

1980

Discussion

John C. Burton

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>



Part of the [Banking and Finance Law Commons](#)

Recommended Citation

John C. Burton, *Discussion*, 8 Fordham Urb. L.J. 93 (1980).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol8/iss1/5>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

DISCUSSION*

John C. Burton†: I was interested in the proposals of the Committee on Municipal Affairs and I certainly agree with its objectives: improved disclosure, better monitoring, better fiscal responsibility tied in with that greater responsibility for charting one's own way. Some of the proposed changes in the constitution are beneficial in that respect.

My first basic concern is the one that Tom Currier discussed. At least in the disclosure area, which is the area in which this panel is devoting most of its attention, I believe the problem is a national one and should be dealt with federally. I understand that there are different views in this regard. Some do distrust the federal government despite its demonstrated wisdom in such matters as keeping inflation under control. I once heard when I was suggesting greater federal involvement an analogy to the story of the lion and the lamb. The story goes that a woman went into the zoo each morning and each morning she saw a lamb lying quietly in the cage with the lion. Both were looking fondly at the other. And after about four days she said to the keeper, "It's really remarkable that the lion and the lamb get along so well together. How do you do that?" The keeper replied, "We put a new lamb in each morning." There are some who suggest that the federal government's role is similar and it is unwise to climb into the cage with them.

On the other hand, I do believe that there are significant advantages which the federal government has in dealing with problems of disclosure. First, the capital market is a national capital market, and the market for municipal securities is a national market. If one is talking, as Tom Currier suggested, about the needs for maintenance of investor confidence, which is one of the principal benefits of our disclosure framework, we are talking, I think, about something which can be destroyed by any one of a wide variety of different municipalities or any small number of municipalities. Therefore, national regulation is needed.

* The following remarks were made subsequent to the delivery of Mr. Currier's paper. The discussion has been extracted and edited from a verbatim transcript of the seminar proceedings. Each participant has been provided with a copy of the edited version and the opportunity to make corrections in it.—Ed.

† A complete list of the participants appears on page 27.—Ed.

In addition, I think that national regulation avoids the various problems of competitive advantage and disadvantage which arise from differential disclosure requirements around the country. It may be hard in some circumstances to know whether or not a state which is mandated to make more disclosures has an advantage or a disadvantage in the capital market. But certainly it seems unlikely that the pluses and minuses will even out and it is therefore better to have a single standard which is generally utilized.

Second, it seems very important that state reporting be included in this regulatory pattern. One of the critical defects in the proposed law is the omission of anything relating to state disclosure and state fiscal controls. Certainly, if this is the Committee on Municipal Affairs, it may be argued that, by definition, we should not be concerned with a state role in this matter. However, if one is looking at New York today, we have the anomaly that New York City is now accounting on an accrual basis, a generally accepted accounting principle. The State of New York, however, is still accounting on a cash basis. The budget director of the state has frequently reiterated his conviction that the flexibility implicit in the cash basis is flexibility which should be sustained. It is therefore argued that the magic window and the cash basis accounting, and the various other techniques which shift revenues and expenditures from one period to the next, should be sustained. Flexibility should be a key objective but, at the same time, I do not believe it should be bought at the price of significant deficiencies in reporting and I think that is what we have.

Third, I think that the SEC, which is the federal agency which most likely would be involved in any federal and municipal disclosure regulation, does have resources and expertise to deal with these problems. It has dealt with the problems in the private sector, and while no one would suggest that public sector reporting and disclosure problems are exactly analogous, I do not think they are as different as some have suggested. There is a fundamental difference when you are not trying to optimize the bottom line and I think that is recognized. However, the pattern of adequate disclosure to understand the future implications of historical data is, I think, a key element and should exist within the SEC. So, I believe that the Commission does have the resources and expertise.

