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ARTICLE

# **M-U-N-I: Evidencing the Inadequacies of the Municipal Securities Regulatory Framework**

*John Carriel\**

ABSTRACT

This article argues that the current regulation of the municipal securities market is inadequate, and that regulatory reform is not only necessary but also permissible as the Securities and Exchange Commission has the legal authority under the current statutory framework to substantially remedy such inadequacy. In making this argument, this article focuses on the legislative history of the Securities Reform Act of 1975, analyses of statutory text, the current regulatory framework surrounding the municipal securities market, prior attempts to effect regulatory reform, and one of the principal issues with the current regulatory framework—the lack of uniform accounting principles in the financial statements municipal issuers use when issuing new securities. In addressing these topics, this article uses different lenses (macro, meso, and micro) to, hopefully, deliver a more compelling tale with three underlying themes: “The Dangers of Function Following Form,” “The Dangers of Circuitous Regulation and Concision,” and “The Causality Dilemma.”

## I. INTRODUCTION

This article argues that current regulation of the municipal securities market (“muni-market”) is inadequate and that regulatory reform is not only necessary but also permissible under current statutory authority. Municipal securities directly impact the quality of life of millions of Americans. They are used (ideally) to finance a community’s infrastructure, which includes roads, public safety institutions, education, common areas, residential developments, and every other facility, program or institution commonly associated with a local government.<sup>1</sup> Due in large part to the importance of what these securities are meant to fund, they have been afforded various exemptions and qualities to make them more attractive investments (for example, favorable tax treatment).<sup>2</sup>

Though municipal securities are meant to be used for the betterment of society, research as well as recent history has shed light on the fact that municipal officials are human beings. As with most humans, they can be self-interested, and consequently, susceptible to the lure of the dollar. This attraction can and has resulted in the rerouting of funds raised by the issuing of a municipal bond to persons, accounts, or projects completely unrelated to the betterment of local communities. These actions can have far reaching effects that result in harm not only to investors, in the case of an issuer being unable to meet its obligations, but also to the quality of life for countless people. These actions can lead to homes losing substantial value nearly overnight, municipalities lacking funds to employ enough public safety officers, and necessary infrastructure like water filtration systems failing.<sup>3</sup>

For example, the Jefferson County, Alabama, sewer construction scandal (which bankrupted the county) was detrimental to its citizens.<sup>4</sup> Additional examples

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1. See *Report on the Municipal Securities Market*, U.S. SEC. & EXCHANGE COMMISSION i–ii (July 31, 2012), <https://www.sec.gov/news/studies/2012/munireport073112.pdf> [hereinafter *SEC Report*].

2. *Tax Treatment*, MUN. SEC. RULEMAKING BOARD, <http://www.msrb.org/EducationCenter/Municipal-Market/About/Financial/Tax-Treatment.aspx> (last visited Dec. 13, 2017).

3. See discussion *infra* p. 2.

4. Jefferson County engaged in a series of risky interest rate swaps and refinancing of municipal bonds that were issued to build sewer projects and improvements. Theresa A. Gabaldon, *The Sewers of Jefferson County: Disclosure, Trust and Truth in Modern Finance*, in *THE PANIC OF 2008: CAUSES, CONSEQUENCES AND IMPLICATIONS FOR REFORM 255-84* (Lawrence E. Mitchell & Arthur E. Wilmarth, Jr. eds., 2010). These bonds were to be funded by the sewer projects and included extremely favorable terms for the banks providing the credit swaps and refinancing. *Id.* at 256-259. As interest rates and fees on the swaps skyrocketed, Jefferson County citizens were forced to pay increasingly prohibitive fees for the operation of their sewers (over 300% rate hikes). *Id.* at 256. Eventually Jefferson County was unable to repay its approximately \$3.14 billion in debt and was forced to declare bankruptcy in November 2011. Dwight V. Denison & J. Bryan Gibson, *A Tale of Market Risk, False Hope, and Corruption: The Impact of Adjustable Rate Debt on the Jefferson County, Alabama Sewer Authority*, PRACTICAL PRESS 312, 324, [http://pracademics.com/attachments/article/877/Luby%20Symp\\_Art%204\\_Denison\\_Gibson.pdf](http://pracademics.com/attachments/article/877/Luby%20Symp_Art%204_Denison_Gibson.pdf) (last visited Dec. 13, 2017). It has since been revealed that the extremely favorable terms the banks received in these transactions were, in part, due to bribery of county officials. *Id.* at 326. At least 21 county employees and contractors involved in the sewer projects have been indicted for federal crimes relating to the sewer projects. *Id.* Further, 17 county officials (including the former mayor of Birmingham, Alabama) and contractors have been sentenced to federal prison in connection with corrupt

include Ramapo town officials who “cooked the books” after losses from building a baseball stadium,<sup>5</sup> and the Rhode Island Economic Development Corporation issuing \$75 million in municipal bonds to finance a video game and subsequently loaning \$50 million to the gaming studio without disclosing the fact that the studio needed \$75 million to complete the game to investors.<sup>6</sup>

Unfortunately, these are not outliers in the muni-market, rather these schemes are often difficult to uncover until it is too late (i.e. bankruptcy).<sup>7</sup> More often than not, it would appear that most of these types of behavior are often undiscovered.<sup>8</sup> While not perfect, an impactful solution would be regulatory agencies placing direct disclosure requirements on municipal issuers (“muni-issuers”).<sup>9</sup> This article ultimately argues that one of the largest issues with the current regulatory framework is the lack of uniform accounting principles in the financial statements muni-issuers use when issuing new securities. Under the current framework, regulators do not require uniform accounting standards,<sup>10</sup> which has led to issuers using accounting methods which are objectively unreasonable. For example, as will be discussed in part IV of this article, municipalities are permitted to use accounting principles which result in severely skewed debt calculations that do not include nearly half of the debt the municipality is responsible for.<sup>11</sup> This skewing is an issue because it permits municipal issuers to create an image of financial stability, and issue large bonds and securities which, by the nature of how debt works, necessarily increases the potential of default.

In discussing this issue and solution, this article uses different lenses (macro, meso, and micro) to, hopefully, deliver a more compelling tale with three underlying themes. Part II (“The Macro-Level”) discusses the history of muni-market regulation with a focus on the Securities Reform Act of 1975 (“1975 Amendments”)<sup>12</sup> and its segments commonly referred to as the Tower Amendment (the “Tower”), named after the late Senator John Tower.<sup>13</sup> Part II’s theme is “The Dangers of Function Following Form.” Part III (“The Meso-Level”) provides various examples of how the Municipal Securities Rulemaking Board (“MSRB”) and the Securities and

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financial dealings, including bribery, relating to the refinancing of the sewer bonds. Kent Faulk, *Prison Sentence Ends for JeffCo Sewer Contractor; 3 More to Go*, AL.COM (Oct. 30, 2015), [http://www.al.com/news/birmingham/index.ssf/2015/10/jeffco\\_sewer\\_contractor\\_ends\\_p.html](http://www.al.com/news/birmingham/index.ssf/2015/10/jeffco_sewer_contractor_ends_p.html).

5. *Town Officials in New York Hid Financial Troubles from Bond Investors*, U.S. SEC. & EXCHANGE COMMISSION (Apr. 14, 2016), <https://www.sec.gov/news/pressrelease/2016-68.html>.

6. The game was not completed, the studio went bankrupt, and Rhode Island was left with much of the debt. *SEC Charges Rhode Island Agency and Wells Fargo With Fraud in 38 Studios Bond Offering*, U.S. SEC. & EXCHANGE COMMISSION (Mar. 7, 2016), <https://www.sec.gov/news/pressrelease/2016-37.html>.

7. See *infra* Section III.B (evidencing how most securities laws violations in the muni-market are likely not discovered by regulatory agencies).

8. See *infra* Section III.B (evidencing how most securities laws violations in the muni-market are likely not discovered by regulatory agencies).

9. The definition of a municipal security issuer is: “[a] state, territory, political subdivision, municipality, or governmental agency or authority that raises funds through the sale of municipal securities.” *Glossary of Municipal Securities Terms: Issuer*, MUN. SEC. RULEMAKING BOARD, <http://www.msrb.org/Glossary/Definition/ISSUER.aspx> (last visited Dec. 13, 2017).

10. See *SEC Report*, *supra* note 1, at 70; *infra* Section III.A (discussing current regulatory framework surrounding municipal securities).

11. See *infra* Section IV.B.1 (discussing debt recognition principles in North Bergen, New Jersey).

12. Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97.

13. Mark E. Laughman, *Leaning Tower: Do the Proposed Amendments to SEC Rule 15c-2-12 Violate the Securities Acts Amendments of 1975*, 69 NOTRE DAME L. REV. 1167, 1169 (1994).

Exchange Commission (“SEC”) have cleverly attempted to create a fair and efficient muni-market using indirect methods, but have been seemingly unable to do so. Part III presents arguments that the inability to effect regulatory reform in the muni-market appears to be, in large part, due to public interest not-for-profits’ lobbying efforts in opposition to any changes to the existing framework. Part III’s theme is, “The Dangers of Circuitous Regulation and Concision.” Finally, part IV (“The Micro-Level”) uses the Township of North Bergen, New Jersey as a case study for an analysis of one of the primary issues preventing the equitable operation of the muni-market—the lack of uniform accounting principles in muni-issuers financial statements, and subsequently, their official statements used in connection with issuing new securities. Part IV’s theme is, “The Causality Dilemma.”

There are two core arguments presented throughout: first, the current regulatory framework surrounding the muni-market is inadequate to prevent fraudulent activity and promote fair and efficient markets; and second, this need not be the case, as the SEC has the legal authority under the current statutory framework to substantially remedy these inadequacies. The agency need only boldly reject special interest arguments and select different provisions of statutory text to use when exercising their rulemaking authority, even if the drafter of the chosen text results in a less infectious public branding than the aforementioned Tower Amendment.

## II. THE MACRO-LEVEL: LEGISLATIVE HISTORY OF THE SECURITIES REFORM ACT OF 1975 AND THE TOWER AMENDMENT

Part II uses one of the broadest legal arguments that can be made, and has been made countless times. That is, the difficulty in deciphering and adhering to legislative intent often leads to dangerous occurrences of function following form. The inverse, “form follows function” is a common architectural principle dating back to the late 1800s.<sup>14</sup> The general idea is to design a building or product based primarily on how it is intended to function, and its ideal form will follow.<sup>15</sup> While this phrase is commonly credited to architecture, the principle can be seen in all industries and even life itself—as evidenced by all life having formed its varied appearances in pursuit of a biologically desired function (i.e. survival).<sup>16</sup>

It would be unfair to argue that the Senate and Congress as a whole creates legislation without fully considering its intended function. Rather, the argument below is that times change, the floor shifts, and our laws or their interpretation must evolve in kind. This evolution is imperative, and ultimately, when the functioning of legislation like the Tower becomes detrimental to the fair and efficient operation of the muni-market, the legislation must go the way of the tail, until all that remains is the coccyx (the tailbone) in the form of an entry in the index of repealed legislation on Wikipedia. Members of Congress are not clairvoyant and are unable to anticipate how statutory language will be implemented decades into the future. In fact, it can be argued that our legislators are fully cognizant of this fact. Designations of

14. Louis H. Sullivan, *The Tall Office Building Artistically Considered*, LIPPINCOTT’S MAG., Mar. 1896, at 403–09.

15. *Id.*

16. See e.g., *Arctic Bears: How Grizzlies Evolved into Polar Bears*, PBS (June 10, 2008), <http://www.pbs.org/wnet/nature/arctic-bears-how-grizzlies-evolved-into-polar-bears/777/> (explaining that polar bears evolved from brown bears; their design was based on the needed function of surviving in harsh polar environments).

rulemaking authorities to executive agencies is a perfect example supporting this position. More specific support that relates to this particular topic can be found within the Senate Report discussing the Tower's adoption.<sup>17</sup>

[T]he Commission must be in a position to review existing Board rules and policies to consider their adequacy in light of new knowledge and experience and changed regulatory circumstances. By continuously examining market circumstances and regulatory needs, appraising and reappraising the adequacy of existing regulatory measures, the Commission can exercise its supervisory powers to ensure the continuing validity of self-regulation and the effectuation of the purposes of the bill.<sup>18</sup>

Part II presents a bird's eye view of the current regulatory framework surrounding the muni-market. Part II is divided into three subparts. Subpart A endeavors to present a balanced view of the legislative intent behind the portions of the 1975 Amendments relevant to the field of municipal securities. Subpart B then discusses the legislative intent behind the Tower. Part II concludes with subpart C providing a short summation and laying the groundwork for part III and the "Meso-Level."

