of maturity at some point out there.

The point of my comment is that you have to look at the Internet as a tool for efficiency. And the question is, who is that efficiency focused at? We've obviously had a great deal of conversations revolving around the individual investor because it is an information-intensive

purchase. But equally important, if you can deliver information to the registered representative so he or she can better represent his or her sales position to his end using client, I think it's a very powerful medium.

So what we are seeing in the electronic trading world is the fact that the Internet is slowly replacing the telephone. And what I mean by that is, if we rewound the clock to 1/1/99, think about when you went out to lunch and you'd come back and you'd look at your spindle, and you'd have your messages stacked up in your spindle. You'd go to your e-mail, and you'd have three e-mails going. One's from your son or daughter.

Now, when you sneak out or you go back to the office after this meeting, you will probably have two or three phone messages and 42 e-mails. What we are seeing is people want to communicate electronically. And that is the evolution that we are seeing.

I've seen a lot of conferences where the buzz word is "e-bond 2000, a revolution is here." What I'd really say is "e-bond 200, the evolution is here." And what we are doing in the world of electronic trading platforms is making sure that we are able to very effectively transmit that information. And that's really the essence of what we are doing.

A specific platform can have up to 25 participants. They all have products to sell across the fixed-income spectrum. Obviously municipals are ideally suited because they are a prime retail product. Probably the number one fixed-income retail product.

But more importantly, the Internet allows you to have an information-intensive purchase actually understood in a cohesive fashion. There's 1.5 million Cusips for municipals. How can even a registered rep get his hands around that on day one. He can through research due diligence, but once again we're talking about efficiency here. Whereat his fingertips, be it the hyperlink, be it information on data services through Cusip. He or she can really be empowered in terms of better serving the individual investor.

Ms. McGuire: Thanks. Do you have any similar or different views, Roger?

Mr. Hayes: Well, I think that we really are evolving into a different business model. I hear what Joe's got to say down there about how the liquidity is being impacted by the fact that everybody can't know everything and so you can't really add a little spread to your knowledge as an investor, but what really concerns me is that originally in the old days—remember I told you I started back in 1992 -- but we had salespeople who sold our inventory. I mean that was why you had a salesperson. And a salesperson would call an individual. He would learn something about the individual and do the suitability. And then he would look through the inventory and then find one of your bonds to sell to that individual.

And if that didn't suit, then he would act as agent and on behalf of the individual, search the market and try and find something that really did fit the individual for his purposes. And that's the way the old business model worked.

Now what you're talking about in Brad Wendt's platform down here is commingled inventories. Our inventory and all the other dealers' and hypothetically—I mean theoretically you could end up with one of these screen scrapping services so that literally at the fingertips of an individual investor, you could have every municipal bond offering in the country available to that person.

Then the person goes through, searches out what he wants and then, you know, buys it. And I think—I'm afraid that some of the suitability issues and some of the responsibilities that the deal community had, and rightfully so, in the old days, it troubles me a little bit that the dealer community is going to be sort of stuck with some of the G-17 or G-19, the fair dealing or the suitability issues that we had when the salesperson really was in direct contact with the customers.

I don't have any answer for that right now. but it certainly does concern me some.

Ms. McGuire: Brad, how do you—Joe raised the question of due diligence. How do you see due diligence getting done? How do you see suitability getting done. Who's going to do the quality control about the products that are on these electronic markets?

Mr. Wendt: Right. And speaking in a generic sense, platforms are traditionally set up where you do have an electronic medium. And if you were to use an example of a multiple broker-dealers, they are really the end customer traditionally, so you'll have a broker-dealer who is contributing inventory so they are actually posting inventory to a centralized marketplace. And then you'll have another broker-dealer who will be distributing inventory. And traditionally that distributor of inventory will be buying the security from the contributor as principal, and he or she will be transferring that security to their customer.

So taking it back to what you'd like to call the perfect order world is not that dissimilar from the process which Roger just highlighted, where instead of looking at a screen and finding a security from another firm which would be of interest and value to your client, in the old days you'd do it telephonically. And now I think all you're doing is on a very sophisticated basis, an efficient basis is replacing the telephone with an electronic trading platform. So you have more choice at the fingertips of the brokerdealer.

So to answer your question specifically, the suitability and the rules, et cetera, reside with the brokerdealers executing the trade.

Ms. McGuire: Ursula?

Ms. Hyman: I think we heard from Lebenthal though this morning, their new approach, which is really designing models or suitabilities determined by a computer. Sort of the next move beyond just a platform for trading, whereby collecting certain information much like you would if you were trying to, you know, decide if someone was an accredited investor under Reg D, they could get certain information and then have a set of parameters on the computer about what groups of bonds might be best for that investor and then let that investor choose, and that seems to be the next wave of the future.

And I'd love to hear from the banks and other other bankers here about suitability or from the issuers about how they would feel about having their bonds marketed that way.

Ms. McGuire: Would anyone like to comment on that? Mr. Hayes: Oh, dear. Well, I think that the way that I think and Scott Martin may want to walk up here. He's with Bank of America on securities, and he is our compliance officer. In fact, if they're going like this, you know that I'm going to need to shut up.

But what we're going to try and do, at least what we're thinking of trying to do when we're going to be using the bond as a platform, is to do an extensive questionnaire that the investor must fill out. And, you know, what's your net worth? What's your experience? How

sophisticated are you? Do you have high-speed Internet? Are you going to have to download your stuff with just, you know, the old 14.4 modem? You know, what's your job? What's your income? What's your marginal tax bracket? All of that sort of thing. And then we hope, with a unique user ID and password, to say that investor may only see from us AA or better municipals.

And then our screen will only show him that kind of a security. And then from that point on, we'll have a regular review of suitability where he's got to update his screen and with an electronic signature say, "This is correct and this is where I am."

We don't have the Bond S platform up and running yet. But that's our best thinking at the moment. We probably—I'm going to have Scott here today so that he can take a report back so far as what he's hearing from this panel, but at this moment, that's kind of what we're thinking.

Mr. Green: From an issuer perspective, our interest is in having our bonds marketed in the most efficient, most effective and most cost effective way possible so that our issuance costs are lowered.

Now, intuitively, the most liquid the secondary market, the lower the marketing costs for the bonds originally are going to be. Now, I know that Joe has some markedly different views on that in terms of the spreads, and I know that Jim Lebenthal this morning addressed that a little bit.

But intuitively this type of marketing seems to make a lot of sense from an issuer standpoint. The suitability issue, which is a real issue from a legal standpoint than a bond lawyer's standpoint, which Kate doesn't want to talk about at this point, is not one that's a primary concern to issuers in this area because it's not a cost-driven question.
But I'd be interested in hearing Joe's views on these spreads.

Mr. Deane: You know, we were talking outside for a couple of minutes and I made one comment that actually seemed to make some sense, which is capital follows spread. It's a simple theory. It's a simple equation. And trust me, it works. If you take the spread out of a marketplace, the capital on Wall Street will walk out the front door. And I think anything that's taking place today, considering that we are in what I would call a somewhat capital-challenged market at the moment, I think anything that cuts back the spreads that people are working for right now is not only self-defeating but potentially self-emulating. Because I think that one of things that people don't realize is that if you're an institution, if you're a mutual fund or if you're an insurance company, a big bank trust department, buying a bond, buying an asset, is half of the green trade, selling it is the other half.

And any time that you limit my ability or my capability of making an excellent trade on the other side of that transaction, you are going to make me less willing to take on risk. You are going to make me less willing to take on your bonds in the future. And even though you may think generically on this bond deal, "I saved a dollar," that's great. If I don't buy your credit for the next 10 years, it's going to hurt you more than you'll ever know.

And the thing is, I have an old theory in life. I use it. I think it works. I never get mad, I get even. And the thing is, I don't forget when people gyp you out of -you know, trying to make people work for nothing in new issues. I never forget that. I just store it in the computer and later on I just remember it.

And I think that right now we are a little bit capital challenged as an industry. There's absolutely no question about it. And I think that anything that we could do that would increase the liquidity, even if it meant slightly higher spreads, I think in the long run for our industry would be infinitely infinitely better. And if the Internet can work to increase liquidity, I am all for it. And if the Internet will work insidiously to decrease liquidity, I will be dynamically against it. Because I think liquidity is king and will be for the next decade.

Mr. Hayes: Joe, you know, theoretically the promise of the Internet and the promise of the inter-dealer platform, from the dealer to the—

Mr. Deane: Yes, I wanted to make that distinction, especially with what Brad was talking about.

Mr. Hayes: Right. And I really applaud the recent MSRB release on setting up the sophisticated investor category. But theoretically what the inter-dealer or dealer to dealer and dealer to institutional customer, the benefit of that is that it's going to allow everybody to see everybody's needs. I need to sell this. I need to buy this. You know, that. And what you're able to do really is cut the dealers out so you don't need us anymore and you can sell your bonds and get your liquidity by showing it to literally hundreds of thousands of other bond funds and dealers who will show it to Hal what—I mean don't you think that's a good theory?

Mr. Deane: It's a good theory if you really don't need money and if you're in a dead-up market. The first time you hit a down market you're dead. You're dead. I mean one of the things that we try and do is we have—we have probably of all the institutional investors in this industry, we probably have the best relationship with Wall Street of anybody. And the thing is, you know, in an up market, you know, simple theory. Monkeys could sell bonds. But the thing is, when it turns less liquid, when the market starts to begin to go against you, if you don't have a relationship with somebody, if they don't feel a compelling desire and need to provide you with liquidity—

You know, there was a song years ago, "Just walk away, Rene." That's what they're going to do. Because they don't feel that you have given them anything on the other side of the trade. What do they owe you? And I think that hand-in-hand relationship that I've taken, you know, 30 years to build up with in the street, I think is very, very part and parcel with what I do in the industry. And I think it's a very personal relationship. Not an electronic one.

Mr. Hayes: So the aspect of anonymity doesn't hold any great allure for you.

Mr. Deane: I think anonymity right now to me would be a ferocious negative. I can get anonymity right now. I mean I can go to the broker-broker marketplace and very quietly work through a Chapdelaine & Co., or work through a J.J. Kenney, and on an anonymous basis, although people will look up and see whose bonds they are the minute they appear on Chapdelaine, you know, get anonymity to do a trade. That is not humanly impossible to do today.

But the thing is if I'm doing something positive for somebody, I want them to know it's me. So that someday when I knock on their door and go, "Hey, Fred, the market is dying. I need 100 million bucks. How about a hand?" I want them to feel utterly humiliating compelled to help me raise that capital.

And the thing is if you're doing it anonymously on the upside, trust me, they're going to be equally as anonymous on the down. And you know what? Up markets are easy. Down markets are where the whole game is played.

Ms. McGuire: Hal?

Mr. Wittman: The only comment I'd have to make. The direction I come from before I got involved with finances, I was in a service-oriented entity. I didn't deal with products. And obviously municipal bonds, just like other equities, are products. And the products are bought and sold and paid for by a consumer or the purchaser and the salesperson gets his fee, whatever you may see, between the sale of that item.

The interpretation of the investor is if indeed I buy from Bob a municipal bond and he gets a spread and he's entitled to that spread, I'm entitled to a service for that particular transaction that took place. This is sorely lacking. Because most people don't realize that there's an ongoing relationship that's got to be established or should be established for the future.