I should emphasize that my view of having this dealt with nation-

ally does not include subjecting municipalities to the full registration procedures. Rather, my views coincide with those proposed by the Williams Bill; that is, to give the Commission discretion over accounting and disclosure requirements, not to confer authority in the area of registration.

Finally, it seems apparent that we are now witnessing for the first time some considerable attention from the accounting profession as to municipal reporting. The Financial Accounting Standards Board, which is the private sector standard setting body in accounting, has put on its agenda the problem of the objectives of municipal financing reporting and expects to have its first exposure draft out in September, 1979. It has advisory committees working. It is working closely with the National Council on Governmental Accounting, which is an adjunct of the Municipal Finance Officers Association. In addition, it seems likely that there is going to be a very substantial grant from HUD to fund additional research in municipal financial reporting. I think this suggests that municipal standards may well be developing, and that standards will be effective in a few years and that the best way to get these standards adopted expeditiously is through a federal approach.

In addition to this general concern which I have about the local approach, I have a number of specific concerns that I might just mention in reading through the proposals and lay them on the table for consideration.

First, the responsibilities of underwriters in the municipal securities market seem conspicuously ignored in these procedures. It is conceivable that the presence on the committee of a few people who from time to time receive some pittance from municipalities in connection with the sale of securities could have affected this, although I would not suggest it as a demonstrable hypothesis. Nevertheless, it seems to me that one of the key ways in which one can move in making an effective improvement in disclosure is to place on underwriters the responsibility for disclosure in connection with municipal offerings. The Municipal Securities Rule Making Board, which Tom Currier mentioned, was specifically precluded from imposing these responsibilities by the Tower amendment to the Securities Acts Amendments of 1975. The point of market entry is a critical point and it is one which seems to me to be a reasonable point to apply pressure for disclosure.

Second, I am concerned by the lack of clear distinction between accounting, budgeting and capital budgeting in the law. The problems of accounting and budgeting have been continually mixed up in the area of municipal financial reporting and financial planning. Budgeting is essentially a cash phenomenon. It is a question of recognizing cash that comes in and being sure that it matches the cash going out in some fashion. So that when one looks at budgeting, one looks at something which is a phenomenon that relates to working capital and possibly cash itself.

Accounting, on the other hand, should address itself to the long-run implications of the year's operations. In a sense, the conventional commercial accounting model is one which describes the net income as the long-run average cash inflow at the current level of activity. It is a long-run average measure, and as such, is designed as a predictive measure.

Whereas budgets are primarily a cash or working capital document, financial statements perhaps should be broader. The standards developed for both should be included in generally accepted accounting principles. In the municipal area, although you do not have the same bottom line, you are entitled to ask accounting statements to tell you the degree to which the operations of a particular year are drawing upon the past, drawing upon the future, or contributing to the past and the future. For example, if New York City were to achieve a balanced budget it would have about a billion dollars of annual debt service which is paying for the past funding over time the six or seven billion dollars of deficits which were run up over a five year period. At the same time, it is deferring certain pension costs which it is borrowing from the future. So, there are at least two major effects in New York City which make the budget an inadequate measure of whether or not the city is really in balance on an ongoing basis. Now you have to have cash, but it seems to me that you also have to have some measure of long-run responsibility in the financial statements and that is what accrual accounting should do.

There is considerable work that is needed in this area, but there seems to be a confusion in the act, and in municipal finance generally, about the relationships of accounting and budgeting. When you add in capital budgeting, you add the question of what decisions you make regarding long-term projects that will have a benefit over a period of years. The integration of capital budgeting into the

accounting and the budgeting framework is one which is not satisfactorily done. To a very significant extent, capital budgets are handled independently of operating budgets and financial statements. Therefore, when one looks at financial statements, one does not necessarily see the future implications that are arising as a result of capital budgeting decisions being made. I do recognize that mandating specific accounting practices does take away from the discretion of governmental officials. Generally accepted accounting principles would probably be developed in a joint effort by the Financial Accounting Standards Board and the National Council on Governmental Accounting with some cooperation, hopefully, from the states and the GAO. One of the concerns that people have in the municipal area is that they will see these principles change as a result of a national consensus that may affect them and that they would not be able to deal with it. A great deal of work needs to be done on the relationship of these three areas and the development of an integrated system of financial reporting and control.