#### A. *Legislative History of the 1975 Amendments*

The 1975 Amendments were comprised of various changes to both the Securities Act of 1933 ("Securities Act")<sup>19</sup> and the Securities Exchange Act of 1934 ("Exchange Act").<sup>20</sup> In the broadest of strokes, the 1975 Amendments created the MSRB, adjusted the SEC's authority over self-regulatory organizations, increased public access to information surrounding the activities of institutional investors, and authorized the SEC to create a national clearing system for securities transactions.<sup>21</sup> While the 1975 Amendments influenced various areas of financial regulation, this article only discusses its sections that are directly or indirectly relevant to the muni-market. In terms of methodology, the following analysis uses the totality of discussions and debates surrounding the adoption of the 1975 Amendments in conjunction with the final enacted language. This use aims to provide insight as to the intentions of not only Senator John Tower, but the aggregate of legislators of the time.

In deciphering the legislative history of the Tower and available records, the most rational starting point is a discussion of how the topic of municipal securities was first broached in the Senate Report on the 1975 Amendments. In introducing the amendments and explaining their effects on the muni-market, the Senate Report states, "S.249 would also create a federal mechanism for the regulation of transactions in the debt obligations of state and local government issues ('municipal securities') and brokers and dealers and banks engaged in a municipal securities business."<sup>22</sup> The report then describes the first step in doing so as "removing the

17. S. REP. NO. 94-75, at 50 (1975), as reprinted in 1975 U.S.C.C.A.N. 179, 228.

18. *Id.*

19. 15 U.S.C. § 77a (2012).

20. *Id.* § 78a.

21. Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97.

22. S. REP. NO. 94-75, at 3 (1975), as reprinted in 1975 U.S.C.C.A.N. 179, 228. In contrast, the House Report on the 1975 Amendments is largely silent on the topic of municipal securities, and essentially defers to the Senate's proposals by stating, "The House amendment contained no comparable provision.

exemption municipal securities have enjoyed since 1934 from practically all of the provisions of the Exchange Act . . .” as removal would “substantially benefit the increasing number of individual investors who find the tax-exempt features of these securities attractive.”<sup>23</sup> The Committee reasoned that, while they were unaware of any widespread fraud in the muni-market, it had become clear that the muni-market was no longer comprised of only institutional investors.<sup>24</sup> Therefore, the Committee concluded that the general exemption from regulation under the federal securities laws that municipal securities were historically afforded should no longer apply.<sup>25</sup>

The Senate Report then explained that the Committee believed the best way to regulate the market would be through regulating municipal securities professionals, as opposed to imposing disclosure requirements on issuers.<sup>26</sup> The available legislative materials indicate that the primary reasons for choosing this route was because the Committee had been “mindful of the historic relationship between the federal securities laws and issuers of municipal securities,” as well as the Committee having been unaware of any abuses that would “justify such a radical incursion on states’ prerogatives.”<sup>27</sup> In a vacuum, or perhaps just suspended with the Tower, these quotes appear to entirely support the notion that regulatory authorities were not intended to impose any disclosure requirements, in any manner, directly on muni-issuers. Despite this appearance, when these quotes and the Tower are read along with the rest of the 1975 Amendments, it becomes apparent that legislators intended to establish an evolving regulatory framework in the muni-market.

### B. The Tower

The Tower, read on its face, may prohibit the SEC and the MSRB from placing disclosure requirements on muni-issuers. While this may be the case upon first glance, as discussed below, a careful reading of the Tower’s text, and counterbalancing portions of the discussions surrounding its adoption, allow for a reasonable contrary conclusion.

There has been a tendency to discuss the Tower as a standalone amendment.<sup>28</sup> The Tower is comprised of 205 words,<sup>29</sup> and was a small part of the 1975 Amendments, which had approximately 42,286 words in its entirety.<sup>30</sup> Despite the Tower’s brief appearance in the 1975 Amendments, there is a compelling reason why it has garnered so much attention (in the field of municipal securities) over the years. This attention stems from the Tower’s repeated use by parties opposing muni-market regulatory reform, as one of the primary reasons regulatory agencies must stay far away from regulating the muni-market.<sup>31</sup> This is a result of the text of the Tower appearing, at first glance, to explicitly prohibit regulating the muni-market.

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The House receded to the Senate.” H.R. REP. NO. 94-229, at 101 (1975), as reprinted in 1975 U.S.C.A.N. 321, 332.

23. S. REP. NO. 94-75, at 3.

24. *Id.*

25. *Id.* at 3-4.

26. *Id.* at 44.

27. *Id.*

28. See *infra* Sections III.E.1–3 (discussing efforts made by those opposing additional muni-market regulation).

29. 15 U.S.C. § 78o-4(d) (2012).

30. Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97.

31. See *infra* Sections III.D-E (discussing parties in opposition to amendment or repeal of the Tower).

Unfortunately, this current interpretation, along with opposition to regulatory reform, has precluded muni-market reform necessary for creating a fair and efficient market.<sup>32</sup>

### 1. *A Nuanced Analysis of Statutory Text*

At first glance, the Tower text places heavy restrictions on both the SEC and the MSRB with respect to the ability to require disclosure from muni-issuers. The Tower text in full reads as follows:

(d)(1) Neither the Commission nor the Board is authorized under this chapter, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such security.

(2) The Board is not authorized under this chapter to require any issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: ***Provided, however,*** [t]hat the Board may require municipal securities brokers and municipal securities dealers or municipal advisors to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this chapter.<sup>33</sup>

Despite the Tower's fairly express language, there are at least three reasons and instances from the legislative history of the 1975 Amendments as to why this language should not be interpreted as preventing muni-market regulation.

First is the congressional record. The Congressional Record for the period of time when the Tower was first introduced, evidences legislators' intentions to limit the MSRB's authority, not the SEC's. The Tower was introduced by Senators Tower, Williams, Sparkman, and Brooke on April 17th, 1975.<sup>34</sup> The Congressional Record from the Senate chronicles Williams introducing and explaining the portion commonly referred to as the "Tower Amendment" by stating, "the amendment thus states that the Municipal Securities Rulemaking Board may not impose on issuers, directly or indirectly, disclosure requirements. Surely there can be no argument with that result."<sup>35</sup> That is fairly straightforward; however, it is important to note that

32. See *infra* Sections III.D-E (discussing parties in opposition to amendment or repeal of the Tower).

33. 15 U.S.C. § 78o-4(d).

34. 121 CONG REC. 10,736 (1975). It is unclear what percentage of the Tower was drafted by Williams, Sparkman, or Brooke. Although, it can be argued that "The Tower Amendment" has a certain *je ne sais quoi* that the "Williams Amendment," "Sparkman Amendment," or "Brooke Amendment" would not have had.

35. *Id.*



Senator Williams was explicitly speaking of restrictions on the MSRB, not the SEC.<sup>36</sup> Senator Tower soon after provided his explanation of what he believed his namesake was meant to accomplish: “[u]nder the amendment, the Board [MSRB] would not have authority to require [s]tate and local government units to provide information about their operations.”<sup>37</sup> As mentioned, notably absent from Senator Tower’s explanation is the notion that the restrictions clearly applied to the MSRB were also intended to apply to the SEC.

Second, parsing the language in both (d)(1) and (d)(2) of the Tower, in likely unnecessarily granular detail, indicates that an extreme level of care was taken in specifying the extent of specific limitations.<sup>38</sup> A close reading of (d)(1) clearly reads as a restriction on the SEC and MSRB in terms of requiring filings “prior to” the sale of municipal securities (as opposed to any mention of restrictions on continuing disclosures post-sale).<sup>39</sup>

Further, when subsection (d)(1) is read in conjunction with (d)(2) it becomes increasingly apparent that the text of the Tower makes efforts to distinguish between the types of restrictions on the authority to require disclosures on the MSRB as opposed to those meant for the SEC in (d)(1).<sup>40</sup> For example, (d)(2) states that the MRSB is not authorized to require a muni-issuer, directly or indirectly, through a broker, dealer, municipal advisor, or otherwise, to “furnish to the Board or to a purchaser or a prospective purchaser . . . any application, report, document, or information with respect to such issuer.”<sup>41</sup> While this language is clearly designed to place additional restrictions on the MSRB, the drafters added additional language that should clarify any misconception that these restrictions also applied to the SEC. That is, (d)(2) concludes with language emphasizing that nothing within paragraph (d)(2) should be construed as impairing or restricting the SEC’s authority.<sup>42</sup>

With this in mind, it is abundantly clear that the amendment places entirely different levels of restrictions on the SEC and the MSRB. Further, after analyzing the extent of how intentionally restrictive the language in (d)(2) is, (d)(1) now reads as containing fairly limited restrictions on the SEC’s authority. In short, the limitations placed on the SEC’s authority by the Tower were solely applicable to pre-sale filing requirements.

Third, the Senate Report dedicates significant attention to addressing the precise concerns raised by muni-issuers, which were ultimately the impetus for the creation of the Tower.<sup>43</sup> In discussing these concerns, the report states, “[s]pecifically, the fear has been expressed that requirements could be imposed which would have the effect of subjecting information disclosed by issuers in connection with an offering to prior review or approval . . . .”<sup>44</sup> Again, as is plainly seen in the final and current version of the Tower, the primary concern meant to be addressed with the Tower was with respect to disclosure requirements prior to the sale of municipal securities.<sup>45</sup> Given that the concern was over pre-sale filing requirements, the

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36. *Id.*

37. *Id.* at 10737.

38. 15 U.S.C. § 78o-4(d).

39. *Id.* § (d)(1).

40. *Id.* § (d).

41. *Id.* § (d)(2).

42. *Id.*

43. S. REP. NO. 94-75, at 44 (1975), as reprinted in 1975 U.S.C.C.A.N. 179, 228.

44. *Id.*

45. 15 U.S.C. § 78o-4(d).

Committee responded to these specific concerns over *prior review or approval*, by stating,

The Committee agrees that no case has been made for the pre-filing review, either directly or indirectly, of such sale documents, and has therefore included in the bill explicit language to prohibit the use of the rule-making powers of the Municipal Securities Rulemaking Board and the Commission for this purpose. Sections 3(d) and 15B(d) of the Exchange Act (as amended by the bill).<sup>46</sup>

Section 3(d) is a provision excluding employees of muni-issuers acting in their official duties from being a broker, dealer, or municipal securities dealer.<sup>47</sup> Section 15B(d) is the Tower.<sup>48</sup> As evidenced, the legislative history of the Tower and the 1975 Amendments clearly indicate that the purpose of the Tower was to alleviate concerns over *pre-sale filing requirements*, and not an all-encompassing blanket ban on every form of disclosure requirements as it has been, and continues to be argued (these specific arguments will be addressed in part III of this article).<sup>49</sup>

### C. Roles of the MSRB and the SEC

As discussed above, the 1975 Amendments made clear distinctions between the SEC and the MSRB with respect to their authority to regulate the muni-market.<sup>50</sup> The SEC's authority over the muni-market is broader with respect to rulemaking intended to prevent fraud, deceit, and manipulative conduct. Further, the agency is tasked with the enforcement of laws and regulations relating to the muni-market.<sup>51</sup> In contrast, the MSRB has the more specific authority to create rules governing broker-dealers operating in the muni-market, and transaction specific requirements relating to the issuing of municipal securities.<sup>52</sup> Specific examples of this include the "time and method of, documents used in connection with making settlements, payments, transfers, and deliveries" of municipal securities.<sup>53</sup> In contrast, the SEC is precluded from making rules relating to these transaction specific activities.<sup>54</sup> The MSRB is tasked with this responsibility, subject to SEC oversight.<sup>55</sup> In other words, the 1975 Amendments gave the SEC oversight authority over the MSRB, which included the review of all of their rulemaking decisions.

While the 1975 Amendments try to draw lines between the authority of the SEC and the MSRB, they also reinforce existing SEC authority in an attempt to stress that the creation of the MSRB and the adoption of the 1975 Amendments was in no way meant to detract from the SEC's ability to combat and prevent fraudulent

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46. S. REP. NO. 94-75, at 45.

47. 15 U.S.C. § 78o-4(d).

48. *Id.*

49. *See infra* Sections III.E.1-3 (discussing efforts made by those opposing additional muni-market regulation).

50. *See supra* Section II.B (analyzing the Tower).