Issuers, on a primary issue, you don't care, don't give you that kind of service. However, if the issuer has to go back to the well later, he's smarter if he establishes a rapport the first time around so he can go back to that same person and ask for more.
So I think that's an issue very, very important and critical to what Bob had to say. The electronic age does remove a certain amount of personal relationships. Lots of people need that. They need to be stroked. They need to have their hand held. They have to understand that there's somebody back there who knows a little more than I do and can help me.

Mr. Deane: Now, Hal, just to add one thing to that. I did have a conversation with the mayor of a large city who issued a thing through the Internet with no brokerdealer or whatever. And I'm sitting down in my office two days later and I had been quoted in the Wall Street Journal the day before and I got a call. And I said, "Who is it?" He said, "It's Mayor Fred." I said, "That's great. Put him on." And he said, "Joe, I just want to introduce myself, blah, blah, blah. I'm the major of, you know, X." I said, "Okay." He said, "I read your article in the journal in the other day. I understand that you didn't buy our deal." He said, "Can you just help me out a little bit here bit?"

He goes, "You know, it'd save me money. I think you probably could have bought the bonds like a basis point cheaper than if I had gone another way." I said, "Oh, wow. That's huge." And he said, "Why wouldn't you do that?" And I said, "It's not that I won't, Mayor." I said, "But I'll tell you what. You need to have two pages when you do deals." I said, "On the first page, it can be the offering of your new issue." I said, "And then on a second page, I want you to print your bid side for every outstanding bond you've ever issued." I said, "And until page 2 shows up, you don't have to show me page 1. Because if you've got nothing but offerings and no bids, you are doing me no favor."

Mr. Wittman: Can I make one more comment? Electronic media has to be used by people who know how to use it, to give data that people can interpret. If not, basically speaking, it's a caveat emptor. The individual is buying it because they want a tax capability, or they want the income flow. But they're really not knowledgeable enough to buy it. They need somebody or some means on that electronic transfer that makes it intelligent to them so they understand the downside as well as the up.

I discovered in my experience in most transactions that occur the municipal bond, equities, real estate, syndications, et cetera, et cetera, very seldom do you find people telling you the downside risks of doing what you're doing. And people get into a lot of trouble because of that.

And that has to be explained more thoroughly and personal relationships do that for the intelligent investor.

Ms. McGuire: Jeff, what's your view on all this? Mr. Green: I wanted to follow up on something that Harold said a few minutes ago, where he talked about the issuer that has to come back to the market and does so with or without having information out there.

And in connection with that, I wanted to just applaud NABL in their recent statement a few weeks ago for encouraging issuers, although not legally required to do so, to provide information to the marketplace. We all know that under the securities laws an issuer is under no obligation to update information, but I was encouraged to see that NABL had taken a position that it is appropriate for issuers who need to come back to the market to provide information. Because as we know, the furnishing of information to the marketplace for the repeat issuers and the maintenance of investor relations programs by repeat issuers is very, very important in terms of maintaining liquidity in the bonds. And I think you've heard that flow through the discussion today. Most of the disclosure problems that we hear about tend to be the one-time issuers who have no incentive to do that, and the regulation has been along those lines trying to deal with those problems.

So it's good to hear Harold from the individual investor's standpoint make that point a few minutes ago.

Ms. McGuire: Ursula?

Ms. Hyman: Yes. One of the things Harold had talked about before we came in was, we were talking about the NRMSIRs and he said as an individual investor, I don't get this information. Why don't I? And I explained to him that the issuers would be happy in those cases to provide it but they don't know who he is.

One of the real challenges, and I do a lot of bond workouts that we've had, is the cooperation of the brokerdealer level once you go through, you know, you find out which street names the bonds are in, and having those brokers get information to their holders.

And I was a little troubled this morning when Jim Lebenthal was talking about maybe we're going to move to a portrayed kind of deal, and then we lose that investor relation Harold's talking about. And now no one's got the incentive. In a completely anonymous market, where everything is held in Salomon's or everything's held in BofA's name, and the individual investor.

And so it gets back to the voluntary idea of using the Internet to broadcast your information out there, and yet there's so little guidance, other than the technical release, for the conduit borrower or for the city or town or the small issuer. And there's so many traps for the unwary there that it seems like the challenge for all of us market participants are finding ways to give appropriate guidance on how and when and in what format and what disclaimers, et cetera, so that we can reach our retail market. Or we can get the banks to be more responsive to broker-dealers.

Mr. Wittman: It's interesting—let me say this. You talk about the sophisticated investor. That sophistication is determined by the broker-dealer basically to determine whether or not the person is.

I want to know, not that I'm against it because I think the electronic age is wonderful, I want to know how the computer is going to tell me that I'm sophisticated.

(Laughter)

Ms. McGuire: I don't think that they can tell you whether you're sophisticated. I think that weren't they just going to check and see whether you could afford it?

Mr. Wittman: That's possibly true.

Mr. Hayes: Well, we will know who is a sophisticated market professional. There's three very clear guidelines that the MSRB has set out as being the determining factor.

Ms. McGuire: I was thinking of your suitability. Mr. Hayes: But I mean I like you a lot, Hal, but you'll never qualify. I mean you don't have independent research analysts like Joe does. You don't have all of the accesses to the NRMSIRs. You just don't have everything that Salomon Smith Barney has at their fingertips, and so we just wouldn't take any chances to let you be a sophisticated market professional, whereas there'd be no question about Joe.

And that is a little something that bothers me. I mean I worry that we're taking too parental a view and in essence saying, "You're not smart enough" or "You're not rich enough. We've got all this information to do your own research, but we're not going to still allow you complete unfettered access to all of the potential investments that you could make." And it potentially is troublesome too.

Mr. Wittman: Doesn't it make me a loose cannon on the Internet?

Ms. McGuire: I think the suitability document that I know about has to do with recommending securities. And so actually anyone can buy anything in this country. We're still a free country. Some people do put filters in place because if they sell to anyone, they sometimes get sued if it goes down. And so they don't want to be sued. But it's not government policy. Those are litigation policies put in place by general counsels that have had enough bad experiences that they don't want to live with that. That's the way I see it in contrast.

The suitability doctrine says that if you recommend a security to a person, you have to have a reasonable basis for that recommendation. And then you have to know something about the security that you're recommending and you have to know something about the investor you're recommending it to.

And I think that's a doctrine which has served us well and made intermediaries valuable. And you've been talking a lot about dis-intermediation, and I understand the theories that you've been discussing about dis-intermediation and the cost of dis-intermediation vis-a-vis liquidity which is on the sell side, and also dis-intermediation in terms of a loss of particularized investor knowledge and information for dissemination.

Another role performed by intermediaries and one which we have a question from the audience about is the notion of best execution. And as markets in bonds become more public,

and their quotes actually are available about bonds, there will be new market data available for people to factor into, meeting their best execution obligations, which, as you know, is the obligation to obtain the best price for an investor with respect to, so it's not just to pick the best security if you're making a recommendation. But to be sure that investor who is seeking a security pays a fair price.

The question is, how will that be affected by online bond trading? I wonder whether any of you had given any thought to that, to the obligation to obtain the best price or the ability to obtain the best price.

You're looking for the best price everyday, Joe, so—

Mr. Deane: It's a very, very different question when you're dealing with a major institution and you're dealing with an individual. For me to get the best price, I mean even if I mess up, I'm not going to miss it by more than a dollar, which is really statistically irrelevant. For the individual investor, it's a different question. You know, most small lot trades in our industry are always marked up more simply because the cost of processing them is infinitely higher. I mean the cost of doing a ticket for $75 million is basically the same cost of doing a ticket for $10,000.

So best execution—I mean know what the NASD has and you've got screens and everything. In our business, it's a different type of business. And I'm not sure exactly down the road where that leads to other than tremendously great question. I'm not sure that there's going to be a central medium at some point that is actually physically going to determine that for the individual investor.

Brad, what about you? Any thoughts on that?

Mr. Wendt: Well, certainly through electronic trading we're going to vastly increase the data sources for both the registered rep and the individual investor. I would say that the one issue on liquidity today, the reason obviously, the equity markets are so highly liquid is they're all exchange based. And you can simply either pick up the Wall Street Journal or the New York Times or go over Yahoo and type something in and you'll get an immediate quote on the security that you own in the equities market.

I see the evolution of electronic trading where you will have marketplaces where they'll be a large number of dealers quoting prices on the same bond. And through that price, discovery process and also any price discovery process that is mandated by the appropriate regulatory agencies, and I think you'll finally get the information out there.

The point being today, without any electronic medium, there is simply no way to look at where the vast majority of your 1.5 million Cusips in the municipal markets are trading. Certainly the individual investor on average does not describe the bond buyer where they probably have quotes on anywhere from 500 -- probably 500 bond prices throughout the course of the copy of the bond bar. But now through the electronic medium back to the issue down here that Harold's making, if you're an informed investor, the data sources will certainly be available. And it's up to the individual investor on how he or she uses those data sources.

Ms. McGuire: I would like to mention, I haven't 148 used it myself, but I do know that the Bond Market Association does have a Web site up that reveals the current level of transparency in the muni bond market, which has been something we've been working for at

least 10 years, and that's Investinginbonds.com. It's available for those of you who'd like to check on the current level of bond transparency that's available to everyone.
With that, I would like to give our panel a chance to say any one last idea that you might have or else we can say thank you.

Anything?

Thank you very much. I really appreciate your participation.

(Recess.)

Ms. Simpkins: Welcome to the third and final panel on Selected MSRB Issues. My name is Mary Simpkins. I'm an attorney in the Office of Municipal Securities. And I will let each of the panelists introduce themselves briefly. But I should say that Diane Klinke, from the MSRB, came in at the last minute, so we owe a special debt of gratitude to her.
Mack, why don't you start.

Mr. Northam: Hi, my name is Mack Northam. I'm with the National Association of Securities Dealers, Director of Regulation or Fixed-Income Securities. And I want to thank the Office of Municipal Securities for the opportunity to be here.

Ms. Klinke: Diane Klinke, general counsel of the MSRB.

Ms. Currie: I'm Phyllis Currie and now an independent consultant but I spent the last 15 years as an issuer with the City of Los Angeles, the L.A. Department of Water and Power. I also had the opportunity to be a member of the Municipal Securities Rulemaking Board, acting as vice chair in the late '90s. And then I did a stint with the California Data Advisory Commission.

Mr. Zehner: My name is Mark Zehner. I am Regional Municipal Securities Counsel in the Division of Enforcement of the Securities and Exchange Commission. I'm also an ex OMS attorney-fellow, which may explain in part why I'm here. And given the fact that I'm an SEC representative on this panel, I need to give you my official disclaimer. All of the views today I express are going to be my own personal views. Will not necessarily reflect the views of the staff, the Commission, the Commissioners, or anybody else I can think of other than myself.

Ms. Arkuss: I'm Neil Arkuss. I'm a partner in Palmer & Dodge in Boston. I'm really a tax lawyer, which may raise the question why I'm here at all. And about the only explanation I can come up with is I'm here to catch Leslie's javelins.

Ms. Richards-Yellen: I hope I can throw some javelins. I'm Leslie Richards-Yellen. I work for Vanguard. I'm a principal and associate general counsel and I primarily service Vanguard Fixed-Income Group.

Mr. Doty: I'm Robert Doty. I'm a financial advisor for the American Governmental Financial Services in Sacramento. And I'm also a lawyer.