Mr. Robinson argues that a disclosure bill should not regulate; that is, mandate certain practices. The only thing I have to add to that is that, the comptroller at any time when he is persuaded by the accounting fraternity that it is the right thing to do can say that my regulations are indeed generally accepted accounting principles as promulgated at the time by the appropriate accounting bodies. In other words, within the context of the bill there is no necessary distinction between the comptroller's requirements and generally accepted accounting principles. In fact, I gather the differences are really very small today.

Third, in my judgment, the proposed law does not provide for sufficiently timely reporting of large municipal entities. At the present time, the law provides for annual reporting with a proviso that, if certain tests are not met, quarterly reporting can be required. It certainly seems to me that any major municipality in the state should be able to present quarterly data, at least comparing budget and actual results, so that people can see what is happening as the year goes on rather than waiting until the end of the year to see whether budget notes have to be issued to cover deficits. I think this would be important for investors, but it is probably even more important as a managerial tool and as a managerial discipline. There is a strong tendency, if one does not report publicly, to hope that

something will go away. If at the end of the year the deficit exists there is the need for much more draconian action. I think in this regard the request of the New York City financial control board for contingency plans from the city officials is beneficial. Although such requests may be annoying to city officials, as I saw while sitting in my city seat, they serve a useful function and should be used in calm times as well as periods of crisis.

Fourth, there is nothing in the act that deals with the problems of internal financial and accounting control. This subject is increasingly a matter of attention in corporate accountability and needs to be in the municipal area as well. The Foreign Corrupt Practices Act, which was passed in December, 1977, mandates that all SEC registrants have systems of internal control. The title of the act is a typical misnomer. Only peripherally does it relate to foreign or corrupt practices. Its most important sections deal with financial reporting control and domestic corporations. As a result of its title the act was ignored by domestic corporations until they began feeling the two-by-four across the nose as its provisions were used in several enforcement actions. The act's requirements aside, I believe that there should be some proviso for the mandatory maintenance of a system of adequate internal accounting control and a public report thereon, either by the independent auditors of the municipality or by the comptroller, if there are to be no independent auditors.

Fifth, the act is conspicuously silent as to the auditing standards to be used in a comptroller's examination. It says that if an independent auditor examines the results he must report that he has used generally accepted auditing standards. The act, however, does not address the issue of what auditing standard should be used by municipal comptrollers. At a minimum, I think the law should require that the comptroller prescribe publicly by rule, or in some other fashion, the auditing standards which he will use so that they can be examined in the public eye. The proposals are deficient in allowing the standards to be judged merely implicitly in terms of what is done by the comptroller. The nature of the report is critical. Does it constitute meaningful disclosure or does it constitute simply compliance and the presentation of a large amount of aggregated data. I think what this law attempts to do and what other approaches would attempt to do is to provide for a better framework for disclosure. While there are requirements that municipal corporations sub-

mit annual detailed financial reports to the state comptroller, they have proved quite meaningless. And the adequacy of the disclosure is not necessarily directly and positively correlated with the volume of the disclosure. I think that is a problem that exists in the current requirement.

The question of the adequacy of the accounting and whether the bonds will be paid off are not totally correlated. On the other hand, I think that disclosure requirements are likely to have benefits beyond solely the sale of municipal securities and the assessment of the probability of those bonds being paid off. I mean, if you have sufficient wealth in a community, bonds will be paid off even if no accounting is done at all. If the county treasurer runs around with a large bulging wallet and does everything in cash, he can still pay off the bonds if there is wealth and a tax base. If he is honest! Well, even if he is a little dishonest there is probably enough!