51. S. REP. NO. 94-75, at 50.

52. 15 U.S.C. § 78o-4(d)(2).

53. S. REP. NO. 94-75, at 48.

54. *Id.*

55. *Id.*

activities. Language the Senate Report used in describing §15(c)(1) and (2) is particularly useful in determining the role legislators intended the SEC to play:<sup>56</sup>

This power, which the SEC arguably already has under Section 10(b) of the Exchange Act, is included in the bill to make clear that the Commission's responsibility extends beyond sanctioning those who have engaged in manipulative or deceptive practices with respect to municipal securities and includes the promulgation of prophylactic rule.<sup>57</sup>

The use of the word “prophylactic” clearly indicates that legislators also tasked the SEC to work towards preventative measures in the exercise of its rulemaking powers. Although “prophylactic” seems to be an objectively straightforward term, the Supreme Court has provided substantial analysis of how the term should be interpreted for the purposes of SEC rulemaking.<sup>58</sup> In *United States v. O'Hagan*, the Court was tasked with determining whether the SEC had exceeded its rulemaking authority under § 14 (e) of the Exchange Act in their adoption of Rule 14e-3(a).<sup>59</sup> Rule 14e-3(a) made it a fraudulent, manipulative, or deceptive act or practice to take part in a tender offer when possessing nonpublic material information relating to the transaction, unless it is first publicly disclosed.<sup>60</sup> The respondent argued that the SEC exceeded its authority under § 14 of the Exchange Act.<sup>61</sup> Section 14(e) directs the SEC to create rules which “prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.”<sup>62</sup> The Court read this sentence as delegating “definitional and prophylactic rulemaking authority to the Commission.”<sup>63</sup>

Further, the Court acknowledged that the language in 14(e) was in fact “tracking” the language of 15(c)(2).<sup>64</sup> The government used this fact to argue that 14(e) should be read broadly.<sup>65</sup> The Court accepted this argument and explained that a “prophylactic measure, because its mission is to prevent, typically encompasses more than the core activity prohibited” and that Rule 14e-3(a) was “a proper exercise of the SEC’s prophylactic power under § 14(e).”<sup>66</sup>

Armed with the interpretive wiles of our highest Court, it is now even clearer that the SEC has the authority to enact further disclosure requirements or regulatory measures so long as they are designed and intended to prevent manipulative or fraudulent conduct in the muni-market. As is argued throughout this article, requiring uniform accounting principles to be used in municipal security offering documents would be a proper exercise of this authority. Especially so, considering that

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56. Section 15(c) contains the specific authority for the SEC to regulate “broker-dealers and municipal dealers” (“muni-dealers”) in the muni-market and promulgate rules intended to curtail fraudulent, manipulative, and/or deceptive acts and practices. 15 U.S.C. § 78o-4(e).

57. S. REP. NO. 94-75, at 50.

58. *United States v. O'Hagan*, 521 U.S. 642, 645 (1997).

59. *Id.* at 644.

60. *Id.* at 668.

61. *Id.* at 666.

62. *Id.* at 667.

63. *Id.*

64. *Id.* at 672.

65. *Id.*

66. *Id.* at 645, 672-73.

the primary rationale behind requiring uniformity would be to prevent manipulative or fraudulent conduct.<sup>67</sup>

#### D. *Swapping Lenses for the Meso-Level*

The 1975 Amendments, including the Tower Amendment, were not intended to restrict the SEC or the MSRB from regulating the muni-market.<sup>68</sup> Rather, legislative history acknowledges the fact that times and market conditions change, which is why the SEC and MSRB were delegated rulemaking authority over the muni-market to begin with.<sup>69</sup> The legislators intended deference to those intimately involved in the field to ensure a constantly evolving regulatory regime.<sup>70</sup> Evidence of this position is most strongly seen in the following, previously mentioned, language from the Senate Report, “[b]y continuously examining market circumstances and regulatory needs, appraising and reappraising the adequacy of existing regulatory measures, the Commission can . . . ensure . . . the effectuation of the purpose of the bill.”<sup>71</sup>

This language indicates that legislators of the time were fully aware of the danger of function following form. In turn, they attempted, repeatedly, to place emphasis on the fact that the SEC and MSRB needed to continuously reevaluate their regulatory efforts, so as to fulfill the “purpose of the bill.”<sup>72</sup> This purpose, as cited above, was to create a federal regulatory system over muni-markets which would serve to prevent fraudulent activity, and provide safer, more efficient markets for the benefit of individual investors.<sup>73</sup> It would appear that legislators did not haphazardly draft the Tower without taking into account sound architectural principles (form follows function). With this in mind, part III first addresses how the current muni-market framework is inadequate, and second, why reform has been so difficult. To do so, the article will swap lenses to view the “Meso-Level.”

### III. THE MESO-LEVEL: *INDIRECT* CIRCUITOUS REGULATION IS INADEQUATE<sup>74</sup>

Part III is comprised of five subparts. Subpart A addresses how the SEC and MSRB have worked within the confines of prevailing interpretations of the 1975 Amendments and the Tower in their efforts to regulate the muni-market. Subpart B provides reasoning as to why these methods are inadequate for the prevention or detection of fraudulent activity, and the establishment of a stable and efficient muni-market. Subpart C submits potential solutions which may aid in remedying these inadequacies. Subparts D and E provide analyses of recent competing arguments

67. See *infra* Section III.C (discussing the how uniform accounting principles would aid in the detection and prevention of fraudulent activity in the muni-market).

68. See *supra* Sections II.B-C (analyzing the Tower and discussing the roles of the SEC and MSRB).

69. See *supra* Sections II.B-C (analyzing the Tower and discussing the roles of the SEC and MSRB).

70. See *supra* Sections II.B-C (analyzing the Tower and discussing the roles of the SEC and MSRB).

71. S. REP. NO. 94-75, at 50 (1975), as reprinted in 1975 U.S.C.A.N. 179, 228.

72. *Id.*

73. *Id.* at 3.

74. The “direct or indirect” language from the Tower is the go to language when opposing SEC or MSRB regulatory efforts. See *infra* Sections III.E.1–3 (discussing efforts made by those opposing additional muni-market regulation). Therefore, rather than calling the existing regulatory framework what is for all intents and purposes indirect regulation, this article will opt to call it “circuitous.”

surrounding whether additional regulation should come into effect, as well as whether the Tower should be repealed or modified. Subpart F then recaps the areas addressed in part III and prepares to swap lenses for the viewing of part IV and the “Micro-Level.”

#### A. Indirect Circuitous Regulatory Framework

The MSRB and SEC have created various rules working within, and arguably toeing the lines of the confines of existing statutory limitations regarding muni-market regulation. As discussed below, the MSRB and the SEC exerting their power over the muni-market in this manner has created a piecemeal regulatory framework. Given that there are various restrictions as to the “direct or indirect” regulation of muni-issuers,<sup>75</sup> regulatory agencies have had to become creative in how they regulate the muni-market. As argued above, the only restriction on the SEC with respect to the regulation of muni-issuers is the inability to require pre-sale filing documents.<sup>76</sup> Regardless of this narrow restriction, the SEC has opted to refrain from promulgating nearly any substantive rules which would, technically, directly or indirectly regulate muni-issuers (even post-filing).

While there is no explicit restriction in terms of post-filing, or continuing disclosures (directly or indirectly from muni-issuers), there is also no affirmative authority for it. Additionally, given muni-issuers original exemption from much of the Exchange Act, it might be presumed that the SEC cannot require any disclosures from muni-issuers.<sup>77</sup> While the restriction as to the “indirect” regulation of muni-issuers appears on its face to be contradictory to the overall purpose and intent of regulating the muni-market through muni-dealers, regulatory authorities have opted to work within the constraints of a conservative reading of the Tower. Rather than contest whether the Tower governs, and suggest that other sections of the 1975 Amendments override its language, the SEC and MSRB have chosen to operate using the specific affirmative authorities granted by the 1975 Amendments (authorization to regulate muni-dealers in 15(c)).<sup>78</sup> To do so, the SEC has created Rule 15c2-12,<sup>79</sup> which has since become the primary method of requiring disclosures in the muni-market.<sup>80</sup>

While a semblance of disclosure currently exists, choosing to operate within narrow interpretations of the Tower has led to muni-issuers having great latitude in determining the form and substance of their offering documents.<sup>81</sup> In other words, the roundabout circuitous regulatory framework currently in place has ultimately permitted a lack of uniformity in muni-issuers offering documents. Following is a brief, non-exhaustive discussion on how the SEC and MSRB have respectively regulated the muni-market to date.

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75. 15 U.S.C. § 78o-4(d) (2012).

76. See *supra* Section II.B.1 (analyzing the text of the Tower).

77. 15 U.S.C. § 78c (a)(12)(A)(ii).

78. *Id.* § 78o-4(c).

79. 17 C.F.R. § 240.15c2-12 (2010).

80. See *Municipal Securities Disclosure*, U.S. SEC. & EXCHANGE COMMISSION (Dec. 28, 2016), <https://www.sec.gov/municipal/municipal-securities-disclosure.html>.

81. See *infra* Sections IV.B.1-2 (providing an example of how arguably inappropriate some muni-issuer’s chosen accounting principles are).

### 1. SEC Regulation

Rule 15c2-12<sup>82</sup> requires underwriters participating in the issuance of municipal securities to acquire the muni-issuer's deemed final official statement prior to bidding, purchasing, or offering their securities.<sup>83</sup> While the final official statement must be acquired by the underwriters involved, it may omit significant information.<sup>84</sup> For example, the offering price and aggregate principal amount offered may be omitted and the statement still be "deem[ed] final."<sup>85</sup> In addition, if underwriters are in possession of a preliminary statement, they are required to submit it to any potential customers (on request) within one day.<sup>86</sup> It is important to note that this requirement is entirely dependent on whether or not the underwriter even has a preliminary statement.<sup>87</sup> Another major feature of 15c2-12 restricts underwriters from purchasing or selling municipal securities unless the underwriter "reasonably" determines that the issuer, or persons on their behalf, have a written agreement to supply the MSRB with the muni-issuer's annual financial information and notice within ten business days of certain events.<sup>88</sup> These events include financial difficulties, delinquencies, and changes to the muni-issuers' credit ratings.<sup>89</sup> Interestingly, the underwriter need only be "reasonably" certain that an agreement exists.<sup>90</sup> Further, these agreements are not with the MSRB, but rather with a party that agrees to make certain disclosures to the MSRB.<sup>91</sup>

### 2. MSRB Regulation

The MSRB has created 48 rules to date.<sup>92</sup> The MSRB has classified these rules into one of five categories: Professional Qualification, Fair Practice, Uniform Practice, Market Transparency, and Regulated Entity Administration.<sup>93</sup> Professional Qualification rules set minimum standards for those working within the muni-market, as well as explain what activities would result in disqualification from continued practice.<sup>94</sup> The Fair Practice rules are concerned with protecting investors, muni-issuers, and muni-dealers.<sup>95</sup> While a smaller number of the Fair Practice rules relate primarily to investor protections,<sup>96</sup> the rules primarily ensure muni-dealers

82. Exemptions from 15c2-12 include: Entire issues that are less than \$1 million, all bonds sold in units greater than \$100,000 to no more than 35 sophisticated investors, bonds which mature in less than 9 months (with minimum \$100,000 unit per unit), and bonds issued prior to July 1995. 17 C.F.R. § 240.15c2-12.

83. *Id.* § (b)(1).

84. *Id.*

85. *Id.*

86. *Id.* § (b)(2).

87. *Id.*

88. *Id.* § (b)(5)(j).

89. *Id.*

90. *Id.*

91. *Id.*

92. *Rule Book*, MUN. SEC. RULEMAKING BOARD i (Oct. 1, 2017), <http://www.msrb.org/msrb1/pdfs/MSRB-Rule-Book-PDF-Current-Quarter.pdf> [hereinafter *MSRB Rule Book*].

93. As of April 1, 2017, there were 4 Rules classified as Professional Qualification, 25 as Fair Practice, 5 as Uniform Practice, 3 as Market Transparency, and 8 as Regulated Entity Administration. *Id.*

94. *Id.* at ii (referencing rules G-2, G-3, G-4, and G-5).

95. *Id.* at i.