Ms. Simpkins: Actually one of the reasons for this panel is to just to increase awareness about MSRB rules. Because although these rules have been out there for a long time, we continue to hear reports of some problems. And I know that a lot of bond lawyers are only indirectly aware of them because they're not the dealers. They're not the ones dealing with these rules.

So part of the reason for having this is just to make sure that everyone is aware of them and can understand what dealers are going through in trying to comply with them. And with that in mind, I want to make sure everybody knows just what the MSRB is so I made a few points about it and Diane may want to add to this.

But the MSRB, the Municipal Securities Rulemaking Board, was created by Congress in 1975 by an amendment to the Securities Exchange Act to regulate dealer activities in the municipal market. It's the self-regulatory organization for the state and local government securities markets that is subject to oversight by the SEC.

It is a board. It consists of 15 members with representatives of bank dealers, securities firms, and public members, including at least one issuer and one investor. Violation of any MSRB rule is a violation of law under the Securities Exchange Act. The MSRB does not have enforcement power with respect to its rules. Its rules are enforced by the SEC, the NASD, and bank regulatory agencies. And for a lot of information about the MSRB, including all of its rules, I would refer you to their actual Web site which is WWW.MSRB.org.

So that background and the idea of this panel being we want to increase awareness, I guess the first topic we want to talk about is why aren't other participants more aware of the rules and what can be done about that.

Ms. Currie: Well, I guess since I'm the issuer of the group. It's been my experience that larger issuers who are in the marketplace tend to have a better awareness of the MSRB and their rules. So I would say that it's probably not extensive. And then when you get to smaller issuers, and those who are infrequently in the market, they probably don't know much about the MSRB at all.

Now, I know from the time that I was on the board and continuing, the MSRB has tried to do more outreach to try to help with this kind of situation.

But I think it's more a case that of an issuer has a lot of things that are high on their agenda. And the individual who has the responsibility for debt issuance in the organization may be the only person who knows that the MSRB exists. They're getting a lot of their information, however, from their financial advisor and their bond counsel about what the regulations are that the dealers have to adhere to.

And I know from my personal experience, the dealers might come in and behave in a certain manner or be concerned about some particular regulation that they're going to adhere to. They didn't always tell me that it was because that they were required to do something because it was in the MSRB rules. I've heard that over time.

So I think it's very helpful when issuers are aware of MSRB rules and the dealer requirements. It also would raise their sensitivity I think to things like having to get the Official Statements out on time and get them into the hands of the customer.

I also think that it's useful to remember that when you talk about an issuer, you are talking about a collection of people. It's not just the finance director. The issuer is represented by elected officials as well as appointed officials. And they have their own city attorney or other counsel. And you need all of these people collectively to be aware enough about the obligations of disclosure so that they act collectively to get some of these documents done in a timely manner so that rules can be adhered to.

Ms. Simpkins: And I understand the MSRB is doing some outreach programs. Maybe, Diane, could you tell us about that?

Ms. Klinke: Sure. Actually we try to do quarterly meetings in various regions of the country in which we usually have a local dealer, generally a board member, trying to get members of the community together. And this is not just dealers. This is investors, issuers, financial advisors, everyone in the community involved in the municipal securities market, to come together and at least get a feel for what the board is doing.

Today the way timing works out, many board members and staff members are up in Boston because we were having a regional meeting today and our hope was to get 50 or 70 people, and we usually are able to do that. And just to give a little more explanation about who the board is and what we're doing.

Because Phyllis was exactly correct when she said many times dealers will come in to an issuer, to an FA, and say, "Okay. We need to get this Official Statement done. We need to do all these things. But possibly before—some of the recent enforcement actions and other things on G-36, which is our rule about Official Statement delivery requirements to the board, and G-32, which is actually the most important, delivery of Official Statements to the market, to purchasers of bonds.

Sometimes they went in and didn't explain it was a rule requirement, which was their basic reason for pressing to get these documents done.

And so on that level, it's extremely important that issuers and bond counsel, financial advisors, recognize that there are very strict rules and requirements that dealers are supposed to follows. Things that are just the dealers' own duty and obligation to act and comply with this one thing. But when those rules like getting Official Statements out to the customers and to the board, when that is so dependent on issuers and bond counsel and FAs and everyone acting together to get the documents done, it's very important that that message should be provided to all the underwriting participants so that they understand the necessity of getting a document like that out.

We actually did a study when we received additional information on our forms G-36, and it was published in June of '99, that basically said from the information we have received, 20 percent of the time issuers did not provide final Official Statements to underwriters within the seven business-day time frame set forth in the 15C2-12 contract.

That's problematical, because there is a contract that pursuant to the rule, underwriters are required to enter into with issuers to get the Official Statement in a timely fashion, and a very important requirement.

Our Rule G-36 does give underwriters at least three extra days to provide the document to the board, and we did, through this statistical analysis, determine that with those extra three days, 97 percent of the Official Statements were done. But still 3 percent of the time underwriters just did not get the documents from issuers in time to turn it around and provide it. And, again, as I said, it's not just a question of providing the document to the MSRB, who then we turn it around, put it in electronic form, and turn it around to information vendors for the market. But also vitally important Rule G-32, which requires Official Statements to be provided to customers. That's the main point. That the customers, the purchasers of these securities, receive final Official Statements. As the time frame that the Commission put in

place, as a very good time frame, within seven business days from the date of sale, let's get that final Official Statement done.

When that's not being complied with, and, you know, it's the whole—it's the underwriters, it's the issuers, it's the FA. Everyone is involved, I believe in most instances, in getting the final Official Statement done. When that's delayed, you're holding up the whole process so that it might be problematical for customers to get that final Official Statement by settlement, which is a requirement of the board and a very important rule, as the board has determined.

So if everyone involved in the underwriting process has a little more information about those kinds of rules, I think it can only help the timing. And people—and many times it's not they're deliberately not getting the document done. There's a lot of things to be done between sale and settlement. It's just a question of everyone in the process recognizing that there's a lot to be done paperwork-wise. Let's give everybody the time to get things accomplished so that vitally important information gets to the customer.

Ms. Simpkins: We may want to talk about G-32 and G-36 a little bit more later in the program. But actually the first issue we'd like to talk about is the so-called exploding bond counsel opinion and the possible application of Rule G-15 to that problem.

This was something that was brought to our attention by the buy side of the market, so I'm going to let our buy side representative, Leslie, tell us what the problem is from their standpoint.

Ms. Richards-Yellen: Well, basically the concept of an exploding opinion is carve out in an opinion, and it tells you if after the date that the opinion was delivered, if there is any subsequent act, that the opinion is no longer valid. That's the exploding opinion concept. And there had been some talk about marrying that concept with the delivery, which is G-15. And basically what the delivery is is that what buyers expect is to get the legal opinion and legal documents. And if we purchase a bond without a legal opinion or legal documents, that that should be notated, that we'd gotten them, a legal opinion.

So those are the two concepts. And although I understand the tendency to want to put it on G-15, I don't think exactly that delivery of a bond issue to a purchaser without a valid opinion falls within G-15. And I'm going to talk about that in a minute.

But let's look at this from the investor's perspective. In the secondary market, we get an offering document. And the offering document has the opinion in it, and the opinion may have an exploding provision which says that it may go away. But that was written, let's say, five years ago, and the bonds are outstanding for 30 years.

So when we see our OS, we see there's an opinion. The opinion is good because we assume the opinion is good unless someone tells us that the opinion isn't good. We go to Bloomberg. Bloomberg says nothing. We go to the NRMSIR. The NRMSIR says nothing. And maybe the reason for that is because under 15C2-12, the security for which the opinion is attached to is exempted. It could be a variable-rate demand note. Or it could be that under one of the 11 material events under 15C212 that the issuer went to bond counsel and said, "If the fact that your opinion went away, is that material and maybe bond counsel didn't determine that that was material." So that may be a reason why we don't get the notice.

But the issuer is sitting there with a bond, with a bond opinion, and with no notice that the bond opinion is no longer valid. And these opinions are part of the security, a very material important part of the security, and that's why we buy them because they go into tax-exempt bond funds.

If we didn't think that the bond was tax exempt, we would expect a higher coupon on the security, but we're assuming that it's tax exempt because there was an opinion and the opinion was attached to the Official Statement.

So the only people at this point who may know that there's no longer a good opinion on the bond deal would be the issuer because if the bond deal was going to be changed, either the issuer initiated it or the issuer perhaps knew, or perhaps the underwriter that made the structural change.

So those are two parties that may know, but the bondholder, whether they're sophisticated or not, they don't have any idea that the opinion that they're relying on is no longer there.

Where I think the good idea that someone had was that maybe you could tie the idea of good delivery to an exploding bond opinion, I think it's a good idea and I think there's emanations in the MSRB rules that you could use to try to tackle this concept.

For example, there's G-17, which is the fair practice rule. And G-17 has a lot of good language, and some of the hooks that you could try to hang this concept on are that the bondholder should have adequate disclosure, that they should understand what they're buying, and that you should tell bondholders what a reasonable bondholder would want to know. There's also G-30, and that's fair pricing. And obviously if the market thought that they were not buying a tax-exempt bond, they would not be willing to pay the same price for it. So there has to be a reason for us to pay that price and I think that's a relevant factor to know that there's no opinion on the bond deal.

I think it's unfortunate that we can live in a world where an investor can buy a bond and not know that the bond opinion is no longer good. And I think in the future maybe it's something that bond counsels can start to think about, because there's ways to structure the deal in a way where the opinions can explode.

For example, you could say there has to be a put on the bonds. If there's ever a time when the bond opinion could explode, that before that happens, you tell the market. The market can put and the put price would have to be some kind of hard put price, because we've spent billions of dollars analyzing the bond. We've spent money every so often looking at the credit again to determine that we should still hold it. And we don't want it taken away from us unless it's painful. So puts could be provided.

Or the subsequent opinion for the second event to happen, that opinion could have to be some kind of a bringdown opinion so that we're not left with a gap period without an opinion. Or lots of bond documents provide that you go back to the original bond counsel that that's okay. But I just posit the situation in which the original bond counsel goes out of business, and it would be impossible.

But I believe in structuring these bond deals in a more careful way that bondholders won't be left on the hook with the possibility of (a) there's a gap period in the tax opinion; and (b) they have no possibility of getting notice that there isn't an opinion.

Ms. Arkuss: We feel your pain, Leslie, but there are about a dozen things you mentioned with which I don't agree. So I might as well start listing them.
But before I do, I think maybe we should try to put this exploding bond opinion in context. And also I think I'll just take the time, since I'm one of you and not familiar with all the MSRB rules to explain to you that the issue does arise under G-15 under a clause which says as follows. "Delivery of certificates without legal opinions or other documents legally required to accompany the certificate, shall not constitute good delivery unless you identify it as ex-legal at the time of trade."

I think it is my view, I think it is the view of the organized bond bar that an opinion, an exploding opinion, is good delivery on the time of issue and there is absolutely no MSRB issue under G-15.

Ms. Klinke: Let me just jump in. Fifteen does not apply to the situation.

Ms. Arkuss: Thank you.

Ms. Klinke: At all. And the issue is because the section quoted is, as noted, a good delivery provision. And it only applies to physical delivery, which is only a certain percentage of the market now anyway.

And it was kind of a holdover from the ba-zillion years ago when bonds were not even printed. They were typed up and you would staple a legal opinion to it, so that unless you knew the little printed-up bonds you had for some reason didn't have the bond opinion, you know, you would trade it ex-legal. But that's really the extent of that.