Finally, a Certified Public Accountant's report is needed in those cases where a municipality is to be exempt from a comptroller's examination. Such a report requires a statement by the auditor that generally accepted auditing standards have been used. This report should also be required to describe, in order to qualify for the exemption, that the municipality is preparing its financial statements in accordance with generally accepted accounting principles and that there are no significant scope or other limitations that is imposed.

So, those are a number of specific deficiencies which I believe exist. I may sound critical; I do so in part with the interest of stimulating discussion, plus perhaps because of my normally hostile disposition. However, I do believe that the act has some significant strengths and that with appropriate development it could represent an act that is worthwhile. I was very sorry to hear the comptroller was moving in the direction of eliminating the summary report requirements. The federal securities regulations are moving more and more in the direction of saying the key disclosures are the 1934 disclosures, the ongoing disclosures, not the 1933 Act disclosures, which are the disclosures at the point when securities are being sold. The comptroller position is contrary to the general direction of accounting and reporting and does not focus on the important necessity of establishing a periodic system of reporting. Thank you.

Donald J. Robinson: My views with respect to supporting this

proposal are based on a slightly different approach from the other members of the committee. The committee said in the report that despite the dramatic improvement in response to the demands of the marketplace for more information, it is the general consensus of the committee that many deficiencies remain in the scope, quality and presentation of information by local governments in New York State. These deficiencies have severely limited the usefulness of disclosure documents to investors.

I stated in footnote 110 of the Bar Association's Report that I did not believe there was sufficient evidence to sustain a finding that information supplied in connection with the offer and sale of obligations of such local governments is inadequate. Based on that, I am able to support the proposal because I do not believe that the purpose of this proposal should be the protection of investors in New York State.

The purpose of this proposal, as I view it, should be to improve the perception of investors on a nation-wide basis of issues of New York State. The proposal therefore ought to relate to obligations issued by all issuers within the 50 states and sold within New York State. Based on this proposal, there can be a better perception of issues sold by issuers within the state. It is similar to the perception of the marketplace in the North Carolina issues and I think on that basis the proposal can be fully supported.

Let us talk about federal legislation, or as Sandy Burton might want to refer to it, the Williams Accountants Relief Act. It is felt by many that there has to be a nation-wide standard for the protection of investors. I agree with that concept, but I think it can adequately be handled by following the MFOA guidelines. The guidelines are permissive in nature. However, they set a standard by which the marketplace can view new issues. It adequately protects the issuers in terms of the type of disclosure that is going to be made and the type of marketing approach they will take in order to comply with the guidelines. We are not dealing with the corporate market where you have major issuers and a great number of issues. You are dealing in many cases with small issuers who are going to apply the proceeds for a very minor purpose, for example, the purchase of a fire engine. I can see no reason why we should have a nation-wide regulatory system. That is precisely what the SEC's proposals would ultimately lead to. A nation-wide proposal for the regulation

for such small issues would greatly increase the cost to the public in attaining capital funds.

Sandy Burton says that the SEC has experience in this area. However, studies recently completed have shown that there is slight value to the registration process under the 1933 Act of the Federal Securities Laws. He properly reports there is much more importance being given to the reporting requirements than to the 1934 Act. Notwithstanding that, it seems that the proposals that are being put forth for federal regulation will be extremely costly to issuers and therefore to taxpayers and ratepayers. I think the marketplace is demanding a greater amount of information than has been given to them in the past. I think the MFOA guidelines have been a major factor in setting forth the criteria which issuers and other market participants ought to consider in terms of disclosure guidelines. I think the Federal government ought to stay out of this area until they have found that there are major improprieties. I think the evidence to date does not sustain that. For these reasons, I would oppose any federal regulation. Thank you.