96. For example, Rule G-10, relating to the Delivery of Investor Brochures. *Id.* at 50.

are competing for business fairly.<sup>97</sup> In contrast, Uniform Practice rules are mainly drafted to maintain equal treatment of muni-market investors.<sup>98</sup> Market Transparency rules on their face contain disclosure provisions,<sup>99</sup> however, these provisions are largely ineffective. For example, § (a) of Rule G-32 is titled “Customer Disclosure Requirements.”<sup>100</sup> This section requires muni-dealers to deliver a copy of a muni-issuer’s official statement to investors by the settlement date of their transaction.<sup>101</sup> These statements must be delivered, but they are permitted to be preliminary.<sup>102</sup> Further, as will be addressed in part IV of this article, the lack of disclosure requirements or standardization of information in official statements often results in much of their contents being of little use even when provided to investors.<sup>103</sup> The final classification, Regulated Entity Administration, contains rules focused on setting record keeping standards for muni-dealers.<sup>104</sup> While these records are required to be preserved, they are not necessarily disclosed to regulators or investors.<sup>105</sup>

### B. Evidencing the Inadequacy of Circuitous Regulation

As outlined above, the regulatory scheme in place that involves the SEC and MSRB currently provides a wealth of direct and *indirect* circuitous disclosure and functional requirements on, in practice, all parties involved in the muni-market.<sup>106</sup> Given the oblique methods that have been used in creating this framework, compliance requires minimal effort.<sup>107</sup> Further, its fragmented nature has resulted in a framework that is largely unhelpful in terms of the ability to detect or prevent potentially fraudulent activity in the muni-market.

For example, 15c2-12 requires the submission of a final official statement prior to the purchase, offer, or sale of a municipal security.<sup>108</sup> While the statement must be submitted, a final official statement “may” not include the offering price, interest rate, compensation of involved underwriters, aggregate amount of issuance, delivery dates, terms of bidding, credit ratings, or even the identities of the underwriters.<sup>109</sup> Theoretically, if a muni-issuer chooses to omit all that is permissible, a final offering statement could consist of the name of the issuer, the date, and the fact that the municipality is issuing a security, yet be a compliant final official statement under 15c2-12.<sup>110</sup>

Evidence of the inability to detect material misstatements or noncompliance with continuing disclosure obligations under 15c2-12 can be seen most clearly in

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97. For example, MSRB Rule G-37 prohibits political contributions from muni-dealers to candidates who are elected or running for office in municipalities where they are seeking business. *Id.* at 269.

98. For example, MSRB Rule G-12, in part, requires the delivery of municipal securities to all investors be at the same rate. *Id.* at 57.

99. *Id.* at x-xi.

100. *Id.* at 238.

101. *Id.*

102. *Id.*

103. See *infra* Sections IV.B.2–3 (evidencing the difficulties of deciphering financial statements due to the lack of uniform accounting principles in muni-issuer statements).

104. MSRB *Rule Book*, *supra* note 92, at i, ix, xi.

105. *Id.* at i (referencing rules G-1, G-6, G-7, G-8, G-9, G-16, G-27, G-41).

106. See *supra* Section III.A (discussing existing regulation over the muni-market).

107. See *supra* Section III.A (discussing existing regulation over the muni-market).

108. 17 C.F.R. § 240.15c2-12(b)(1) (2010).

109. *Id.*

110. *Id.*

the events surrounding the SEC's Municipalities Continuing Disclosure Cooperation Initiative ("MCDC Initiative").<sup>111</sup> The MCDC Initiative was established in March of 2014 to "address potentially widespread violations" of securities laws by muni-dealers and muni-issuers.<sup>112</sup> The initiative was implemented to encourage muni-dealers and issuers to self-report their violations of continuing disclosure obligations or federal securities laws relating to misstatements in their offering documents.<sup>113</sup> As a reward for self-reporting violations, muni-dealers and muni-issuers would receive favorable settlement terms.<sup>114</sup> The nature and design of this initiative in itself points to the inability to detect violations in the muni-market. The end results of the initiative provide even stronger evidence for this proposition.

The MCDC Initiative concluded on February 2nd, 2016 with 72 different underwriters being charged as a result of voluntary self-reporting.<sup>115</sup> These 72 underwriters were charged in less than two years, and this number does not include seven other high-profile cases against muni-market issuers and underwriters during the same time period.<sup>116</sup> In contrast, the SEC's Office of Municipal Securities lists a total of two cases relating to municipal securities in 2012 and eight in 2013.<sup>117</sup> The drastic difference in the number of SEC charges brought while the MCDC Initiative was in effect (79) compared to those in preceding years (10) evidences that there are likely actual widespread securities laws violations across the muni-market that are largely undetectable. Arguably, the inability to detect violations is a result of the fragmented regulatory framework in place, and more specifically, as will be argued below, the lack of uniform accounting principles in the muni-market.

### C. *Remedying the Inadequacy of Circuitous Regulation*

The SEC and Government Accountability Office have released a report and recommendations on how to improve the fair functionality of the muni-market.<sup>118</sup> The SEC Report included recommendations for legislation that would do the following: (i) require muni-issuers to disseminate official statements to investors and potential investors for the entire term that a security is issued; (ii) exclude conduit borrowers from registration exemptions afforded to muni-issuers;<sup>119</sup> (iii) establish uniform principles for financial statements; (iv) require audits of financial statements; (v) allow safe harbors for forward-looking statements; (vi) establish a system

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111. *Municipalities Continuing Disclosure Cooperation Initiative*, U.S. SEC. & EXCHANGE COMMISSION (Nov. 13, 2014), <https://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml>.

112. *Id.*

113. *Id.*

114. *Id.*

115. *See SEC Completes Muni-Underwriter Enforcement Sweep*, U.S. SEC. & EXCHANGE COMMISSION (Feb. 2, 2016), <https://www.sec.gov/news/pressrelease/2016-18.html>.

116. *See Municipal Securities Enforcement Actions*, U.S. SEC. & EXCHANGE COMMISSION (Jan. 5, 2017), <https://www.sec.gov/municipal/oms-enforcement-actions.html>.

117. *Id.*

118. SEC Report, *supra* note 1, at vii-x.

119. Conduit borrowing is when a municipality issues a security for use by a third party unrelated to the issuer. For example, a muni-issuer issues a bond and the proceeds of the bond go to finance a project undertaken for profit by a company. In this case, the municipality would still be responsible for paying back the debt, but the money invested would be used for purposes unrelated to the municipalities' actual activities. *See supra* Part I (discussing the Rhode Island Economic Development Corporation – an example of conduit borrowing).



which would promote more seamless sharing of information between the IRS and the SEC; and (vii) require bond trustees to enforce the terms of continuing disclosure agreements.<sup>120</sup> The SEC Report also noted that the SEC and MSRB could enact further rules and modifications to Rule 15c2-12 regulating muni-dealers.<sup>121</sup>

While there are many proposed solutions and methods to continue improving upon the regulatory scheme surrounding muni-markets, this article argues that the most impactful modification would be to require muni-issuers to use uniform accounting principles in their financial statements included as part of their official statements.

As discussed above, there seems to be an inability to detect violations by muni-dealers and muni-issuers. The benefits from requiring uniform accounting principles used can be placed into two categories—preventing fraudulent activity and increasing muni-market participation.

First, uniform accounting principles would greatly increase regulatory authorities' ability to deter and detect fraudulent activity. If there was uniformity amongst the financial data that muni-issuers are already required to supply, the data could be run through algorithms to detect suspicious accounting activity. These algorithms could easily cross reference financial statements from previous and future years to quickly determine whether or not the stated uses of an issuance were accurately represented to the investing public. For example, if a municipality issues a bond to repay earlier bonds that have higher interest rates, an algorithm could easily determine whether repayments on prior bonds were actually made. The systems analyzing these uniform inputs would be able to present red flags, much like those in development and in place for the stability of our financial markets.<sup>122</sup> In short, the ability to input uniform financials into computation systems would substantially increase the efficiency of regulatory agencies' enforcement efforts.

Second, uniform accounting would also allow for greater accessibility for individual investors. As it stands now, there are numerous muni-issuers who use varying levels of complexity of accounting methodologies in their financial statements, which in no way resemble Generally Accepted Accounting Principles ("GAAP"), as is discussed later in part IV.<sup>123</sup> Currently, numerous muni-issuers' Official Statements include multiple pages describing the primary differences between their accounting practices and GAAP.<sup>124</sup> As evident in the number of pages needed to describe these differences, this information is not easily digestible for an individual investor.<sup>125</sup> In short, a rule requiring the use of GAAP may well open the muni-market up to a large number of new investors, which would benefit muni-issuers, muni-dealers, and the investing public.

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120. SEC Report, *supra* note 1, at vii-x.

121. *Id.*

122. See Kara M. Stein, *A Vision for Data at the SEC*, U.S. SEC. & EXCHANGE COMMISSION (Oct. 28, 2016), <https://www.sec.gov/news/speech/speech-stein-10-28-2016.html>.

123. See *infra* Section IV.B.1 (discussing debt recognition principles in North Bergen, New Jersey).

124. See *infra* Section IV.B.1

125. Or for that matter, a third-year law student at GWU. As noted earlier, one of the primary reasons legislators decided to create a regulatory framework within the muni-market was because it would "substantially benefit the increasing number of individual investors who find the tax-exempt features of these securities attractive." S. REP. NO. 94-75, at 3 (1975), as reprinted in 1975 U.S.C.C.A.N. 179, 228.

Suggestions for improving the functionality of muni-markets are in no short supply.<sup>126</sup> Despite this, regulatory reform in the field has been slow-moving.<sup>127</sup> This stunted pace is in large part due to the level of pushback, mainly from special interest groups whenever the SEC or MSRB discuss potential new muni-market rules.<sup>128</sup> This pushback has been instrumental in preventing progress toward improving the muni-market regulatory framework.<sup>129</sup> Further, more often than not, the parties in opposition to muni-market reform use the Tower Amendment as a basis for their arguments.<sup>130</sup> The following subpart attempts to address the identities and motives of the parties that are continually involved in efforts to oppose muni-market reform. Given the frequent use of the Tower in opposition to virtually any proposed muni-market regulations, the following discussion focuses on opposition to efforts that have been made to appeal or amend the Tower as well as implementing additional regulatory requirements.

#### *D. Those in Opposition to the Repeal or Amendment of the Tower*

Every few years there are renewed pushes for repealing the Tower or increasing reporting and disclosure requirements in the muni-market.<sup>131</sup> Each time, various organizations appear in opposition. The following addresses the identities of three nonprofits who have been particularly outspoken opponents of further muni-market regulation: the National Association of State Treasurers (“NAST”),<sup>132</sup> the Council of State Governments (“CSG”),<sup>133</sup> and the Government Finance Officers Association (“GFOA”).<sup>134</sup>

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126. SEC Report, *supra* note 1, at vii-x.

127. See *supra* Sections III.A–B (discussing inadequacy of the muni-market’s circuitous regulatory framework).

128. See *infra* Sections III.D–E (discussing opposition to muni-market regulatory reform).

129. See *infra* Sections III.D–E (discussing opposition to muni-market regulatory reform).

130. See *infra* Sections III.D–E (discussing opposition to muni-market regulatory reform).

131. See e.g., Luis A. Aguilar, *Statement on Making the Municipal Securities Market More Transparent, Liquid, and Fair*, U.S. SEC. & EXCHANGE COMMISSION (Feb. 13, 2015), <https://www.sec.gov/news/statement/making-municipal-securities-market-more-transparent-liquid-fair.html> (“The Tower Amendment . . . plays a critical role in denying investors accurate and timely disclosures, by limiting federal regulatory authority over issuers of municipal securities” and thus, the first step in making the municipal securities market fairer is the “[r]epeal of the Tower Amendment.”); Elisse B. Walter, *Regulation of the Municipal Securities Market: Investors Are Not Second-Class Citizens*, U.S. SEC. & EXCHANGE COMMISSION (Oct. 28, 2009), <https://www.sec.gov/news/speech/2009/spch102809ebw.htm> (“as politically unpopular as this suggestion may be, I believe that the exemptions for municipal securities should be removed from the 33 and 34 Acts and the Tower Amendment should be repealed.”).

132. *About*, NAT’L ASS’N OF ST. TREASURERS, <http://nast.org/about/> (last visited Dec. 14, 2017).

133. *About*, COUNCIL OF ST. GOV’T, <http://www.csg.org/about/> (last visited Dec. 14, 2017).

134. *About* GFOA, GOV’T FIN. OFFICERS ASS’N, <http://www.gfoa.org/about-gfoa> (Dec. 14, 2017).