So Leslie's issue, if material, it is a G-17 or something else. Fifteen does not apply.

Ms. Arkuss: I'd agree with that. Let me read you some disclosure language of an exploding opinion so you can see exactly what it is.

Certain agreements, requirements, and procedures contained or referred to in the indenture, the loan agreement, the tax agreement, and other relevant documents, may be changed and certain actions may be taken or omitted under the circumstances and subject to the terms and conditions set forth in those documents.

Here it is. "No opinion is expressed herein as to any bond or other interest thereon if any such change occurs, or action is taken or omitted upon the advice or approval of counsel other than ourselves."

Now, you may think that that's a business promotion paragraph and in many ways I think it is. But there are two kinds of exploding opinions. One is where the opinion explodes when an action is taken and it explodes as of the time that action is taken without the approval of the original bond counsel. I would call that the conventional exploding opinion.
Then we have the nuclear exploding opinion in which bond counsel goes to the trouble of saying that the explosion is retroactive to the time of issue.

And if I have enough time, I'll explain to you why those all came into being, but at least with respect to the conventional exploding opinion. It is not in the NABL model opinion form. Many, many bond counsel firms do not use an exploding opinion because they believe that their

regular opinion, without this statement, is an exploding opinion. And that the exploding opinion is no more than putting down on paper what's perfectly obvious to everyone. It's like the study of sociology.

(Laughter)

So—I'm glad someone's listening. So that's one point.

The secondary market issue of whether a poor bondholder is purchasing a bond upon which the opinion has already exploded is one that I'm extremely sensitive to. The problem is bond counsel doesn't know it any more than the bondholder does, who knows it, the issuer who took the deliberate action that caused that bond to fail its tax exemption by failing to pay a rebate or changing the use of the facility. Or perhaps some structuring agent who has remarketed the bonds in such a way as to pull their bonds into question. But, again, without the purview of bond counsel.

The truth is bond counsel's opinion speaks as of the date of issue. And anything that happens beyond the date of issue, not within the control of bond counsel, is, in my judgment, not covered by that opinion.

So that's my view. I think it's harder to defend the retroactive, the nuclear explosion. I think that just for purposes of background, many of the tax transgressions one can commit post-issuance result in taxability, at least theoretically, of an issue. You fail to pay a rebate is a perfectly good example. Your bonds are taxable from the date of issue.

I think that out of a concern for potential liability, whether real or imagined, when the exploding opinion was invented, to make clear what I say is perfectly obvious anyway, people said, "Well, if we don't make it retroactive to the date of issue, we may be in somehow misleading the recipient of this opinion as to the consequence of a bad tax act subsequent to issuance."

But, again, I don't write exploding opinions explicitly in either circumstance. But I do not think they're offensive. I just think they're surplus.

Ms. Richards-Yellen: I'm glad we agree that bondholders should have noted when they don't have an opinion. And I think that's a fundamental right. If you think you're buying a tax-exempt bond and you're not, you should know that. And I'm glad we found consensus, like Gore and Bush, on something.

However, in addition to the opinion that we're buying, which speaks as of the date of issuance, I believe we're also buying tax compliance into the future for the life of the bond. So we're buying someone's mind and that someone went out, they did diligence at the facility, they asked, let's say, the hospital. They asked the hospital all kinds of relevant questions on which they base their tax analysis. They created a tax certificate. The tax certificate was explained to the hospital. The hospital knew what were bad acts, what were good acts. And they created a procedure to carry the deal into the future. And that's a part of what I believe that we're buying. And when an opinion explodes, the nuclear explosion, it's unclear to me what we have left of that diligence system.

Ms. Arkuss: Well, my only response to that is I think you're accurate in saying exactly what you have bought, and I don't think whether the opinion explodes or doesn't explode

changes that result one iota. We're talking about situations. The backdrop for this back in the '80s was when we did not know the tax consequences of a change in mode. It was prior to the new issuance rules and the Cottage savings regulations.
Now we have a set of post-issuance, factual impairments to the bond tax exemption, such as a change in use of a bond finance facility 18 years after the bond is issued, that's the bond counsel's engagement. He has set up all of the tax compliance. He has explained to the issuer that you cannot invest bond proceeds in a villa for the mayor. He's explained that you can't sell that office building, even though real estate prices have gone up, to IBM without paying off your bonds.

But it happens. It happens. Now, his opinion does not run to that change of circumstances, and all you're doing in the exploding opinion in my judgment is telling—as a matter of fact, it's over-disclosure. It's telling you, the bond purchaser, that because of the perversity of our Congress, there are many things that can occur subsequent to the issuance of the bond that affect its tax exemption.

Mr. Doty: Well, I agree with what you're saying, Neil, and also agree with Leslie's concern.

Part of the answer may lie, Leslie, at the time of the original transaction. You know, usually the issuer makes a covenant not to take action to cause the bonds to become taxable. You might extend that to say, "Or to result in the withdrawal of the bond opinion." Now, that's a possibility.

I've been sitting here struggling to recall what the 11 deadly sins are. I know there's one that deals with the tax opinion, but it may be that you actually receive another opinion, so perhaps that one doesn't fit. But what about 10b-53? A course of business operating as a fraud. Doesn't the issuer implicitly represent at the time of the transaction that it's not going to cause these bonds to become taxable or cause difficulties in trading?

We can't have this kind of difficulty in liquidity or this uncertainty about bonds. Something needs to be done so that the situation is clarified. And if the issuer wants to use another bond counsel, let them use the other bond counsel. Let the other bond counsel issue an opinion.

Ms. Richards-Yellen: Bring-down.

Mr. Doty: Right.

Ms. Arkuss: And if the opinion explodes, and if some other bond counsel issues that opinion, I think what Leslie's objection would be is she didn't buy the opinion of that bond counsel. She bought the opinion of the original bond counsel for the life of the deal. And I don't know how to fix that in the typical bond transaction.

Ms. Richards-Yellen: Well, right now I just want to know. I mean right now I don't even know.

Ms. Arkuss: I understand. And we're on the same side on that issue.

Mr. Zehner: Let me break in here though for a moment, if you don't mind me putting my enforcement hat on, at least my personal enforcement hat on, because I also want to take this issue and take it one step up the extraction ladder, as I would call it.

To me this is just one more variant on a tension that is still in existence in the municipal marketplace, and that is the clash between this concept of an unqualified legal opinion as to the tax-exempt status for the bonds, on the one hand, and the theory that somehow because you've got that unqualified tax opinion, you don't need more than your standard boilerplate, you know, cut-and-paste tax disclosure in your Official Statement.

And one comment to that got my ears perked, if nothing else, which is that this exploding bond opinion problem is to some degree an example of over-disclosure. I disagree. Particularly given his description of what some product practitioners believe, which that this is built into the opinion anyway. This is nothing new. Everybody should already know it. Well, clearly from the reaction of some of the institutional investors, that's not the case. In my mind, part of the concern is if you listen to the language he read off, it's very unclear to me what would trigger this. You know, some deals are structured so that you need a second opinion of bond counsel upon the occurrence of certain events, or if you wish to do certain things. Change your mode, sell a piece of the property, whatever.

The question I have is were those items that required receiving an opinion of counsel disclosed so that the institutional investor can go to the list and say, "Okay. I see the issues here. I see the various break points, the various events that might occur that might trigger the need for a second opinion," which would then, in turn, obviously be the trigger for the exploding bond opinion.

But it's not there. Or may not be there. That's one of the questions, whether the summary of the institutional -- --

Similarly, there's ambiguity here as to what the consequences are of an exploding opinion. Is it a situation in which you simply get a replacement, an equally valid opinion, that goes back to the initial issuance so that everybody's still covered. It's just a question if he knew there was a piece of paper. Are you truly left without any opinion? Is there an issue here as the underlying tax status of bonds, or are we simply quibbling over whether or not people are comfortable opining to the tax status of those bonds?

There's a lot of different issues here, a lot of which can be dealt with an extensive disclosure of initial issuance. But—

Ms. Currie: Let me interrupt just a moment.

You know, I think—I've been in a lot of these situations where questions come up on whether a facility, for instance, that was financed with tax-exempt bonds can be used for a certain purpose, or leased to somebody or sold to somebody.

And, you know, hopefully speaking for the responsible issuers, you have an administrative obligation, you know, once you issue debt, to sort of oversee how the proceeds are being used to ensure that you don't your taxexempt status.

And typically an issuer would get an opinion if they are contemplating something that even calls into question whether the bonds are going to remain non-taxable. And you typically would go back to the bond counsel that entered the opinion.

Now, I don't know that it's written somewhere that you have to do that, but when you start using, you know, common sense and a little bit of logic, I mean it kind of leads one to

think that it would help to go back to the bond counsel who wrote the opinion to ensure that they still would stand behind their opinion if the issuer now uses a facility in a manner that wasn't contemplated.

Now, from your standpoint, if, as an issuer, I did something and I did now call into the question the taxability of the bonds, I either have to cure it somehow by taking the financing out and replacing it with some other source of funding, or, you know, under the disclosure rules, give notice that I've now done something.

Ms. Richards-Yellen: I'm not sure about that. I wish I were sure, Phyllis. You were talking about 15C2-12, the 11 deadly sins.

I think it's the sixth deadly sin for tax, and it says, "Adverse tax opinion or events affecting the tax-exempt status of the security."

If you get a subsequent opinion, you're probably not there, and even if an issuer did have a question of whether or not they had breached this sin, it's a bond counsel's determination, so most issuers, I think, Neil, go to their bond counsel and say, "Here's the facts. Do I have to disclose it? Is this one of the 11 deadly sins?" And it's a case-by-case determination.

Ms. Arkuss: Well, it's even before that.

Ms. Richards-Yellen: Yeah, well, that's the second sin.

Ms. Arkuss: 99 out of 100 cases, Phyllis is absolutely right, if an issuer of bonds is thinking about doing something that they're unsure of under their bond documents, the first person they call is their bond counsel to ask them if it's okay.

This exploding opinion situation deals with the case that that doesn't happen in. And we are as much in the dark as you are. Because they've asked their Uncle Murray whether it's okay if they build a villa for the mayor, and Uncle Murray says "Fine. $40,000 please." And you don't know.

Ms. Currie: Murray is the mayor's brother, so what else would he say?

Ms. Richards-Yellen: But Uncle Murray should at least bring it down. I see the possibility of having an exploded opinion and then Uncle Murray opining on subsequent fact and there being a gap period between the original opinion and what Uncle Murray did. So I see that being a problem, and the second problem is that investors should know that Uncle Murray gave an opinion.

Mr. Zehner: And I would like to point, and this is perhaps my own perspective, but somehow in enforcement, we always deal with the 1 percent that's bad, not the 99 percent that did the right thing.

I'm not disagreeing with anything that Neil had said here. 99 percent I think will do the right thing, will go back to the original bond counsel. There will be no issue and issuers will march on without any concerns.

Obviously to some degree there is a structural solution here which is to add in your continuing disclosure contract that you will give notice to NRMSIRs of any context in which

the original bond counsel opinion explodes, regardless of whether or not in fact you believe the underlying tax status of a security has been threatened.

And I can see the reasonable counsel disagreeing saying "Look, I'm not going to give the opinion, but you are capable of giving the opinion." We have an explosion opinion as a result with respect to the original bond counsel, but as you were saying earlier, the issuer is still comfortable with the underlying tax status of the security has not changed.