Roswell B. Perkins: This subject reminds me of when I was working on the public offering of securities for a company which had been private for many years, had grown enormously and became tremendously successful. When we first brought it to the public market there were enormous problems of disclosure. We had to strike balances between reciting a whole lot of history that might or might not be relevant to new investors in describing the company today. When we approached one of the thorniest issues and were having the most difficult time, my senior partner analogized the problem to fitting a Neanderthal into a tuxedo. What we have here is similar. We are confronting a field in which there traditionally has not been much disclosure and are trying to adapt to it sophisticated disclosure concepts developed in the corporate securities field. My background is that of the corporate securities field and, therefore, I think that I am able to understand the approach that Sandy Burton is seeking to have applied here.

The question really is how fast we can fit the Neanderthal to the tuxedo, and I think that our bill represents an attempt at some reasonable balance between the state of the art as it exists today and the state of the art where we might like to see it in the near future. I think the problems of disclosure in the municipal field present an area for creative lawyering, and, like all lawyering, one must begin

with the state of facts and the realities as they exist. It is hard sitting here in the heart of our greatest metropolis to have a feeling for the small upstate communities, and indeed for small communities all around the country. We are not dealing with big cities in all cases. We are dealing with very modest sized entities and very modest sized staffs and extremely inadequate budgets for doing the kinds of things that we would like to see if we were going to apply the standards of corporate securities law to this field.

On the subject of state versus federal regulation, I would like to reserve for a moment the issue of the mechanics of legislation and speak about the nature of our federal system. These are certain fundamental philosophical aspects of our system of fifty states with certain powers delegated to the federal government. We have gone through a tremendous cycle in the last fifty years. In the 1930's, at the height of the Depression, there was a tremendous sweep of power to Washington for the simple reason that an inadequate job was being done in many areas in which there was a need for enormous speed. Our entire lifetimes, if you will, have been filled with the movement of power toward Washington.

But a lot has turned around and I think we have seen a lot of evidence of the need for change. Such major pieces of legislation, as the Revenue Sharing Act, reflect a recognition now that the federal government cannot do everything. We have to find ways in which the federal government can be relieved of assuming the entire responsibility. If we were not afforded the opportunity, we would be looking for the opportunity for means of decentralization. As with the efforts to find decentralization techniques within a large city such as New York City, it is a constant challenge to make sound judgments as to the allocation of power between the federal and the state government.

In the area of regulating public securities, we need not talk about decentralizing in the sense of undoing something that has already been centralized. There has not yet been thrust upon Washington the responsibility for administration or dealing with a disclosure system for all our localities throughout the country. I personally feel it would be an utter disaster if we were to make that shift at this time.

I think that the reasons for keeping the power at the state level are adequately stated in our report. Just to summarize them, the whole authority for municipal debt issuance is state created. De-

tailed statutory provisions currently exist. The local governments themselves are entities or creations of the states. I feel strongly that the administration of the disclosure system can be best done at the state level, since state officials in most states already have extensive responsibilities in relation to the monitoring of local financing and some form of reporting to the state authorities. If new disclosure requirements are enacted only at the state level, they can be integrated with existing state reporting requirements and not add a whole new layer of regulations.

Furthermore, there are distinct constitutional uncertainties involved in enacting federal legislation governing municipal debt issuances. Additionally, there are enormous differences which have not been recognized here as between the corporate securities field and the municipal securities field. I have heard, for example, people say that we cannot have fifty states enacting disclosure laws because it will cause the same mess as have the blue sky laws. I disagree violently with that conclusion. The blue sky laws are laws in which the states are saying to issuers throughout the country: we cannot sell your securities in our states unless you meet certain standards. So that the national issuer who wants to sell in all fifty states is indeed confronted by a morass of different laws which he has to examine.

The distinction between blue sky laws and the proposed statute is obvious. We are proposing a law which impinges solely on the issuer of that particular state in which the municipality exists. It is a proposal which supplements the existing legal structure relating to the creation of that entity and the creation of its power to issue debt. Non-New York issuers need not comply with the new law. Accordingly, I do not think the analogy to state blue sky laws is accurate.