### 1. *The National Association of State Treasurers*<sup>135</sup>

NAST is a nonprofit comprised primarily of state treasurers and state senior finance officials.<sup>136</sup> NAST describes its purpose as providing “advocacy and support that enables member states to pursue and administer sound financial policies,”<sup>137</sup> and promotes itself as “[l]eading voices for excellence in public finance.”<sup>138</sup> NAST is a fairly large organization, and as with many of the organizations lobbying against muni-market reform, NAST has identifiable connections with other groups against muni-market reform. For example, in their 2013 Form 990,<sup>139</sup> NAST listed \$2,542,058 in revenue for 2014, \$974,426 of which went to CSG for “management and staff support.”<sup>140</sup>

### 2. *The Counsel of State Governments*

CSG is a nonprofit founded in 1933 that advocates on behalf of state governments’ interests.<sup>141</sup> Their mission statement is, “CSG champions excellence in state governments to advance the common good.”<sup>142</sup> CSG has one of the largest networks of state government cooperation and interaction.<sup>143</sup> Given its size, CSG’s advocacy work is related to countless state government issues other than muni-market reform.<sup>144</sup> Regardless, the size and network of CSG necessarily means that its oppositions to muni-market reform carries significant weight.

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135. Entertainingly, a submitted question on a website dedicated to the appropriate forms of address for various officials posed, “Our office is currently debating the use of ‘Honorable’ . . . we are not clear . . . whether or not those state treasurers . . . can use the title. Can you please help us?” This question was submitted by, “J.L. @National State Treasurers Association.” The response was to check what each Treasurer’s home state’s tradition was. Robert Hickey, *How to Address a State Treasurer*, HONOR & RESPECT: THE OFFICIAL GUIDE TO NAMES, TITLES, & FORMS OF ADDRESS, <http://www.formsofaddress.info/USOS.html#493> (last visited Dec. 14, 2017). NAST made their decision, as their 2013 form 990 refers to their trustee and board members as “Honorable.” *National Association of State Treasurers*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/592017623> (last visited Dec. 14, 2015).

136. *About*, *supra* note 132.

137. *Id.*

138. NAT’L ASS’N OF ST. TREASURERS, <http://nast.org> (last visited Dec. 14, 2017).

139. The IRS form 990 is a required annual filing from most non-profits and organizations claiming tax-exempt status. *About Form 990, Return of Organizations Exempt from Income Tax*, INTERNAL REVENUE SERV. (Sept. 7, 2017), <https://www.irs.gov/forms-pubs/about-form-990>.

140. *National Association of State Treasurers*, *supra* note 135.

141. *About*, *supra* note 133.

142. *Id.*

143. *About: CSG Regional Offices*, COUNCIL OF ST. GOV’T, <http://www.csg.org/about/region-aloffices.aspx> (last visited Dec. 14, 2017).

144. COUNCIL OF ST. GOV’T, <http://www.csg.org/> (last visited Dec. 14, 2017) [hereinafter CSG Homepage].

### 3. *The Government Finance Officers Association*<sup>145</sup>

GFOA is a nonprofit that describes itself as a representative of more than 19,000 federal, state, provincial, and local finance officials.<sup>146</sup> GFOA is similar to the CSG with respect to its large network.<sup>147</sup> The primary difference between the two is that the GFOA focuses on public finance, whereas, CSG's coverage is far more expansive.<sup>148</sup> GFOA's stated mission is, "to promote excellence in state and local government financial management."<sup>149</sup> More specific GFOA objectives can be found in a publication by the National Association of Municipal Advisors ("NAMA"), another nonprofit that also opposes muni-market reform.<sup>150</sup> In a 2015 publication discussing their collaboration with the GFOA, NAMA stated, "[t]he GFOA [p]riorities for 2015 have been outlined to include maintenance of tax-exemption for municipal securities . . . [to] continue to monitor [and react to] the MA Rule and associated regulations . . . and [to] oppose any efforts to repeal the Tower Amendment . . . ."<sup>151</sup>

As seen above, nonprofits are overwhelmingly comprised of people substantially involved in the issuing of municipal securities. It can be argued that preventing additional regulatory efforts is almost certain to benefit these individuals. That is, due to less regulatory requirements, states and municipal finance officials can raise capital with little to no oversight. Little to no oversight means that elected officials, and their municipal finance officials, can issue debt securities on behalf of municipalities that may be unable to ever repay such debt. In the short term, this fact would be of little importance to these elected officials because they can display an image of investing in and rebuilding their communities. This image can then be used to ensure they keep their position in the next election cycle. Consequently, their appointed finance officials can keep their positions as well. Further, this hypothetical is assuming muni-issuers would inject capital raised into the local community. Unfortunately, as discussed in part I, there are numerous issuers who have issued securities for uses completely unrelated to the betterment of local communities, in which case, the individual benefit would be the more obvious monetary gain.<sup>152</sup> While it is clear that state treasurers and state finance officials would prefer

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145. GFOA's 990 form for 2014 lists revenue of \$14,590,262; \$4,838,782 of which went to compensation for its 49 employees. This excludes the \$1,066,517 for employee benefits, \$1,589,658 for office expenses (this amount is not for rent or even renovations, but rather "office equipment"), \$242,461 for "Other," and \$470,189 for travel expenses. The financials of GFOA are substantially similar to those of previously mentioned nonprofits. The point here is not to suggest that some individuals running nonprofits may appear to be taking advantage of the current regulatory framework surrounding nonprofits in order to receive substantial personal benefit. The aim is simply to present the available data. Although, it would be interesting to see what \$1.5 million in "office equipment" for 49 employees looks like. *Government Finance Officers Assn of the United States & Canada*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/362167796> (last visited Dec. 14, 2017).

146. *About GFOA*, *supra* note 134.

147. *Id.*

148. *Id.*; CSG Homepage, *supra* note 144.

149. *About GFOA*, *supra* note 134.

150. *Pre-Trade Transparency: It's Not Just for Investors*, NAT'L ASS'N OF MUN. ADVISORS (June 24, 2015), <http://www.municipaladvisors.org/assets/docs/newsletters/15-nama-newsletter-6-24-15.pdf>.

151. *Id.* at 8.

152. *See supra* Part I (discussing to examples of muni-issuers improperly issuing securities to the detriment of their communities).

less regulation, these benefits do little to offset the inherent and unnecessary dangers likely to stem from the current lack of oversight mechanisms in the muni-market.

The list of public interest nonprofits that have spoken in general support of maintaining the status quo with respect to muni-market regulation continues with various amalgamations of the words finance, public, municipal, association, national, state, and so forth.<sup>153</sup> In short, there are countless organizations opposing muni-market reform. There does not seem to be a single institution opposing muni-market reform comprised of parties who are not intimately involved in the muni-market issuance process.<sup>154</sup>

### E. *The Art of Concision*

Concision, in itself, is useful to convey an idea in a compact manner. Concision can also allow a party to choose the idea they want to convey by dissecting language from the source text, which can ultimately lead to a severe distortion of the source's original meaning.<sup>155</sup> As discussed below, the above mentioned public interest groups appear to be highly paid masters of artful concision. In an effort to be as equitable as possible to the aforementioned organizations, below are the public statements that convey the logic and reasoning most frequently used in their oppositions. The following first lists the source and public statement, and then provides an analysis of the merits of such positions.

#### 1. *NAST Supports Preservation of the Tower*<sup>156</sup>

"The Tower Amendment prohibits direct or indirect federal regulation of muni-issuers."<sup>157</sup>

The above quote seems to be a commonly stated phrase; it is a sentence uttered by many of the nonprofits involved in opposing repealing or amending the Tower.<sup>158</sup> Despite its frequent use, the language of the Tower does not read as prohibiting the direct or indirect federal regulation of muni-issuers.<sup>159</sup> As detailed in part II of this article, the text distinguishes between the authority of the SEC and the MSRB, and makes explicit efforts to convey that the restriction on the SEC relates specifically to its inability to require filing of disclosure documents prior to

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153. Examples include: The National Association of Unclaimed Property Administrators, The State Debt Management Network, the National Institute of Public Finance, National Federation of Municipal Analysts, and the National Association of State Auditors, Comptrollers and Treasurers. This list is not nearly exhaustive. Each state then has their own version of the national brand, for example, the GFOA of Texas.

154. As in, individual investors rather than State Treasurers, local finance officials, and/or muni-dealers.

155. See *Concision*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Concision> (last visited Dec. 13, 2017).

156. *NAST Supports Preservation of the Tower Amendment*, NAT'L ASS'N OF ST. TREASURERS, <http://nast.org/wp-content/uploads/2016/10/Tower-Amendment-6915-ONE-PAGER.pdf> (last visited Dec. 14, 2017).

157. *Id.*

158. See *infra* Section III.E.2 (discussing identical language used in opposition to repeal of the Tower by CSG).

159. See *supra* Section II.B (analyzing text of the Tower and discussing the limited restrictions the Tower placed on the SEC as relates to muni-market regulation).

the issuance of a municipal security.<sup>160</sup> Further, as touched upon previously, the Senate Report on the 1975 Amendments makes it clear that the amendments would result in establishing “regulation over the muni-market.”<sup>161</sup> When considering the text of the Tower, and the full text of the 1975 Amendments, it would be incongruent to suggest that the Tower prohibits all direct or indirect forms of federal regulation of muni-issuers.

“Repeal or amendment of the Tower Amendment would lead to increases in the issuance costs for state and local governments.”<sup>162</sup>

While this might be the case, the counter can be argued as well. Were amendment to occur, it could instruct regulatory bodies to begin drafting new rules.<sup>163</sup> These rules would probably include uniform standards in the form and substance of issuing documents,<sup>164</sup> with uniformity issuers could experience lower costs relating to issuances. That is, if there were uniformity, the market would become more liquid, due to increasing investor participation. This might well also bring in more underwriting firms involved in the issuance process, which would ultimately increase competition and lower costs for muni-issuers.

## 2. CSG: Resolution Opposing Amendment or Repeal of the Tower<sup>165</sup>

“The Tower Amendment prohibits direct or indirect federal regulation of muni-issuers.”<sup>166</sup>

This is identical language to that used in the NAST statement above.<sup>167</sup> As previously mentioned, NAST pays CSG for consulting services.<sup>168</sup> CSG employees likely drafted this document and language for NAST, and subsequently used it themselves. “The municipal marketplace is already regulated by . . . blue sky laws, federal tax laws, the anti-fraud enforcement power of the SEC . . . [the] MSRB . . . independent credit rating agencies, and the demanding requirements of the capital markets.”<sup>169</sup>

The muni-market is regulated; the issue is whether the current framework is sufficient. Blue sky laws exist, but appear to be largely ineffective with respect to

160. See *supra* Section II.B (analyzing text of the Tower and discussing the limited restrictions the Tower placed on the SEC as relates to muni-market regulation).

161. S. REP. NO. 94-75, at 3 (1975), as reprinted in 1975 U.S.C.C.A.N. 179, 228.

162. *NAST Supports Preservation of the Tower Amendment*, *supra* note 156.

163. See *supra* note 131 and accompanying text (providing examples of the SEC’s efforts to urge Congress to repeal or amend the Tower so as to enable the SEC to strengthen its regulatory framework surrounding the muni-market).

164. *SEC Report*, *supra* note 1, at vii-x (discussing recommendations for improving muni-market regulation, including as relates to moving towards uniformity).

165. The CSG and NAST statements interestingly (maybe), covered both defensive and offensive stances in their opposition of repealing the Tower. As seen in the NAST opposition being titled as “supporting the preservation” of the Tower, and the CSG opposition being titled as, “in opposition” to repeal. M. Jodi Rell & Kim Koppelman, *Resolution Opposing Amendment or Repeal of the Tower Amendment*, COUNCIL OF ST. GOV’T, (May 31, 2008), <http://knowledgecenter.csg.org/kc/content/resolution-opposing-amendment-or-repeal-tower-amendment-weramentmentresolution--final.pdf>.