Nevertheless, I think there's a good practice to include that kind of thing in continuing disclosure agreements if you are also going to have a continuing bond opinion provision. It seems to be simply the obviously logical consequence of that.

As I see from my perspective, the more intriguing question here, and it's the one that I think we're all struggling with, is how to deal with the fact sometimes you have situations like this in which reasonable bond counsel can disagree as to the tax implications of a change. Now, okay. Now, funding the multi-million dollar villa for the mayor is a relatively easy one. But you can get into a large number of areas in which it's not so obvious. It's not so easy. And it comes back to this question of whether or not the tax opinion is truly drafted such that no court would reasonably come to a contrary conclusion.

We're kind of backing ourselves into the reality that to paraphrase what was said at the first discussion, the first panel today, we're in a very complicated bond world now. The tax aspects of municipal securities generates a lot of very complicated issues. And yet we still have, with respect to disclosure of those very complicated issues, a nice, you know, three-paragraph boilerplate section in the Official Statement.

And there is attention there. There is a challenge there. And I think for those of—no matter how many people in the industry would like to think that the whole yield burning saga is now ancient history. The door has been closed and locked and we'll never reopen that door. The reality is that so long as that tension still exists between the reality of the likelihood that the court or the IRS would ever hold otherwise on the tax opinion, and that skimpy disclosure, with respect to tax matters, you're going to have trouble. And somehow those two issues have to get going somehow.

Ms. Simpkins: I guess from my perspective, and I should have given a disclaimer that everything I say is my perspective. It's really a problem from the investors' standpoint. Do they have notice about what's going on later on?

And I don't know, Diane, if you have a view if G-17 or G-30 or any other would cover this situation?

Ms. Klinke: Yeah. The whole thing with G-17 is the requirement for dealers to disclose material events. You have to determine first whether the fact the issue is material but also it has to be something a dealer could actually find out about.

So that if it is a fact that just an issuer knows, and as Neil says, the bond counsel doesn't know, and if it's not part of the 11 deadly sins, they might not be under an obligation to provide, then I don't think one could even say a dealer under 17, even if it's a material fact, would be responsible for providing the information if it was not public. You know, the material fact requirement is really prefaced on either public information or information the dealer otherwise has. If the only people in the world who knows there was some change in the use of a facility is the issuer, I don't think there's any way to have a dealer liability under even G-17.

Clearly the price is not right. But, again, when the dealer has absolutely no idea about what's going on, it would be a hard case.

Mr. Doty: But, you know, the more I think about it, Leslie, the more I am coming around to the idea that maybe the original continuing disclosure agreement is a good place and then maybe the support of an organization such as the NFMA to get people to focus on this would make sense.

It's been I think reasonably successful. NFMA hasn't got full compliance with everything, but I think on a specific issue, I would bet that you could get some satisfaction. And the good thing about it is that if later on you get the opinion of Uncle Murray, and Uncle Murray really gives the opinion and you question that opinion, there's always the alternative of jawboning the issuer at that point and being able to step in.

So I mean I don't think that it's a situation in which you would be totally helpless. It doesn't take care of all of the concerns, but I think it gives you a lot more tools than you have now.

Ms. Richards-Yellen: It does give us more tools but there's a big section of the market that's excluded from 15C2-12 which are money markets, variable-rate demand notes. So that would still leave the inability for those kinds of funds to get this kind of information. But I do agree with you that it's a good start.

Mr. Doty: Well, there is always that covenant of the issuer not to take actions that affect taxability, and, you know, you can negotiate on those covenants even in variable-rate obligations.

Ms. Richards-Yellen: Can I just dispel one thing? Someone else said it in another panel. Individual buyers—you know, you're assuming that we would have seen it in the primary market and -- -- the covenant.

Mr. Doty: No, I understand your problem.

Ms. Richards-Yellen: And that's not always the case. And even if that were the case, individual buyers have one—you know, Vanguard has one voice. We can't make an underwriter or issuer change the provisions of a bond. I mean we try but we can't unilaterally change that.

Ms. Arkuss: Let me just say one final thing about this. the discussion we've just had over the last 10 minutes, tax compliance and the standard of care in giving a clean tax opinion, tax disclosure, are questions that I wrestle with all the time.

I think my point, if I want to leave you with one, is that whether or not there's an exploding opinion doesn't change that one bit. It is what it is. And the fact is, and it is well disclosed. I do not agree with the characterization by the gentleman on my left that it's skimpy. It is well disclosed in the tax section of every OS that the tax exemption is subject to act and failures to act subsequent to the date of issuance.

Ms. Richards-Yellen: But exploding opinion takes it away as of the date of issuance.

Ms. Simpkins: Yeah, once that happens, don't investors have a right to know that?

Ms. Arkuss: I don't disagree that they have a right to know it. And I absolutely don't disagree with that.

Ms. Simpkins: Well, this might be a good point to move on to a discussion about Rule G-17, which is a fair dealing rule and which has been described as an omnibus and a very expansion rule. And if you haven't read it recently, it's very short. It says, "In the conduct of its municipal securities business, each broker-dealer and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive dishonest or unfair practice. And in preparation for this panel, I went back through all the cases that our office had compiled in the municipal securities area and I looked under the "Underwriter" section, I was looking through there, and I noticed we had charged G-17 violations in a lot of those cases. So I'd like—would any of the panelists care to talk about the application of G-17?

Mr. Doty: I'd like to say some things about it.

I think G-17 is a rule everybody needs to know about. It's a real sleeper in some ways because people have not paid attention to it.

In some ways it's narrower than 15b-5 because it only applies to dealers. But having said that, if you look at the language of the rule, it is far broader than Rule 10b-5 in many, many ways. And the Commission has used it over and over and over and over again. Now, usually the Commission has used it in enforcement actions in conjunction with a lot of other violations. But all that accomplishes is it builds the body of precedent. That such and such an act, among other things, was considered to violate G-17.

G-17 doesn't require scienter. It does apply to deceptive acts but it also applies to dishonest acts and unfair acts. I question whether it even requires negligence. The history of the adoption of G-17 makes it clear that it applies to all of the dealers' municipal finance business, not merely their sales to investors, not merely their underwriting of securities, but also their financial advisory business, investment advisory business. It applies to everything they do in the municipal market.

And so it is extremely broad. And I can give you two examples of enforcement actions based solely on G-17. One I believe is the release on Lazard and Merrill arising from the Mark Ferber situation. That release is around 1995/96. And I believe the only violation cited there is G-17 and the section of the Exchange Act that prohibits violations of the MSRB rules. There's also another action which technically is still pending because it's on appeal to the Commission. And that's the Wheat First decision last December. In the Lazard/Merrill situation, it was non-disclosure of arrangements between Lazard and Merrill that affected the financial advisory business of Lazard in providing financial advisory services to its clients. And in the Wheat First, it was violation of a contract between the financial advisor and the issuer, in that case a representation by the financial advisor in the process of getting employed. That it had not used a lobbyist and was not paying anybody any compensation contingent on the representation.

So there it's a contractual violation. And there are many authorities of which it is said that G-17 requires full disclosure. But G-17 is more than a full disclosure rule. I saw an article somewhere where somebody said, "Well, it means you can't do anything naughty." That's a comment for people to think about.

G-17 can be applied to a lot of different things, and so I think people need to pay attention to it and look at its sheer breadth as it applies to dealers.

Mr. Zehner: And I would like to echo that. As an enforcement attorney, I've certainly used G-17 and seen it used, and I think Bob is correct. In most cases, you are dealing with a situation that fairly clearly is fraudulent, very clearly has the requisite scienter of knowing or reckless conduct. But nevertheless, it is useful. And there are certain odd-duck situations in which, for whatever reason, whether they be logistical, jurisdictional, whatever, 10b-5 cannot be used but G-17 can. And it's a tool in the toolbox and a valuable tool. And I think people have to realize it, think it through.

I do think though that G-17 is ultimately simply one more example of an underlying theme to a lot of MSRB rules. Some people mistakenly think of the MSRB rules as mundane procedural rules. Underneath those so-called mundane procedural rules, a lot of substantive issues, a lot of issues that are really of relevance, not just to the brokerdealer, but to the issuer, to the financial advisor, the bondholders and everyone else.

To take what I hope is a blatantly obvious example, if a slick investment banker ever tried to hand an issuer a document asking them to sign it and mumbles under their breath something about this being required under that stupid silly G-23 rule, if the issuer would wake up, think and say, "Umm. I wonder what that rules says. And more importantly, what that rule is intended to do."

Because if you think about it, the G-23 rule, which requires consent of the issuer before someone acting as an FA on a transaction shifts and becomes the underwriter on a negotiated basis on that transaction, is dealing with conflict of interest. And that's a very important issue for the issuer. And although it's a rule on the broker-dealer, ultimately, hopefully, if it works right, you're protecting the issuer as well.

There are other rules of a similar nature on limits on gifts and gratuities, so forth and so on. And which again the benefits to the issuer are relatively obvious I would hope. And then there are some rules that aren't so obvious. You know, who cares whether or not the underwriter files that G-36 form on time with the MSRB. It's an empty document. It's not boilerplate, dot, dot, dot. And everybody can ignore and forget about it and laugh at it, until the issuer starts wondering whether or not they have the ability to call those escrow to maturity bonds. And all of a sudden, an issuer issue, whether or not they can call their bonds, is very much dependent on whether or not the underwriter filed the requisite documentation such as the bond market was put on notice of those call features.

So a lot of this stuff, if you think about it for a bit, has very important substantive issues underlying what I would almost call trip wires. If you follow the MSRB rules, at least you'll avoid some of the most obvious and glaring abilities to get yourself in trouble, it's not a -- -- you can still get yourself in trouble and not violate the MSRB rules. Don't get me wrong. But having said that, I think they need to be perceived by all sides as something that if treated correctly, it can actually help instead of just hurt.

But I think the underwriter counsel who advise dealers need to be aware of the breadth of G-17 and also on some of the subtleties of G-23 we'll be talking about. And I think the issuers need to be aware that they have protections they didn't know about as well as investors, both institutional and individuals.

Ms. Klinke: Yeah. I just want to mention one thing about G-17, that sometimes, yes, it is viewed as the catch-all, and there are some interpretations on the board under 17, but not many. And why is that? Because the board, in adopting 17, made it clear it was obviously to prohibit -and I agree with everything said up until this point -unfair deceptive practices. But it was also a vitally important part of 17 is to have a high ethical standard in the marketplace. And, yeah, you don't need scienter for that. It could be negligence. It's just kind of—the board's rules, while sometimes complicated and tough, try to be reasonable, try to be rational, try to be the kinds of rules that dealers are able to comply with. And what G-17 says in the conduct of your municipal securities business, you act fairly. And it does apply, not only to your dealing with customers, or dealing with issuers, you are dealing with other dealers. It all comes in under 17.

So it is a vitally important rule and for many reasons, sometimes it is the only rule the SEC charges and I'm sure Mack will mention too, many times the NASD could charge that rule as well when there is not another more specific rule, more on point.
But the whole basis for 17 was to ensure high ethical standards in the dealer community.

Ms. Simpkins: Right. I made a note that the board has interpreted the rule to require dealers to disclose at or before sales of state and local government securities all material facts concerning the transaction including a complete description of the security and prohibits omissions of material facts in light of the information provided.