One final comment on the SEC and the staffing process. Based on my own experience with the SEC, they have far more than they can handle. The delays are enormous. I shudder at the notion that some little town in Nevada would have to send its comptroller down to deal with the Office of Municipal Disclosure at the SEC in Washington, D.C. It would undermine the concept of federalism that has been so important in our national history. Any notion that the staff of the SEC can do the job better is wrong.

Mr. Burton says that the SEC is qualified to do this reviewing task better because they are more expert at the disclosure requirements. But he hastily adds that the Williams Bill does not call for

the SEC staff to review anything because it does not require a process of filing and staff review of offering statements. The two thoughts are completely inconsistent. I do not often assume the role of issuing great warnings about enlarging the role of the federal government. I must say, however, that we are in a period in which it is extremely important that we act at the state level and demonstrate to the Congress the capacity of the state to put its own house in order.

There are a great many things we did not do in our proposals. There is a definite note of restraint in the proposals in not trying to advance the Neanderthal too rapidly. We concede that and consider it one of the strengths of the bill. As you have seen, the comptroller has recently proposed a bill which is distinctly short of our proposal. We think it is not particularly worthwhile for an organization such as ours to propose something wholly unrealistic in terms of its capacity to be absorbed by the political entities for which it is proposed.

What are some of the things we did not do? We did not set up an approval system. We did not require that there be an administrative approval of the official statement before an offer is made. We did not seek, as Sandy Burton has said, to regulate the distribution process. I think that there is a need for further examination of the distribution process, but we did not feel equipped in the statute to establish a mandated system of distribution of the official statement. I should point out, in response to Mr. Burton's remarks that there is a provision in the statute which does permit the comptroller to issue regulations as to the use of the official statement, in section 2, subdivision (b). However, we considered it realistic not to establish by statute a mandated system of distribution of the official statement. We did not set up any new agencies. We sought to utilize and build on the comptroller's office. We did not try to create new disclosure standards. We built on the enormously important work done by Don Robinson and his cohorts in the MFOA guidelines and encouraged, in effect, the comptroller to look to those guidelines.

We did not create new penalties. We felt very strongly that in the maturation of our Neanderthal the one thing we could not do was to destroy the capacity of local government to attract the best people it can and we are certainly not going to come out with legislation which misses the mark by seeking to be punitive on individuals as

distinct from establishing a program and a pattern.

Although we considered the subject very carefully, we did not mandate audited financial statements in the offering statement and annual reports. This was perhaps our most difficult issue. The ideal situation would be to require audited financials. But the simple fact is that we have not had that situation in New York State. We are moving toward it gradually. Federal revenue sharing programs are resulting in a great deal more auditing being done by outside auditors of municipalities than ever before. It has been an evolutionary process and we are all for it. But we did preserve the alternative of having the existing system of state comptroller's audit of annual financial statements after the fact. This may be unsatisfactory, but it is realistic in terms of where we are today.

In terms of the criticisms that Sandy Burton has made of the accounting aspects of the bill, I do not think that there is anything in the bill that deals with the question of the distinction between accounting and budgeting. I concede that it is important. I am not sure that there is anything that can be done in our draft legislation to promote some of the advances in the field of municipal accounting which are so necessary. We have a letter from the New York State Society of Certified Public Accountants, dated December 29, 1978, which has made some highly constructive comments on the draft bill. I think the accountants should make inputs into this area. But I would like to suggest that most of Mr. Burton's comments really ought to be taken as serious needles to the accounting profession; they do not really relate to the contents of this legislation. I do not think that we can resolve in this legislation all of the differences between the comptroller's existing requirements and generally accepted accounting principles. The latter is a moving target and one that is properly evolving. We applaud any effort that the accountants and the comptroller may make to get together and to harmonize the comptroller's requirements with generally accepted accounting principles. I think that our bill has gone a long way in recognizing those two categories, calling for a statement of the distinction between generally accepted accounting principles and the comptroller's requirements. I think we have provided the framework which is compatible with major advances in the accounting field for municipal financial disclosure.