166. *Id.*

167. See *supra* Section III.E.1 (discussing identical language used in opposition to repeal of the Tower by NAST).

168. See *supra* Section III.D.1 (discussing NAST and the fact that NAST pays CSG for consulting services).

169. Rell & Koppelman, *supra* note 165.

the muni-market and often do not provide regulatory requirements that fill in the holes in the federal patchwork regulatory framework. For example, in New Jersey, municipalities are disallowed from issuing bonds if their net debt exceeds 3.5%.<sup>170</sup> While this is explicit, New Jersey also permits municipalities to adopt their own accounting methodologies so long as they generally follow state guidelines.<sup>171</sup> Municipalities are afforded a large amount of deference in doing so.<sup>172</sup> As will be explained in detail in part IV, this permits municipalities to use accounting methodologies that deduct nearly half of their outstanding debt when compiling their financial statements.<sup>173</sup> Doing so essentially makes the 3.5% ceiling in New Jersey law relatively pointless. With respect to the existing SEC anti-fraud enforcement authorities, the 1975 Senate Report showcases the legislative intent to allow the SEC to create preventative rules in the municipal securities area in addition to its enforcement responsibilities.<sup>174</sup>

### 3. GFOA: GFOA Rebuffs SEC Bid to Oversee Accounting Standards<sup>175</sup>

“The GFOA opposes SEC involvement with standard-setting [uniform accounting principles] for muni-issuers . . . such involvement violates the basic tenet of federalism, given that the power to set accounting standards for state and local governments ultimately belongs to the states.”<sup>176</sup>

This language reads as analogous to commonly used state sovereignty arguments. The balancing of state and federal powers has been debated since the country’s inception. The counter argument is essentially one based on interstate commerce in that the issuance of municipal securities is not confined within a single state.<sup>177</sup> Investors can be, and often are, located throughout the country, and therefore, the federal government has a vested interest in ensuring the fairness and stability of the muni-market.<sup>178</sup>

*S72410-37 (Comment on SEC Proposal):* Including municipal securities under the definition of Asset Backed Securities would, “clearly violate . . . the Tower Amendment, which explicitly prohibits the SEC from requiring municipal security issuer to file with the SEC or MSRB documents prior to the sale of securities.”<sup>179</sup>

170. N.J. REV. STAT. § 40A:2-6 (2013).

171. See *infra* Section IV.B.1. (discussing debt recognition practices in North Bergen, New Jersey).

172. See *infra* Section IV.B.1. (discussing debt recognition practices in North Bergen, New Jersey).

173. See *infra* Section IV.B.1. (discussing debt recognition practices in North Bergen, New Jersey).

174. S. REP. NO. 94-75, at 50 (1975), as reprinted in 1975 U.S.C.C.A.N. 179, 228.

175. Susan Gaffney, *GFOA Rebuffs SEC Bid to Oversee Accounting Standards and Mandate Disclosures for Issuers of Municipal Debt*, GOV’T FIN. REV., Oct. 2007.

176. *Id.*

177. See Theresa A. Gabaldon, *Financial Federalism and the Short, Happy Life of Municipal Securities Regulation*, 34 J. CORP. L. 739, 753-757 (2009) (providing a far more comprehensive analysis of federalism arguments surrounding municipal security regulation).

178. *Id.*

179. William Daly et al., *RE: File Numbers S7-24-10 and S7-26-10*, U.S. SEC. & EXCHANGE COMMISSION (Nov. 15, 2010), <https://www.sec.gov/comments/s7-24-10/s72410-37.pdf> (this was a comment opposing proposed SEC rules which the GFOA signed alongside 13 other organizations, including NAST).

Regardless of whether including municipal securities under the definition of Asset Backed Securities would clearly violate the Tower, this statement accurately represents the text of the Tower.<sup>180</sup>

#### *F. Swapping Lenses for the Micro-Level*

The SEC and MSRB have creatively regulated the muni-market, primarily through the regulation of muni-dealers.<sup>181</sup> In creating this framework, the strict adherence to certain narrow interpretations of the Tower and the 1975 Amendments has resulted in a regulatory scheme with various shortcomings.<sup>182</sup> For example, the lack of uniform disclosure hinders regulatory authorities' abilities to detect violations of federal securities laws.<sup>183</sup> This subpart has argued that the difficulty in reforming the regulation of muni-markets is in large part due to lobbying efforts of public interest groups that are intimately involved in the issuance of municipal securities. These groups at times use artful concision to make their points, which, as argued above, can result in distortions of the source in which the arguments are based. In order to forward conclusive evidence of how the current regulatory framework is insufficient, part IV increases the level of zoom and enters the "Micro-Level." This final lens focuses on the difficulties of detecting potential securities laws violations by using the Township of North Bergen, New Jersey (the "Township") as a case study to speak specifically to the problem with a current lack of uniform accounting principles in the muni-market.

#### IV. THE MICRO-LEVEL: THE TOWNSHIP, THE AUTHORITY, AND THE DIVISION

Part IV is comprised of three subparts. Subpart A establishes the setting and relevant characters necessary to tell a story about the Township. Subpart B discusses the significant differences between the Township's chosen accounting principles and GAAP. Following subpart B are a variety of calculations used to support the proposition that the Township's financial stability may be likely to take a turn for the worse. Subpart C builds upon these calculations to suggest potential violations of federal securities laws stemming from the Township's activities as a muni-issuer. Subpart C then concludes with a discussion of the causality dilemma, followed by a restatement as to how instrumental uniform accounting principles in the muni-market would be for the prevention and detection of fraudulent activity and the creation of a more efficient and fair muni-market.

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180. It should be noted that the various organizations referenced seem to be selective in how they describe the Tower, likely dependent on audience. For example, in an article on its website, GFAO describes the Tower as, "[the] SEC is prohibited from directly regulating issuers under the 1975 Tower Amendment." *GFOA Alert: The SEC MCDC Initiative and Issuers*, GOV'T FIN. OFFICERS ASS'N (July 7, 2014), <http://www.gfoa.org/gfoa-alert-sec-mcdc-initiative-and-issuers>.

181. See *supra* Part III.A (discussing current regulatory framework surrounding municipal securities).

182. See *supra* Part III.A (discussing current regulatory framework surrounding municipal securities).

183. See *supra* Part III.B (evidencing how most securities laws violations in the muni-market are likely not discovered by regulatory agencies).



### A. *Setting and Characters*

#### 1. *The Township, the Authority, and the Division*

The Township lies on the Hudson river across from Manhattan.<sup>184</sup> The 2010 census lists the Township as having a population of 60,773.<sup>185</sup> The Township is, as of the 2010 census, the 23rd most populous municipality in New Jersey.<sup>186</sup> In New Jersey, a “township” is one of five models for municipalities to choose from when crafting their local governance structure.<sup>187</sup> Each of these five models have their own organizational framework.<sup>188</sup> There are an additional seven optional governing models that can be adopted to supplement one of the five base types.<sup>189</sup> The Township has a modified governance model under the Walsh Act of 1911.<sup>190</sup> Under this particular model, the population votes for 5 Commissioners, the newly elected Commissioners then vote amongst themselves to determine which of them will be the Mayor.<sup>191</sup> The Commissioners are then each charged with running one of North Bergen’s five departments, which are Public Affairs, Parks and Public Property, Public Works, Revenue and Finance, and Public Safety.<sup>192</sup>

The North Bergen Municipal Utilities Authority (the “Authority”)<sup>193</sup> is classified as a public body corporate and politic of the state, and was established in 1981.<sup>194</sup> It operates the Township’s sewage system.<sup>195</sup> The Division of Local Government Services, Department of Community Affairs, State of New Jersey (the “Division”) is the body that created the accounting guidelines that the Township uses (loosely) in place of GAAP.<sup>196</sup>

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184. *North Bergen Township, Hudson County, New Jersey*, U.S. CENSUS BUREAU: FACTFINDER, [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml?src=bkmk](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk) (last visited Dec. 14, 2017).

185. *Id.*

186. U.S. Dep’t of Commerce, *New Jersey: 2010*, U.S. CENSUS BUREAU (Aug. 2012), <https://www.census.gov/prod/cen2010/cph-2-32.pdf>.

187. The five are: Borough, Township, City, Town, and Village. *Types of New Jersey Municipal Government*, N.J. ST. LEAGUE OF MUNS., <http://www.njslom.org/types.html> (last visited Dec. 14, 2017).

188. *Id.*

189. The seven additional governing models are: Commission, Council-Manager, Mayor Council, Small Municipality, Mayor-Council-Administrator, and Special Charters. *Id.*

190. *Official Statement of Township of North Bergen: \$17,725,000 General Improvement Refunding Bonds*, MCELWEE & QUINN A-2 (Apr. 14, 2016), [http://www.mcelweequinn.com/system/files/job-pdfs/16/2016\\_northbergentwp\\_os.pdf](http://www.mcelweequinn.com/system/files/job-pdfs/16/2016_northbergentwp_os.pdf) [hereinafter April 2016 *Official Statement*].

191. *Id.*

192. *Id.*

193. The Township chose to use the “Authority” as an abbreviation in their 2013 bond issuance’s official statement, rather than the less ominous shortening, “MUA”, it opted to use in a more recent Official Statement. *Official Statement of the North Bergen Municipal Utilities Authority: \$16,120,000 Sewer Revenue Refunding Bonds*, MCELWEE & QUINN 1 (Sept. 12, 2013), [http://www.mcelweequinn.com/system/files/job-pdfs/2013\\_northbergenmua\\_os.pdf](http://www.mcelweequinn.com/system/files/job-pdfs/2013_northbergenmua_os.pdf) [hereinafter 2013 *Official Statement*].

194. *Id.* at 1, 8.

195. *Id.* at 8.

196. *Id.* at E-5.

## 2. *Director, Commissioner, Mayor, Senator Nicholas Sacco*

Nicholas Sacco first became a Commissioner in 1985, Mayor and Assistant Superintendent of Schools in 1991,<sup>197</sup> and a State Senator in 1994.<sup>198</sup> Since 1994, Sacco has held all four positions continuously.<sup>199</sup> Sacco and Township employees have received numerous allegations relating to corruption, official misconduct, and nepotism.<sup>200</sup> To date, Sacco has evaded the various allegations aimed at him. While Sacco may have dodged these allegations, there have been multiple charges and convictions of senior level Township employees for conspiracy, official misconduct, and or tampering with public records.<sup>201</sup> In short, the best way to describe corruption in the Township would simply be to say that it is telling when a municipality's Wikipedia page has its own subsection entitled "Corruption."<sup>202</sup>

### B. *Division Principles vs. GAAP*

Appendix B of the Authority's 2013 official statement has 5 pages of single spaced text dedicated to explaining the many differences between Division principles and GAAP.<sup>203</sup> There are numerous differences between Division principles and GAAP; however, arguably, the most problematic difference relates to how, under

197. Sacco was Assistant Superintendent until salary caps were instituted by Governor Christie in 2010, after which Sacco became, "Director of Elementary and Secondary Education." It cannot be definitively stated that Sacco changed positions because of the new caps on Superintendent pay. Although, what is known is that this new position provided a salary of \$253,100.00 in the 2014-2015 school year. This is an amount separate from salaries and benefits resulting from his roles as a Commissioner, Mayor, and State Senator. *North Bergen School District 2014-2015 Salaries*, PI BUZZ, <https://pibuzz.com/wp-content/uploads/2014/12/North-Bergen-SD-2014-2015-Salaries.pdf> (last visited Dec. 14, 2017).

198. *Members: Senator Nicholas J. Sacco*, N.J. LEGISLATURE, <http://www.njleg.state.nj.us/members/bio.asp?leg=140> (last visited Dec. 14, 2017).

199. While not relevant to this article's purpose, it is interesting how Sacco has been able to maintain his positions for the last quarter of a century. In large part, Sacco is able to win elections due to the sizeable amounts of money the North Bergen Democratic Municipal Committee (NBDMC), a Political Party Committee, is able to raise in support of him. For example, the NBDMC raised \$522,972.84 in anticipation of the 2015 Mayoral race. *Receipts and Expenditures Quarterly Report*, N.J. ELECTION LAW ENFORCEMENT COMMISSION (Apr. 13, 2015) (on file with the University of Missouri Business, Entrepreneurship & Tax Law Review). The overwhelming majority of donations made to the NBDMC come from Township employees buying \$150 tickets to the annual Mayor's Ball. *Id.* In addition, there have been multiple allegations from Township employees claiming they are forced to buy tickets to avoid backlash from supervisors, regardless of whether they actually attend. John Heinis, *Witness: James Wiley Forced NB DPW Workers to Buy Tickets to Sacco Fundraisers*, HUDSON COUNTY VIEW (May 28, 2015), <http://hudsoncountyview.com/witness-james-wiley-forced-nb-dpw-workers-to-buy-tickets-to-sacco-fundraisers/>. Also, it appears these events are paid for by Sacco's own 501(c)(3) nonprofit whose mission is to, "promote citizenship and collegiality among members of the community." *Nicholas J. Sacco Foundation, Inc. Form 990-EZ*, CITIZENAUDIT.ORG, [http://pdfs.citizenaudit.org/2016\\_07\\_EO/27-0853744\\_990EZ\\_201506.pdf](http://pdfs.citizenaudit.org/2016_07_EO/27-0853744_990EZ_201506.pdf) (last visited Dec. 14, 2017).