Ms. Klinke: We talked more about the scope of G-17 in a notice we just did a few weeks ago on E-trading in the municipal securities market, and that's on our Web site. And you may want to review that notice.

Ms. Simpkins: Well, why don't we move on now to Rule G-20, which restricts gifts and gratuities to personnel of customers, and just to review the rule briefly, G-20A "prohibits municipal securities dealers from giving anything or service worth more than $100 per year directly or indirectly to any person other than an employee or partner of such dealer, if such payment or service is in relation to the municipal securities activities of the employer, or the recipient of the payment or service."

And in Rule G-20B, "exempts normal business dealings from the $100 limit. And the rule is intended to prohibit commercial bribery and covers payments to issuer officials.
But I know we all heard a lot about the violations in the '80s. We are still hearing about problems in the gift area, and I'm wondering if other panelists are aware of the gifts being made in a more subtle way. For example, say you have issuer officials going to New York for a rating agency trip, which admittedly rating agency trips can be totally legitimate. But we've heard of situations where a whole lot of people go. They take their spouses. They go for a week. The underwriter pays for everything, and then sends a bill back to the issuer for that trip. And do people have comments about problems in the gift area or more subtle ways that gifts are being made?

Ms. Currie: Well, let me comment on that.

I think there are many instances where there are rating agency trips that may be called into question in terms of their legitimacy. Typically, however, I think most issuers are much more focused on their local conflict-of interest laws that their state and local government have imposed upon them.

And that has made a lot of issuers very, very careful about how they interact with dealers and all the little goodies that they can, you know, throw your way. You know, if they're trying to make an impression.

The rule itself also provides some caveats in that. It doesn't apply if the payment is for theatrical and sporting events, entertainment or other expenses that can be construed as a deductible business expense by the IRS. So in terms of I think trying to limit gifts and gratuities that are going to influence behavior, I don't know that this rule is as effective for a foreign issuer, as their local conflict-of-interest laws would be.

I know with the City of Los Angeles, there are much more stringent prohibitions that both the city and the state Fair and Local Practices Act impose that would say that if you have taken anything that amounts even to $50 from anyone doing business with the city, that you cannot now act upon something that influences their business dealings.
So that has much more impact and there's much more scrutiny of compliance with those kind of rules.

Ms. Klinke: I just want to note. Under 20, even though the rule does exempt from that category of gifts, kind of normal business expenses, the rule does go on to say "provided, however, that such gifts shall not be so frequent or so expensive as to raise a suggestion of conduct inconsistent with high standards of professional ethics in the industry."

So every instance regarding G-20 should be reviewed, you know, on a facts-and-circumstances basis, and as Phyllis said, you know, many rating agency trips are obviously perfectly fine and necessary for a transaction.

But even if something could be viewed as a legitimate business expense, even in that definition, they say "occasional" with that caveat at the end that they cannot be so frequent or so expensive that raises propriety questions. And that is in the rule. And it would just be a factual determination.

Mr. Zehner: I would like to point out that although I think you're quite right, responsible issuers do care much more about their local conflict-of-interest rules than any MSRB rule, again, I'm going to have to start dealing with that 1 percent out there that we seem to always have so much fun with. That's not true in every state. And either the rules aren't that strict on a local level or they are winked at more than anything else.

And, indeed, I think to some degree one of the issues this rule raises is what do you do with the issuer who puts the kibosh on the underwriter and says, "You know, we've got the entire board here, and they've been looking forward to a Broadway play for the last, you know, two years. Now this bond issue is coming up, you will, of course, be paying for every board member to go to the rating agency meeting, won't you?" The underwriter is sitting there saying, "Ah, ah, I don't know." I think there are a lot of factual—

Ms. Currie: I wouldn't go that far.

Mr. Zehner: There are a lot of factual situations that play out here, and I'm not about to point fingers or name names, but I just think that, again, this is the kind of situation where the rule, if looked at very closely with a lawyerly magnifying glass, normal business dealings, all these exemptions and so forth. Sure, you can kind of wiggle your way out of it. I'm not so sure it's going to cover every situation.

But at the same time, it's a trip wire. It's a "Think about this one, guys." Maybe, you know, frequent gifts and gratuities, even if nominally within that exception, should raise issues for issuers.

Ms. Currie: Well, I think this rule, as other rules that we've talked about, are really there to try to encourage ethical behavior and raise the standards for the industry. And I think as an issuer I speak for a lot of people when I say that most issuers want to behave responsibly. And I've even met a lot of dealers who want to act responsibly.

But, again, you know, there are people who don't and there are people who will get business any way they can. They will stoop to levels that I think none of us would condone. And we need to always reinforce for everyone that this business will not enjoy the reputation that is beneficial to it. And there won't be confidence in the outcome of the business dealings if there isn't a high ethical standard.

Mr. Northam: I had one thing. These are my personal opinions and not the opinion of the NASD, by the way.

But one of the things that gifts and gratuities I think you need to be aware of, is institutional investors that might be the recipient of a gift or gratuity in the form of a trip or a due diligence review of something in the south in January, and bring the family to Orlando while you're here over spring vacation, and it doesn't necessarily come from the municipal finance professional group that is offering this. It's done through the marketing group, through hosting a seminar of big issuers and inviting someone to speak, and then extend the stay. And those things, while they could be fairly legitimate, at the same time, there can be a tendency to curry favor, and it kinds of falls off the radar screen because it's not being done through the sales group and it's not being done through the underwriting group. It's being done through the larger securities firms, marketing their new business development or customer retention budget, and it would be done that way.

And so I think you need to pay attention to that. Ms. Simpkins: Right. I think from our standpoint, it wouldn't matter if it was another group that was doing it. And, again, these are not new issues. We have evidence that the message is not universally out there, so be careful. I think we can move on now to Rule G-23, which prohibits financial advisors to an issuer from engaging in underwriting activities with that issuer in the absence of certain disclosures and written consent.

This is another issue where people have been calling us about temporary resignations of FAs to act as underwriters or placement agents. And people perceive that there's some problems out there. Either they're not complying with the rule or maybe they feel the rule as it is is not sufficient.

So I'd like to get a discussion, and I think, Bob, you said you wanted to talk about this issue.

Mr. Doty: Right. Well, I think that—I've been doing some research in the last two or three months that it's beginning to put G-23 in a very different light for me. And I say this as somebody who years ago taught agency and law school, and has begun thinking about fiduciary relationships and so on.

This morning I thought it was very interesting or in the prior two panels that we have institutional investors who just say, "Well, I'm a fiduciary and so I have to do this." And they

just accept that and say they are a fiduciary. In the municipal market, people have tended to want to run away from that concept.

And yet I began to realize that there are a number of court decisions in the last few years on this very topic that are quite relevant. And you'll find them all in my Web site, I'll add. The two Cochran decisions, in which in the first case, the criminal case, it was found—a criminal conviction was overturned based on the evidence.

The second one being a civil case in which a summary judgment against the Commission was overturned and now that is going to trial in the spring, the Debader case in the 11th Circuit. The two Cochrans are in the 10th Circuit. The Debader case in the 11th Circuit. We've got the Rauscher case, the lower court, in the 9th Circuit. And on top of that, a corporate case, Daisey Systems, in which the investment banking firm advising a corporation on mergers took the position that as a matter of law, an investment banking firm cannot be a fiduciary. And the court said, "That's not true. It's a facts-andcircumstances determination."

And if you look at these decisions, they are very consistent in their analysis. They looked at state laws as a general rule. State common law, fiduciary principles. You get certain things that you look to, the trust and confidence. Is the trust and confidence of the client being placed in the financial professional? Is there reliance, in other words? Is there an agency relationship? That's defined in part as representing the issuer, the client, in its dealings with third parties.

Sometimes in Commission settlements, you'll see references especially to unsophisticated issuers, but I'll point out that not all of these decisions relate to unsophisticated issuers at all, but rather issuers who have employed somebody to carry out a specific task. Managing investments.

In the Debader case, employing an underwriter, where Fulton County, Georgia, made the final determination, and so on, and the court said, "No. The financial advisor had enough influence, enough control or dominance, over that procedure in sending out RFPs, evaluating them, submitting the recommendation, and so on, even though the county made the final recommendation, there's a fiduciary relationship."

I'm saying that to lay a very brief basis for what is the notion, what is the nature of a fiduciary relationship? And I think it's becoming more and more clear to me that in my normal practice, it's very difficult for a financial advisor not to be a fiduciary.

I've accepted that for a long time and I approach things that way and I charge accordingly. And if I have clients who don't want to pay it, I don't keep them, because I don't want to put myself in the position of having to do a lot of work for which I can't be compensated.

Ms. Simpkins: And if I could just interject right here. I could say the Commission has said that in the Lazard Freres release that generally a municipality's financial advisors owes fiduciary obligations to it in connection with bond financings by the municipality.

Mr. Doty: The Commission has come right out and said it, and then in some later releases has given us some rationale for it. And I'm being very hard pressed at this point to find contradictory precedent.

Now, having said that, keep in mind that I'm an independent FA. I am not a dealer, so G-23 doesn't apply to me. But I was around when G-23 was adopted. And Freida Wallison was there, and so on. And I was actually on the issuer's side, the GFOA side. And I had people calling me up and they were saying things like, "Well, you know, my investment banker is the only person who will bid on my bonds." And things like that.

Now, today I am sitting there and having a little more experience under my belt, and I say, you know, "That is the strangest statement I believe I can think of in the municipal bond market, that some issuer is going to tell me that there's only one banker that wants to buy their bonds." I mean I have seen so many people bleeding on the floor, fighting over whether to get a deal, and knocking each other and knocking on doors, and doing everything except committing murder, and they might even do that.

And only one firm is going to be bidding on that deal and why is that? And if this firm has been acting as financial advisor and now they're the underwriter and there's only one bidding, why is that? Why aren't there other firms out there? And the answer seems to me pretty obviously, the financial advisor didn't do the job in soliciting firms to come in and submit proposals or bid, why they structured the transaction in a certain way that favored their firm. But let's look at G-23. And keep in mind some of these principles. G-23 says, "Financial advisory relationships shall be deemed to exist when a dealer renders or enters into an agreement to render."

All right. Let's start there. They don't have to have an agreement to render the financial advisory services. All they have to do is render them. That's (a) or (b). With the expectation of compensation. The compensation expectation might be the underwriting in the end. I remember being told by a banking firm, a wellrespected regional banking firm, "We always get hired as FA and then switch." Okay? And I've seen it in several states. There are states where this is uniform practice almost, to get hired as FA and then switch. Even keeping your continuing contract in place. Resigning for that one bond issue but keeping the contract there. Now, how do you—keep in mind the trust and confidence of the client, if you have a continuing contract, how do you erase—how do you have trust and confidence over here but do away with trust and confidence over here?

Ms. Richards-Yellen: Bob, can I ask you a question?

Mr. Doty: Yes.

Ms. Richards-Yellen: How is that sort of situation disclosed to the bondholder? Because I know our analysts go to the conflict-of-interest section, and they look at that, and they take that to heart.

Do you expect that an issuer is getting the best advice that they can get, that advice is impartial and that advice is going to lead to good business decisions, which is going to lead to the credit being good?

Mr. Doty: Well, the whole idea is conflict of interest. And, of course, there are two interests here. There's the investor interest and there's the issuer interest. And the rule actually requires disclosure to both. Everyone thinks—most of the words in the rule relate to the disclosure to the issuer and procedures for the issuer. The rule also requires disclosure to the investors. And whether it's actually being made, I have not taken a look at that. I have my guess.