To summarize a few of the other pluses, I think putting the state

imprimatur on the disclosure principle is of enormous importance. Mandating the existence of the disclosure document itself, and requiring that it be on file before the offering begins, is enormously important. Giving recognition to the work of the MFOA and the very detailed standards established by the guidelines is extremely important. I think, as Sandy Burton said, that the adoption of the concept of continuous disclosure is a major step forward. This is an inevitable trend, not only in the corporate securities field, but also in the municipal securities field. This statute would go very far by latching onto that concept and promoting it.

I think that in recognizing the archaic nature of the existing annual report that is filed by municipalities and calling for an annual report that contains the same information as an official statement an enormous step forward has been made. The morass that is filed now is worthless in terms of investory information.

The statute would put a needle into the comptroller for more rapid auditing. It is a disgrace to ourselves and the state that some of the audits are three years behind. Our statute in effect alleviates these problems. It encourages independent auditing in a number of respects. It mandates the availability of basic documents.

As for the bill introduced by the comptroller, his message to the legislature states that it is one step in the direction of our proposal. This is true. No one could deny that. It is fairly clear from what has been said, however, that it does not go nearly as far as we would like to see it go. For example, I think that we must continue to stress the importance of the annual report and the broader disclosures required in our proposal. While we will not thereby reach Mr. Burton's ideal of perfection for some years to come, I think we are moving in that direction.

Three questions have been directed to me. First, what are the state comptroller's existing powers with respect to the report and essential facts which must be disclosed and what are the substantive differences between the present law and the Bar Association's proposals? Second, in view of the comptroller's previous failure in the disclosure area, why continue to leave the comptroller complete discretion in prescribing the contents of official statements? Third, in view of New York City's continuing market problems while others have returned to the market, why could not the committee propose special provisions for cities over one million?

First, it is my understanding that the comptroller presently has broad powers that could have been exercised in this area. I confess that I have not really done the kind of exhaustive legal analysis to be able to say with assurance that the comptroller could have done by regulation exactly what we proposed by statute. So, I must default on giving a good lawyer's answer to the first question.

Second, I think there are sound reasons for giving the comptroller the discretion in prescribing the contents of an official statement. The very existence of the statute will force the comptroller to move in this area and the statute mandates a great sweep of action on his part. If it is inaction by the comptroller which is the problem, the law would force him to act. In addition, leaving the comptroller as the administrative agent, as it were, for the statute is consistent with his role as watchdog and monitor of local finance. He now has the auditing function, the staff to perform the necessary work and is used to dealing with the localities. Other than the Office of Local Government, the status of which I do not know, I know of no other body at the state level which has such a major continuing relationship to local governments. You would have to create one and this makes no sense. The comptroller can do the job. It is a question of having the right people. The fact that the job has not been done correctly in the past is no reason to give up on the function. Although the standards prescribed are discretionary, it would take a mighty bold comptroller to ignore the statute and the MFOA guidelines.

Third, on the question of special provisions for New York City, we all recognize that the city's prospectuses are now voluminous and complete. In my judgment, this kind of legislation would really have no significant effect. Since the events described in the SEC investigation have been reported the state of the art of disclosure for New York City has gone extremely far. There might be some elements of the annual reporting requirements in our proposal which would impact on New York City but, there again, they now have outside accountants and have extensively revamped things. The bottom line answer is we did not give any significant thought to the question of a separate set of disclosure standards relating to cities of a million or more.

Finally, we did not address the question of multi-state organizations like the Port Authority. We fully recognized that there is a

broad area of authorities which our bill does not address. The facts of life are that disclosure statements by public authorities in the past have been far ahead of those of municipalities. To the best of my knowledge no one has complained that the Port Authority or Triborough Authority prospectuses have been inadequate. Thank you.