200. Most of which can be gleaned from an ethics complaint filed by Larry Wainstein, who lost an election running against Sacco in 2015. John Heinis, *UPDATED: Larry Wainstein Files NJ Dept. of Education Complaint Against Mayor Nick Sacco*, HUDSON COUNTY VIEW (Mar. 25, 2015), <http://hudsoncountyview.com/larry-wainstein-files-nj-dept-of-education-complaint-against-mayor-nick-sacco/>.

201. Katherine Guest, *Ex-NB DPW Official James Wiley: 'I Got Caught With my Hand in the Cookie Jar'*, HUDSON COUNTY VIEW (June 11, 2015), <http://hudsoncountyview.com/ex-nb-dpw-official-james-wiley-i-got-caught-with-my-hand-in-the-cookie-jar/>.

202. *North Bergen, New Jersey: Corruption*, WIKIPEDIA, [https://en.wikipedia.org/wiki/North\\_Bergen,\\_New\\_Jersey#Corruption](https://en.wikipedia.org/wiki/North_Bergen,_New_Jersey#Corruption) (last visited Sept. 14, 2017).

203. *2013 Official Statement*, *supra* note 193, at A-32-36.

the chosen methodology, not all of the Township's liabilities are considered debt for calculating its total debt.<sup>204</sup>

The ability to exclude actual liabilities from the Township's financial statements allows it to obtain inflated credit ratings by distorting its debt to income ratio.<sup>205</sup> It might well be argued that credit agencies are thoroughly investigating and calculating the ratings of muni-issuers, and are therefore, fully aware of the creative accounting principles used by the Township. However, recent history and events surrounding the 2008 financial crisis would lead to a different conclusion.<sup>206</sup> In addition, this distortion enables the Township to stay far below New Jersey statutory debt maximums.<sup>207</sup> With higher credit ratings, the Township can more easily issue larger bonds.<sup>208</sup> In practice, the Township has, and continues to issue a series of bonds to repay bonds the Authority has already issued.<sup>209</sup> After several years, the Authority (or another Township entity whose debts are not deemed "debt" under their accounting methodologies) issues a larger bond to repay the Township's debts.<sup>210</sup> This cycle results in the Authority (or equivalent entity whose debts are excluded) holding an ever-growing majority of the debt so that the Township can maintain and increase its credit rating and borrow more.<sup>211</sup> This is dangerous because eventually the Township will not be able to issue a large enough bond to cover its liabilities, which could realistically lead to bankruptcy. This may be an inevitable result, but it will likely be delayed for a significant period of time because the Township can have other entities whose debts are also excluded, issue bonds.<sup>212</sup>

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204. See *infra* Section IV.B.1 (discussing debt recognition principles in North Bergen, New Jersey).

205. See *infra* Section IV.B.1 (discussing debt recognition principles in North Bergen, New Jersey).

206. See generally Steven L. Schwarcz, *Markets, Systemic Risk, and the Subprime Mortgage Crisis*, 61 SMU L. REV. 209 (2008) (describing events surrounding the economic crisis).

207. N.J. REV. STAT. §§ 40A:2-6, 40A:2-42 (2013) states that no bond ordinance may be adopted by a municipality if its net debt exceeds 3.5%. The equation for which, is total debt divided by the average of the last three years of equalized valuations of taxable real estate + improvements made on the same property. The Township's audited financials for 2015 lists a total of \$56,952,381.84 for Net Debt. The financials then divide this by \$4,785,952,085.67, which is the amount the Township reached using the equation above. This results in a Statutory Net Debt Percentage of 1.19% for 2015. As mentioned earlier, the net maximum debt percentage is 3.5%. If the entirety of the Township's liabilities to be included, their Net Debt Percentage would be 2.75% (\$130,254,793.84/ \$4,785,952,085.67). *Township of North Bergen Hudson County, New Jersey Report on Examination of Accounts for the Year Ended December 31, 2015*, NORTHBERGEN.ORG, [http://www.northbergen.org/\\_Content/pdf/budgets/CY-2015-Audit.pdf](http://www.northbergen.org/_Content/pdf/budgets/CY-2015-Audit.pdf) (last visited Dec. 14, 2017) [hereinafter *NB Audit Report 2015*].

208. Daniela Pylypczak-Wasylyszyn, *Municipal Bond Investing Glossary*, MUN. BONDS (June 24, 2015), <http://www.municipalbonds.com/education/glossary/>.

209. For example, the Township issued a \$28,937,415 in March 2016, for which \$24,111,415 was slated to pay a note due in April of 2016. The remaining \$4,826,000 was to be used for new Township projects. *Official Statement of Township of North Bergen \$28,937,415 Bond Anticipation Note*, ELECTRONIC MUN. MKT. ACCESS 4 (Mar. 31, 2016), <https://emma.msrb.org/ES771504-ES606130-ES1001877.pdf> [hereinafter *March 2016 Official Statement*]. Similarly, the Township issued an additional \$17,725,000 in April 2016, the use of which is less clear, as its purpose was "to advance refund all or a portion of the 17,760,000 of the outstanding callable principal amount of the...Bonds, dated May 15, 2009." April 2016 *Official Statement*, *supra* note 190, at 1.

210. See Pylypczak-Wasylyszyn, *supra* note 208.

211. *Id.*

212. For example, other entities whose debts are excluded under the Township's accounting methodologies are – the Board of Education, Municipal Library and Municipal Parking Authority. March 2016 *Official Statement*, *supra* note 209, at A-19.

### 1. *Debt Recognition Specifics*

In order to address the significance of the difference in liability recognition, it is first necessary to explain how and why separate fund accounting is used in municipalities' financial statements. A fund is how municipalities separate their assets and liabilities based on specific types of expenditures.<sup>213</sup> For example, the Township has a "Current Fund," that is used for expenditures relating to governmental operations and includes administrative costs.<sup>214</sup> This fund has its own financial statements created, which are kept separate from the other funds' statements.<sup>215</sup> The audited financials of all funds are then presented separately within the Township's financial statements.<sup>216</sup> The Township has five separate funds – Current Fund, Trust Fund, General Capital Fund, Capital Fixed Assets,<sup>217</sup> and Public Assistance Trust Fund.<sup>218</sup>

The issue referenced earlier relates to whether the funds adequately capture the entirety of the Township's liabilities. The Governmental Accounting Standards Board ("GASB") has issued a pronouncement that requires financial statements to include all financial activities for which a municipality is financially accountable (which GAAP complies with).<sup>219</sup> In contrast, Division principles have no such requirement and defer to municipalities to determine which operations should be deemed separate entities for financial reporting purposes.<sup>220</sup> The Township has used this deference to conclude that the Authority is a separate entity not related to Township's "functions or activities," and, therefore, its financial statements need not be included in the Township's financial statements.<sup>221</sup> The ability to make this determination, at least regarding the Authority, stems from its unique classification as a public body corporate and politic of the state.<sup>222</sup>

The liabilities of the Authority not being included would not be an issue so long as the Township were not in fact liable for the debts. Moreover, this general logic appears to be the rationale for why the Division's alternative accounting methodology allows for these types of exclusions. At first glance, it would appear that the Township is not liable. That is, the Authority's 2013 Official Statement's first page states in all caps,

THE 2013 BONDS ARE DIRECT AND GENERAL OBLIGATIONS OF  
THE AUTHORITY. THE AUTHORITY HAS NO POWER TO LEVY  
OR COLLECT TAXES, AND THE 2013 BONDS ARE NOT DEBT OR

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213. Separate accounting for funds is also part of GAAP, the idea generally being that this method makes it easier to determine how each department used their budget.

214. 2013 *Official Statement*, *supra* note 193, at A-31–32.

215. *Id.* at A-32–33.

216. *Id.* at 32–33.

217. Capital Fixed Assets is technically an account group used to account for the assets and liabilities not captured in one of the other funds. *Id.*

218. *Id.*

219. *Id.* at B-32.

220. *Id.*

221. *Id.*

222. *Id.* at C-18.

LIABILITY OF . . . THE TOWNSHIP OF NORTH BERGEN (EXCEPT AS SET FORTH IN THE SERVICE CONTRACT)[.]<sup>223</sup>

This quote explicitly says the bonds are not debt of the Township; however, the referenced service contract states the exact opposite.<sup>224</sup> This quote claims that the bonds are not debts or liabilities of the Township, when the bonds really are debts and liabilities of the Township. As set forth below, this service contract may result in the Township being forced to levy higher taxes to pay off the bonds. Article IV, § 401 of the referenced service contract states,

The Township . . . pledge[s] [its] power to levy ad valorem taxes upon all the taxable property . . . to satisfy . . . obligations under this Agreement . . . [t]he [a]nnual charges . . . shall be the sum equal to the difference between the expenses of operation . . . the principal of and interest on any and all bond as the same become due . . . .<sup>225</sup>

This contract is not exactly user friendly. It essentially states that the Township is liable for, and required to levy taxes in order to pay, “[a]nnual charges.”<sup>226</sup> These annual charges are an amount computed by the Authority in the amount necessary to cover its operational costs, which includes payments on bonds it issues.<sup>227</sup> This is more easily discernable in the Official Statement for the 2013 Bonds,

Pursuant to a Service Contract (as defined herein) entered into by the Authority [and] the Township . . . the Authority may impose Annual Charges upon the Township . . . in an amount sufficient for the Authority to pay for, among other things, the expense of operation and maintenance of the Sewerage System and the principal of and interest on any and all Bonds, including the 2013 Bonds, as they shall become due . . . [i]n the opinion of Bond Counsel to the Authority, the Township has the power, and has the ultimate obligation, to levy ad valorem taxes upon all the taxable real property in the Township for the payment of such Annual Charges . . . as the same become due, without limitation as to rate or amount, if such funds are not otherwise available.<sup>228</sup>

In practice, this Service Contract means that the Township would be entirely responsible for required payments if the Authority were to be unable to make them. That is, if the Authority were to go bankrupt, the debt holder would likely file a motion to assume the Service Contract. Doing so would enable them to force the Township to cure the default under their obligation to pay “annual charges.”<sup>229</sup> In addition, the Authority provides essential services for the municipality; bankruptcy or default is an unlikely option without the Township also having to follow suit.

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223. *Id.* at 1.

224. *Id.* at 302.

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* at 1.

229. *Id.* at 302.

In short, the Division's principles allow for significant liabilities that the Township is responsible for to be unrecognized as liabilities in financial statements used in the issuance of new municipal securities. Now to address exactly how the Township's Division accounting principles have resulted in severely skewed debt calculations for the Township.

## 2. *The Math*<sup>230</sup>

Division principles permit the Township to severely deflate its total outstanding debt to income and assets ratios.<sup>231</sup> For example, the Township's 2015 financials list tax collections as \$131,772,784.26,<sup>232</sup> and \$22,134,880.52 in miscellaneous revenues.<sup>233</sup> This is a total of \$153,907,664.78 for income in FYE 2015. In terms of assets on hand, fixed assets owned are listed as \$57,670,34.12,<sup>234</sup> and \$18,443,221.40 is listed for "in cash" at year end.<sup>235</sup> The financials list Net Debt as \$56,952,381.84, which does not include the following debt the Township is responsible for: \$55,178,043 from bonds the Authority issued; \$10,435,000 in outstanding Certificates of Participation issued by the Board of Education,<sup>236</sup> \$3,870,000 owed for issuances used for "School Purposes,"<sup>237</sup> and \$7,689,369 owed to the North Hudson Regional Fire & Rescue under a capital lease.<sup>238</sup> These liabilities sum to \$134,124,793.84. Further, the Township ended 2014 with approximately \$20,643,947.85 in cash (assets were substantially similar in 2014).<sup>239</sup> This rough

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230. The following is not exactly riveting, but the calculations are the basis of Part IV's overall argument. To note, all of the following figures are accurate approximations; in a decision to preserve sanity, this article does not include insubstantial amounts in determining assets (less than \$500,000). To set off any potential skewing this may cause, the calculation of the present value of Pension liabilities is also not included; those amounts would far outweigh any excluded asset amounts.

231. See *supra* Section IV.B.1.

232. *NB Audit Report 2015*, *supra* note 207.