But I just want to lay down some of the tension that I see here. If a dealer renders financial advisory services with the expectation of compensation, they have to carry out the steps in the rule involving resignation, delivery of a notice and that sort of thing.

Now, there is a sentence that says, "Notwithstanding the foregoing, a financial advisory relationship shall not be deemed to exist when—" These are the operative words. "In the course of acting as an underwriter the dealer then provides certain advice to the issuer, and structure terms, and so on."

Now, what does that mean "In the course of acting as an underwriter"? And I really hadn't thought about that before. To me, after hearing for years now that underwriters are principals who deal strictly at arm's length, and I read that into that phrase, "When a dealer is acting as a principal strictly at arm's length," they can provide advice about certain matters. But a principal dealing with another principal doesn't say, "I'm going to tell you what is your best decision to make." What the principal dealing with another principal says, "Here are market conditions. This is how investors are going to receive this structure. This is how this is going to affect the marketing of your bonds." But they don't say, "Trust me. I'm going to give you the best deal you ever had. I'm going to lead you by the hand and take you from start to finish." Or they don't act as agents. They don't say "We're going to represent you with the bond counsel. We're going to represent you with the rating agencies. We're going to represent you with this party. We're going to represent you with that party." And to hit another nerve, they don't say, "We're going to help you write your communications to bondholders; i.e., the Official Statement."

An agent in these cases is somebody who communicates on behalf of the client to third parties. So now if they are not acting strictly as a principal, they must be acting as an advisor and have a fiduciary role. And if they render those services, they are supposed to put them in writing.

Now, the rule obviously recognizes they might not. And when they put them in writing, when they put in writing the basis for compensation, they are supposed to set forth provisions relating to the utilization of fiduciary or agency services.

Those are all very interesting words that I never thought about any of those words before in any of this context, but now in the last five years, we have a ton of precedent coming out of the Commission in the last few years out of the courts. And I'm not sure about all of the nuances of all of this.

So I'm making some observations here. And to some extent, I've pretended to give you some answers, but I think that there are probably more questions than answers. And so there you are.

Ms. Klinke: Let me just raise a few issues. I think what you're saying is that a dealer could enter a transaction as an underwriter, but depending on either the extent of the advice given or representations made to the issuer in connection with those underwriting activities, the underwriter may take on an agency or a fiduciary role.

Mr. Doty: Possibly.

Ms. Klinke: Yeah. Because in my view, fiduciary status is a state law question. It depends on the facts and circumstances of the arrangement. So even though I believe most underwriters would say in the course of their underwriting activities they are not fiduciaries,

anyone could find anyone to be a fiduciary depending on the facts and circumstances, you could have a review.

But I have to say I can't agree that—I think you are putting two terms together that don't really go together. Financial advisor, as defined in 23, and fiduciary. They are not the same terms. Financial advisor, as defined in 23, may in many cases be a fiduciary, but not necessarily in all cases. Again, a fiduciary finding is a facts-andcircumstances determination.

So that my view is in G-23, if an underwriter engages—if a dealer goes into an issuer and is performing the underwriting function, depending on the facts and circumstances and what they say and do, it may be found later that they were a fiduciary, depending on actions. It could not be found that they have somehow turned into a financial advisor under 23 and therefore financial advisory requirements under 23 kick in. That's just not how it is written.

Mr. Doty: Are you saying then that the phrase "In the course of acting as underwriter" is broader than acting as a principal strictly at arm's length?

Ms. Klinke: Acting as an underwriter is acting as an underwriter. Again, we go back to a common sense view of the world. When a dealer goes to an issuer and says, "I am here to be your underwriter," and that's the normal course of human events, in my view, 23 was never intended, through any kind of terminology, to say that depending on how they fulfill their underwriting function, that they somehow would turn into a financial advisor and therefore other sections of 23 would kick in.

What they do may cause them to be a fiduciary given facts and circumstances, most of the time, again, most underwriters would view themselves not as a fiduciary.

Mr. Doty: Understand.

Ms. Klinke: But they would never turn into a financial advisor under 23 and have those requirements kick in. That was never how 23 was set up.

And I will go back to, and Bob mentioned, he was general counsel of MFOA—

Mr. Doty: It was MFOA in those days.

Ms. Klinke: Before GFOA. And when the board first went out with the 23 rule, it was to prohibit dealers who act as financial advisors from for the same issue becoming the underwriter. Just out and out prohibited because of the conflict of interest.
And many issuers, including the GFOA and other people, said, "You're being a little paternalistic, board. If disclosure of the conflict is provided, issuers should be able to make the determination of whether they still want that dealer FA to be an underwriter."

So even though the board was against it at the beginning, and was going to prohibit the activity, because of the issuer comments back, which said "Board, thank you very much. We can take care of ourselves in this regard," the board changed its view when the final rule was put into place to change it from a prohibition of dealer changing roles to a dealer is allowed to change those role but only if they resign as a financial advisor for that issue, proceed to make very specific disclosures to the issuer about the prima facie conflict of interest in changing those roles. And with issuer written approval, they can go ahead and do that.

Ms. Simpkins: But I think that's a situation the issuer has to be very careful about because if you have an FA that sets up the whole structure, I think there's a concern that maybe the underwriting arrangement structure that was created would be one that would favor that FA when they put on their underwriter or placement agent hat.

Ms. Klinke: Sure. That is the conflict of interest that rule was meant to deal with. And the only decision that the board made 20 years ago in the face of a lot of issuer complaints about the paternalistic attitude of the board for their activities, that if an issuer with all that conflict information still decided that was the way to go, who was the board to say they couldn't make that decision.

Mr. Zehner: I'd like to—

Ms. Klinke: And the board tries not to be all that paternalistic to issuers.

Mr. Zehner: I'd like to follow up on the distinction that Diane made, because I think it's a very important one, but it cuts two ways.

And that is you can find yourself in a situation where you do not violate G-23. For example. You are acting as financial advisor for an issuer on one issue and then simultaneously acting as underwriter on a second unrelated issue. Technically that's not a violation of G-23.

Ms. Klinke: Correct.

Mr. Zehner: Because it has to be on the same issue.

Ms. Klinke: Right.

Mr. Zehner: Well, that's great, that's fine. But guess what? You still have fiduciary duties with respect to the financial advisory role you are playing on the first issue under state law, assuming the facts and circumstances flow that way. And you can very well find yourself in as much trouble, if not more trouble, for doing things as underwriter on that second transaction, even though you never violated Rule G-23. To me it comes back to this concept that these rules frequently are trip wires. If you look at them real closely, sure, you can wiggle out of them, but I'm not sure that's to your best advantage.

And for those of you who aren't aware of it, we currently have a case outstanding against an individual in West Virginia who did just that. He was acting as a financial advisor on one transaction and simultaneously was acting as underwriter on a second advance refunding transaction, and "Oh, by the way, incidently, I picked up over $100,000 from the provider of the escrow securities in advance refunding without telling anybody. But that's not a problem, is it? I don't have any fiduciary duties. I was an underwriter on the advance refunding transaction." "Whoops, well, maybe not."

As I say, that case is still in litigation, so I don't want to—

Ms. Klinke: Always the finding of fiduciary capacity is the facts and circumstances of the situation.

Mr. Zehner: Exactly.

Ms. Klinke: Pursuant to state law.

Ms. Simpkins: Although I think it's fair to say that the Commission generally thinks that a financial advisor usually is a fiduciary.

Ms. Klinke: It's just not an absolute, and you have to look at the facts and circumstances.

Mr. Doty: The last section of G-23 makes it clear that any stricter provisions of state law also govern—

Ms. Klinke: Of course. That's really why it's in there because 23 was not meant obviously to trump any state fiduciary or other requirements.

Mr. Doty: And there was, if I remember, one of the reasons for that provision was Miami v. Benson, which is an old Florida case, but which said that a contract by a financial advisor to buy bonds was void as against public policy.

Ms. Klinke: And there are a number of states that have copied 23 the way it was initially drafted, which is in their state, if a dealer is an FA on the deal, they may not underwrite. And, again, that's perfectly okay too. It was just what the board had heard was that to give the issuer the required disclosure, knowledge and information regarding the prima facie conflict of interest, and let it be the issuer's decision whether to go ahead or not.

Mr. Doty: So what I want to clarify, Diane, is once a firm has begun to use the term "underwriter" in describing its relationship with the issuer, are you saying that there is nothing that firm can do, short of using the term "financial advisor," to turn itself into a financial advisor regardless of the facts and circumstances?

Ms. Klinke: I would think so. Because, you know, what is a dealer—and the definition of an FA is rendering advice with respect to structure, time and terms other than if you're an underwriter rendering advice with respect to structure and timing and terms?

So that if you go in as an underwriter, you're an underwriter. If at some point you turn into the FA, you would think there would be a separate, okay, you know, you turn 180, it really is a different role. And I don't think you could slip into that role.

Mr. Doty: But so you—

Ms. Klinke: -- without knowing it.

Mr. Doty: Now, but you would say that the underwriter may, depending on the facts and circumstances, take on a fiduciary responsibility.

Ms. Klinke: I think they'd fight mightily not to, but depending on the facts and circumstances, anyone could become a fiduciary for anyone pursuant to state fiduciary requirements. It depends on the actions taken.

Ms. Simpkins: Why don't we move on to Rule G-32 and G-36 that we talked about a little bit before. As you probably know, G-32 requires just giving disclosures to customers. And G-36 requires filing of OS's with the MSRB.

Maybe Mack can tell us a little bit about whether underwriters are complying with these rules and tell us about his exam modules and I'm sure people would be interested in what the NASD is doing to improve compliance of those and any other rules.

Mr. Northam: Thanks. You know, really this discussion almost aside, excluding bond counsel's opinion and due diligence review and the OS and publishing the OS, really at the end of the day it doesn't matter until an investor alleges that they've lost yield or principal or interest, because as long as yield is maintained and principal is paid and interest is paid, most investors aren't going to even look at anything that has been produced as part of the OS. Notwithstanding some of the institutional investors. But my mother certainly is not going to. But in any case, so, you know, Rule G-36 requires that the underwriter or managing underwriter submit within very tight time frames two copies of the OS to the MSRB. And we talked earlier about, you know, who is going to provide the OS, and all the problems getting the OS, and whose fault is it?

Everyone is pointing their finger, but it's the dealer who has got to send it to the MSRB, and that's where I come in because I regulate the dealer. And I'm charged with, with other people here, charged with protecting the interest of investors.

So in 1997, the NASD fined 21 firms $325,000 for their non-compliance with Rule G-36. That is, they did not send the OS into the MISL system within the required time period and there were some firms actually who'd never sent an OS in at all.

And, you know, the argument was, you know, the justification was, "Gosh, oh, gee, it's hard to comply with these new rules." And I think if you go back and look at the rules adopted in 1990. So here we are in 1997, it's still a new rule for the issuer.

So that's why they are interested in complying. That's one of the reasons why they're interested in complying, because they know I'm going to be taking a look to see that they are complying.

And importantly, by not filing the OS with the MSRB or even filing the OS late, the investing public is deprived of access to critical information about the issue and this does not serve investors well.