233. Miscellaneous Revenues include funds stemming from issuing liquor licenses, collecting fines, and receiving grants. *Id.*

234. *Id.*

235. This amount is the cash balance across all funds that hold cash in excess of 500,000. While there are other balances, they are substantially lower (in the low hundreds of thousands). *Id.*

236. Certificates of Participation appear to be a method to issue a bond, without calling it a bond, which prevents the amounts from being added to total debt. This particular issuance involved the BOE borrowing approximately \$10,000,000 from AHG Leasing, Inc. for the renovation of various schools in the Township. The method calls the repayment of this debt "lease/rent payments," rather than debt payments. The Official Statement of this issuance is extremely explicit in stressing that the Township has no obligation to pay this debt, only the BOE does. The BOE gets its budget from the Township. Further, the Certificates of Participation are secured by seven elementary and secondary schools located in the Township, including the land they are built upon and equipment/materials therein. This means that should default occur, AGH is permitted to take possession of all properties, until the default is cured. These properties make up a significant percentage of the Township's assets. Given these facts, it is hard to imagine a situation where the BOE defaults and the Township does not have to take over the payments, other than one in which the Township defaults as well. For all intents and purposes, the Township is liable for this additional \$10,435,000. *Official Statement of the Board of Education of the Township of North Bergen: \$5,590,000 Refunding Certificates of Participation*, ELECTRONIC MUN. MKT. ACCESS (June 29, 2010), <http://emma.msrb.org/EA387846-EA305176-EA700813.pdf>.

237. Division accounting principles also allow for the deduction of monies borrowed for school improvements. April 2016 *Official Statement*, *supra* note 190, at A-48.

238. March 2016 *Official Statement*, *supra* note 209, at A-47.

239. *Township of North Bergen Hudson County, New Jersey Report on Examination of Accounts for the Year Ended December 31, 2045*, NORTHBERGEN.ORG, [http://www.northbergen.org/\\_content/Pdf/budgets/CY-2014-Audit.pdf](http://www.northbergen.org/_content/Pdf/budgets/CY-2014-Audit.pdf) (last visited Dec. 14, 2017); *NB Audit Report 2015*, *supra* note 207.

calculation means that the town spent most of, or the entirety of, its revenue in FYE 2015 in order to wind up with slightly less cash in hand at the close of the year.<sup>240</sup>

The math will now get murkier in an attempt to establish the Township's debt liability relating to municipal securities for 2016. In addition to the various principal amounts reaching maturity on an annual basis, each liability also carries interest.<sup>241</sup> Most of these issuances carry about 4% interest, payable twice a year.<sup>242</sup> Using a 4% assumption across all debt and no payments towards the principal until they become callable (this generally appears to be the case), this amounts to approximately \$5,210,191.75 in annual interest payments.<sup>243</sup> In 2016 the principal amounts due across all issuances was at least \$4,670,000.<sup>244</sup> These amounts combined will result in annual payments for debt payments relating to bond issuances in 2016 of approximately \$9,885,191.75.

### C. Applying the Math and the Causality Dilemma

Part IV's purpose is to highlight a concrete example of how prevention of regulatory authorities from enacting new requirements in the muni-market negatively impacts its fair and efficient operation and the ability of regulatory agencies to detect potential securities laws violations.

Subpart B's analysis relating to the Township's liability for the Authority's issuances and subsequent calculations established evidence of arguably false or materially misleading misrepresentations in the Township and Authority's Official Statements. For example, the 2013 Official Statements explicitly stated, "the 2013 bonds are not debt or liability . . . of the Township."<sup>245</sup> While a careful, and close reading of the 2013 Official Statement would lead a potential investor to conclude that for all intents and purposes, the Township is liable for these debts, the language stating that the bonds are not the Township's liabilities is explicit and arguably materially misleading.

Moreover, the Township's April 2016 Official Statement lists maturity and interest payments due for outstanding bonds as \$3,096,379.17.<sup>246</sup> Even accounting for a significantly large margin of error in the calculations presented in subpart B, the amount disclosed in the 2016 Official Statement is not remotely close to the number more likely representative of the bond payments that the Township was responsible for in 2016 (approximately \$9,885,191.75).<sup>247</sup> With this in mind, it should be

240. Sincerest apologies to any accountants offended by the simplistic reasoning and calculations used in making this point.

241. *Issue Details: North Bergen Municipal Utilities Authority*, ELECTRONIC MUN. MKT. ACCESS (OCT. 9, 2013), <https://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER356961> [hereinafter *NB Utilities Authority*]; *North Bergen TWP NJ*, ELECTRONIC MUN. MKT. ACCESS, <https://emma.msrb.org/IssuerHomePage/Issuer?id=B212762B293F98335E829507929F820B&type=G> (last visited Dec. 14, 2017).

242. *NB Utilities Authority*, *supra* note 241.

243. While normally interest payments should lower over time, this appears not to be the case with the Township, because they continue to issue new and larger bonds, and the current outstanding issuances' interests accrue. April 2016 *Official Statement*, *supra* note 190, at 2.

244. This is the sum of the various callable amounts of bonds issued directly by the Township, and those issued by the Authority (the sum does not include amounts due for every issue/debt [for example, the previously mentioned BOE certificates], however, the callable amounts used in this calculation are the largest by far). *NB Utilities Authority*, *supra* note 241.

245. 2013 *Official Statement*, *supra* note 193, at 1.

246. April 2016 *Official Statement*, *supra* note 190, at A-52.

247. See *supra* Section IV.B.2 (calculating the Township's estimated bond repayments for 2016).

stressed that while muni-issuers have been afforded substantial exemptions from the provisions of the Securities Act and Exchange Act, they are not exempt from anti-fraud provisions (e.g., 17(a) and 10(b)).<sup>248</sup>

Further, the process of identifying these potential violations serves to highlight the difficulty that regulatory authorities would face in the detection of potential misstatements, primarily due to the lack of uniform accounting principles. If authorities were to investigate a municipality much like the Township, they would first have to dissect the particularities of their accounting principles. Further, even though the Township complies with the Division's accounting principles, this does not mean that every municipality in New Jersey that uses Division guidelines has the same accounting methods. Rather, municipalities in New Jersey are permitted to use their own interpretation of Division rules.<sup>249</sup> This means that actual accounting used by one municipality may differ vastly from those used in a neighboring municipality. The result of this is that the time it would take to find and investigate potential securities laws violations in municipalities using distinct accounting principles is so great that it might not be worth the effort.

This article argues that if GAAP were required across the muni-market, regulators could more easily detect and prevent fraudulent issuances by potentially financially unstable municipalities. Given the general movement toward big data analytics, regulatory authorities have already begun using increasingly complex algorithms to sift through massive amounts of data and produce red flags, which investigative staff can then follow up on.<sup>250</sup> The future of every industry is going to heavily involve big data analytics.<sup>251</sup> While this may be the case, algorithms are largely useless without uniform inputs to establish reliable parameters. If the financial statements of municipalities use unique accounting principles, like those deducting more than half of outstanding liability from net debt, these systems will be ineffective at flagging suspicious events. As argued previously, the SEC has the authority to draft a rule addressing this issue pursuant to both the text and legislative intent behind the 1975 Amendments, and it is imperative that they do so.<sup>252</sup>

The above argues in favor of uniform accounting principles, which would aid regulatory authorities in uncovering securities laws violations. The question comes to mind as to whether the examples of potentially material misstatements contained in the 2013 and 2016 Official Statements would have occurred if the Township adhered to GAAP principles instead of crafting principles pursuant to Division guidelines. It can be argued that these potentially misleading statements would not have occurred. If that were the case, the argument regarding uniform accounting increasing the ability to detect violations is moot with respect to these particular situations. In other words, did the lack of GAAP cause the potential misstatements, or would GAAP have detected the potential misstatements? This particular question will

248. S. REP. NO. 94-75, at 50 (1975), as reprinted in 1975 U.S.C.C.A.N. 179, 228.

249. See *supra* Section IV.B.1 (discussing the Township's debt recognition accounting methods).

250. See Stein, *supra* note 122 (SEC Commissioner statement regarding movements towards big data analytics).

251. See generally James Manyika et al., *Big Data: The Next Frontier for Innovation, Competition, and Productivity*, MCKINSEY GLOBAL INST. (May 2011), [http://www.mckinsey.com/~/media/McKinsey/Business%20Functions/McKinsey%20Digital/Our%20Insights/Big%20data%20The%20next%20frontier%20for%20innovation/MGI\\_big\\_data\\_full\\_report.ashx](http://www.mckinsey.com/~/media/McKinsey/Business%20Functions/McKinsey%20Digital/Our%20Insights/Big%20data%20The%20next%20frontier%20for%20innovation/MGI_big_data_full_report.ashx).

252. See *supra* Sections II.A–B (analyzing of legislative history of the 1975 Amendments and the Tower).



remain unanswerable until a time when the multiverse theory is proven and future generations gain the ability to peek into a nearly identical dimension that established GAAP principles in the muni-market at an earlier time. Regardless, the SEC was not only tasked with detection and enforcement of these violations,<sup>253</sup> they are also tasked with creating preventative rules.<sup>254</sup>

## V. CONCLUSION

Part II's purpose was to discuss the regulatory framework of the muni-market. A story was told that addresses how a small portion of much larger statutory language can reverberate across time, regardless of its drafter's original intent. Part II's primary argument was that drafters of the 1975 Amendments, including Senator Tower, never had any intention of limiting the SEC's authority with respect to muni-markets. Rather, the Amendments were designed to increase regulation in the muni-market, and the drafters wanted the SEC to monitor and continually implement new regulatory requirements in the muni-market. The drafters fully recognized the shifting floor of time, as well as their inability to predict how their statutory language would be implemented down the line.<sup>255</sup> As referenced previously, evidence for this position can be seen in the Senate Report on the 1975 Amendments, "the Commission's responsibility . . . includes the promulgation of prophylactic rule."<sup>256</sup>

Part III attempted to tell a story about competing interests and the after effects of the statutory language dissected in part II. At its core, part III discussed why implementing regulation over the muni-market has been so difficult, and laid the groundwork for discussing why regulatory reform is necessary. The idea was to then choose one of the principal issues stemming from the lack of regulation over the muni-market (lack of uniform accounting principles), which would then have its importance proven in part IV using real world examples.

Part IV provided concrete examples in order to prove that the lack of uniform accounting principles in the muni-market is very likely to impede regulatory bodies' efforts to prevent and detect fraudulent activities. Using rough calculations, part IV presented potential securities law primary fraud violations resulting primarily from the lack of uniform accounting principles. The calculations portion also served to highlight how difficult and time consuming it would be for regulatory authorities to investigate and find potential violations if they had to decipher the unique accounting principles of each municipality's individual interpretation of their state's equivalent of the Division. Part IV concluded by circling back to the notion that the SEC has the authority under the current regulatory framework to create a rule remedying this issue, and should exercise this power sooner rather than later.

This article began by arguing for the necessity of evolving laws. Initial cursory research indicated that the Tower Amendment prohibited nearly all regulatory efforts in the muni-market that could be made by the SEC or MSRB. After additional research, it became apparent that the drafters of the Tower and the 1975 Amendments were clearly aware of the need for a continuously evolving regulatory

253. S. REP. NO. 94-75, at 50.

254. *Id.*

255. *See supra* Sections II.A–B (analyzing of legislative history of the 1975 Amendments and the Tower).

256. S. REP. NO. 94-75, at 228.

framework in the muni-market.<sup>257</sup> Moreover, Congress explicitly tasked the SEC with effecting such evolutions.<sup>258</sup> At this point, the article's concentration shifted to determine what the most likely reasons were for the seemingly distorted public representations of the Tower Amendment and the fierce resistance to regulatory reform. Research into the muni-market, coupled with concurrent experience with investigatory work, sparked interest in investigating the Township. Diving into the story involving the Township's various questionable activities has, at a bare minimum, proven that the Township warrants the inclusion of a "Corruption" header on its Wikipedia page. Given the amount of time spent researching the Township's activities, and the desire to deliver some of the stories uncovered, the focus then became on weaving together a coherent article that could incorporate this research.

If the end result appears to be stitched together, that is because it was, much like the current muni-market regulatory framework. This article has little resemblance to its original design. On second thought, maybe this article is exactly representative of its initial intent. This article began with stressing the importance of adhering to the laws of evolution, which given the continual shifts in direction, focus, and lenses, maybe the article became a product of its original intent. That sounds nice, but I would only claim to have intended this result if the sum of these changing parts has at least been mildly entertaining.

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257. *See supra* Sections II.A–B (analyzing of legislative history of the 1975 Amendments and the Tower).

258. S. REP. NO. 94-75, at 228.