So overall compliance with the MSRB's Rule G-36 has improved since 1997, and there's a couple of reasons for this, but quarterly the MSRB provides me with statistical information on the form's filings, and what we've done is create a scorecard firm by firm by firm—there's 2600 plus or minus firms, municipal dealer firms in the country, which would list description, date of the sale, date of closing, date the OS was received from the issuer, date it was sent to the MSRB, and date it was received by the MSRB.

And accordingly what we can do through an access spreadsheet is to do a real quick simple calculation. "Did you send it in on time?" And what we do with that information is compile that information, and by and large, as somebody said, you know, 99 percent of the firms are generally pretty darn good compliances, that 1 percent which we caught causes us to spend a lot of time.

But what we do is make the information about all the firms' underwriting available to the examiner who's going to go in to do the review and the examiner then has a very simple job. They have the schedule in front of them. They see what was done. They see how late, or if the form was filed late or if it was filed within the time frame. And they can simply focus their

examination efforts on the ones which appear to be late. And there could be some reasons why they are late or not filed at all.

But all that means that we've got a pretty good audit trail because now we have an evidentiary trail and we don't have to develop the evidence I've already provided to the local examiner to look for compliance patterns.

So we look for those which file late. We look for firms which file routinely late. Some firms have a routine, "You know, okay. It's one day late. What's the harm? Or two days late? What's the harm?

Well, when they're always one day late and always two days late, that would indicate to me that there's some kind of pattern of maybe a failure to supervise within the firm or some kind of supervisory process in the firm. Is it working right?

There's other instances where I think Diane has indicated that sometime the firm simply doesn't get the form from the issuer in time, and obviously then they can't file the form to the MSRB.

Well, since the firms need to tell me when they received the information from the issuer, I can do that quick calculation, are you telling me correct or aren't you telling me correct?

But that brings us to a whole another issue. If you didn't get the Form OS from the issuer, then how can you comply with G-32. And what MSRB Rule 32 says, requires that a dealer not just a managing underwriter, but any dealer during the new issue period, send to the customer purchasing a municipal security at or before settlement, a copy of the final OS, or a POS if a final one is not prepared. And we need to do this within one day, send the final OS within one day of receipt by the dealer.

And Rule G-8 requires that they maintain records. Well, if you can't send the OS to the MISL system within one day of receipt, and we know that settlement, typically regular-way settlement on municipal securities is T plus 3, then how can you send the OS to the customer in time for them to receive it at or before final settlement.

There's the conundrum on the part of the dealer. The dealer says "Gosh, oh, gee. I've got a customer who wants to buy but I don't have the OS from the issuer. What should I do? I guess I could not sell it."

Well, I don't think that's really a viable—well, I think it might be a viable option. I'm a regulator. But from the business perspective, I see the creative tension there, "What do you mean, don't take the customer's money?" But nevertheless, that's the problem that they're in. So we might find a parallel between those firms which are late in sending the forms to the MISL system, because they didn't receive it from the issuer. That conjures up problems with G-32.

Then how could you comply with the requirement that you send the individual investor or the institutional investor, with the OS at or before final settlement so that they can make an informed decision as to all the material facts which have been properly disclosed in the OS, including the exploding bond counsel's opinion perhaps, whether this is a proper investment? So importantly, the failure to receive the OS from the issuer doesn't absolve the dealer and so they have me to answer to or examiners to answer to. And that goes back to the '97 enforcement agreement.

Again, compliance is a lot better than it used to be. Still not perfect. We still hear stories that the OS was not received by the issuer in time. That's not borne out by the statistics produced by the MSRB because by and large, the majority of the OS's are received by the issuer in time. So it's a mechanical process in-house. Whether E-trading will make that better or whether that'll make that worse, that's a whole another story. I don't know.

Ms. Klinke: And I just want to mention again. 32 compliance is very dependent on getting the document from the issuer as soon as possible. And when that happens, if dealers are just sitting on the documents, you know, they will get nailed on 36, on 32. But it's vitally important to provide dealers, not just underwriters but other selling dealers as well, with the final OS as soon as possible.

So everyone in the underwriting process, if they could, redouble their efforts to get the document done early, that just benefits the whole process of getting it through underwriters and other selling dealers to the customer, which is the goal.

Mr. Zehner: And just for those who aren't aware of it, let me echo Diane's comments. If you're a broker-dealer who really has systemic problems with getting these things out on time, we can bring cases too, and we did with respect to a prominent Baltimore firm that seemed to have a systemic problem in getting their OS's and ARD's filed on time. The case is actually still in litigation.

Ms. Simpkins: We've got one question from the floorwhich I think is probably for Diane. It says "Describe MSRB actions regarding application of MSRB rules to electronic trading." So would you like to say a few remarks about your draft notice

Ms. Klinke: Our notice on that is on the Web site. We see a number of things. We reviewed the issue of electronic trading and basically want to say, at least for draft interpretative purposes, and everything is open for comment, that we think this electronic trading in municipal securities could well be a wonder. Could hopefully reduce costs to the customers, get more customers involved in the market, all those things are well and good.

The concern we had is that the muni market is not like—and I'll just use the analogy of the equity market.

A lot of these electronic systems are premised on the equity market, where many times you can get on your Web site and you find out you want to invest in IBM. There is plenty of information around about IBM.

The muni market is different. Millions and millions of differing kinds of municipal securities. 80,000 issuers. I mean there's only 10,000 different equity securities in the country I think. My numbers—I don't want to be like Al Gore. My numbers may not be right. But there's just a multiple of differing kinds of municipal securities in the market. And information about the securities themselves and the issuers are not always readily available to all concerned. Which is why the history of the muni market is that dealers are a very important part of that market because they are the regulated entity. They have the duties and responsibilities to get the information and to sell securities to customers, to act fairly. If making a recommendation, make sure the recommendation is suitable and always to price the security fairly.

When you have a dealer E-system, what did we say in the notice? The rules still apply. You're a dealer. Just because you're on the Internet doesn't mean for some reason the rules don't apply to you.

So that's the main issue. We have done a few things in interpretations, draft interpretations and notice, which I'd like everybody to review. The comment period runs until December 1st.

Basically in the fair practice area, and that is G-17, G-18 and G-19, we've done some draft interpretations so that for what we term "sophisticated market professionals" -and there's a big definition of those people or entities. The requirement to disclose all material information under G-17 does not apply because part of the definition of a "sophisticated market professional" is they already have all the information in the marketplace. They're on kind of the same level as the dealer community.

On suitability. We want to specifically say whether a recommendation is made, which Kate McGuire mentioned before, that's the key. Before you get into G-19, you need a recommendation. It's the facts-and-circumstances determination whether a recommendation is being made. But a sophisticated market professional, even if given a recommendation, the dealer does not have to get any more information about the customer to determine whether their recommendation is suitable, pursuant to the definition of "sophisticated market professional," they are able to review the security. They have the wherewithal to do the research to determine whether that product is suitable for them.

So the customer-specific suitability requirements would not be involved in a trade with a sophisticated market professional. But with a retail customer, if a recommendation is made and maybe a dealer showing a list of their inventory to a customer, depending on the facts and circumstances, may be viewed as a recommendation to the customer. That's something to be determined. But you can't, in the E-trading world, assume you're never making a recommendation.

So you have to be concerned about that, review your facts and circumstances, and if a recommendation is determined to be made, you have suitability obligations in that context. And then we also make a few comments about quotations rules that aren't overly relevant to the retail customer world. And some issues in the new securities trading where there are some systems that assist issuers on the Internet to get their securities to dealers and customers, and we make some comment about 32 and 36.

But the comment period still runs for a month and a half and we look forward to getting some good comments back.

Ms. Richards-Yellen: Diane, in your proposal, is there a difference between the information you provide institutional investors and Mom and Pops?

Ms. Klinke: Yes. The requirement, for example, under G-17, to disclose all material information for Mom and Pop, remains, whether you're on the phone with Mom and Pop or you're on an E-system with Mom and Pop.
But for the sophisticated market professional, the definition of which they have research capabilities, they are reviewing the market, kind of the same par level as a dealer, they have the information available, that specific disclosure requirement would not be required.

You should read that notice, Leslie.

Ms. Richards-Yellen: I will.

Ms. Simpkins: Well, I think we're out of time. I'd like to thank all our panelists and thank you all for staying. I think Steve is going to make a few closing remarks, and then that will conclude our roundtable.

(Applause)

Mr. Weinstein: Thanks, Mary. I'll just grab one of these mikes. They're open. This is probably the second most awkward or painful position to be in in a program. The first being the last speaker before lunch. But the closing at the end of a long day, we appreciate your attendance, is a difficult position too.

I guess my choices range between regurgitation and with deference to honorable bond counsel, a recollection of my college years, a description of sociology is the painful elaboration of the obvious.

That I do not intend to do. The other choice is over-simplification, and I choose to err on the side of oversimplification.

Kind of going in reverse order from the last panel to the first, but before I do that, maybe the most important thing I have to say is to thank Mary Simpkins and Sherry Moore, of our office, as well as Martha Haines. We heard from opening the program this morning. For doing a lot of very hard work in putting these panels together and 30 or 40 members of the industry who were very helpful in that process, many of whom appeared here today.

With that said, the last panel was a discussion of half a dozen or so very important MSRB rules, by their nature in drafting and intention and application, technical. And I will let that panel, which has just spoken, speak for itself.

Going back to the two earlier sessions on disclosure generally and on the world of electronics.

First, it may be an unnecessary preface. What is the system we have in the United States since the Commission was established in the two securities acts passed in the 1930s. It is not a merit regulation system. We are not the traffic cop. The Commission does not determine the merits of a security.

And with the regard to the municipal business, the reason we're all here today, we do not have, by Congress's intent, a registration system. What we do have in this business is application of the anti-fraud provisions. And with that comes, as you all know, no checklist, no template, but the concepts of materiality and completeness, and fairness of presentation because, after all, that's the only way to communicate to the investing public what a municipal security is all about.

And in the course of our panel this morning, we had several questions, six, eight questions, handed to us which really were in the nature of "Can you tell us? Should we include this in a disclosure statement? Can we exclude that?" Or on the other hand, who in the process is excused or who is not excused from responsibility?

And our answer that you heard from all spokesmen for the Commission through the years is that, of course, materiality rules. The enforcement actions and the interpretative guidance are your guidelines. And that all of you, no matter what hat you wear, no matter what

role you play, in a securities transaction and when you're speaking to the market, have the same responsibility under the securities laws. This is mantra from us. It's familiar to you but it's important to put the following observation into the proper context.

What I heard in the first two panels today was a series of questions and a series of concerns from various actors in the industry about gravitating toward the secondary disclosure market, trading in outstanding securities, and gravitating toward the unfolding world of electronics. That world, the computer age, was in its infancy a decade ago, is probably now in its early or mid adolescence. But it is very different from its infancy and something everyone seems to be grappling with, dealing with, under that same set of precepts that underlie the federal securities laws.

There is no difference in the law when you're dealing with electronics. There is, however, apparently some confusion in how to proceed on a day-to-day basis. And both of those strains, that is, information to the secondary market, continuing disclosure, and the unfolding world of electronics seem to me, and, again, I'm speaking for myself, not for the Commission, the disclaimer still stands, but those two strains that seem to be pronounced and repeated in both of those panels may have a certain commonality that the industry may wish to explore further as its own panels and its interaction with us proceeds to what I would hope to be another year until we meet again here, another year of continuing evolution upward in the municipal securities industry.

Thank you all again. And good night.

(Whereupon, at 4:51 p., the meeting adjourned.) * * * * *