

## **SEC Historical Society 11<sup>th</sup> Annual Meeting**

### **“Self Regulation in the Securities Industry”**

**June 3, 2010**

SUSAN COFFEY: Good afternoon and welcome to the 11th Annual Meeting of the SEC Historical Society. I'm Sue Coffey, a senior vice-president at the American Institute of Certified Public Accountants and the current President of the Society.

It's truly a pleasure to be here today. And on behalf of my fellow trustees of the society's Board of Trustees, I would like to welcome those who are gathered here in the auditorium of the SEC in Washington, D.C. and all of joining us through our live video broadcast online at [www.sechistorical.org](http://www.sechistorical.org).

Before our presenters begin their discussion on self-regulation in the securities industry, I'd like to take a minute to share with you what we're doing to preserve the knowledge of the history of financial regulation through our unique virtual museum and archive.

Each and every day hundreds of people come to [sechistorical.org](http://sechistorical.org), the home of our living virtual museum and archive, to obtain primary information and material that can be found nowhere else online. Our visitors trust us to provide them with objective and authoritative information that can help them understand how our present system of financial regulation has developed over the 20th and 21st centuries and how changes in regulation may impact them both professionally and personally.

I'm delighted that so many of you visit and use the museum, from the Federal, state, municipal and international regulatory community – including the SEC; from law, financial services and accounting firms; from self-regulatory organizations; from academia; and from the media. Because of the support of so many you, the museum and archive continues to be free and accessible worldwide at all times.

As some of you may know, the Society and museum receive no government funding. We are solely supported through the generous gifts from people like you and from corporations, foundations and associations.

We are deeply grateful to all of you who give to sustain the museum. And I'm proud that we now commit more than 80 percent of gift revenue directly to the growth and outreach of the virtual museum and archive.

This Annual Meeting also gives the Society the opportunity to welcome new leaders. As I begin my tenure as President, I would like to recognize my fellow officers: our Chairman, Jim Barratt, of Alvarez & Marsal; our President-Elect and my successor, Richard Nesson, of Luness Partners; our Vice-President of Development, George McKann, of Drinker Biddle & Reath; our Vice-President of the Museum, Donna Nagy, of Indiana University Maurer School of Law; our Treasurer, Scott Bayless, of Deloitte; and our Secretary, Stacy Chittick, of FINRA.

I would also like to welcome our new trustees: Bruce Bennett, of Covington & Burling; Mike McAleve, of General Electric; Chuck Senatore, of Fidelity Investments; and Larry Sonsini, of Wilson Sonsini Goodrich & Rosati.

The SEC Historical Society was founded independent of and separate from the SEC, and remain so to this day. We of the Society very much appreciate the ongoing cooperation and friendship that the SEC has extended to us since our founding. We are honored to be asked back to recognize the upcoming 76th anniversary of the SEC next week, to present this timely discussion on self-regulation in the securities industry, and to host an ice cream social at the end of the program for all guests here and for all SEC staff.

I'm also very delighted to welcome Chairman Schapiro who will be joining us in a minute. Chairman Schapiro is coming – she's in the back of the room walking down. Chairman Schapiro is a former trustee of this Society, and I'd like to present her for some remarks prior to the start of the program. So, with that, Chairman Schapiro, thank you for joining us and we look forward to hearing from you.

MARY SCHAPIRO: Good afternoon. I'm sorry to be a moment late. I really pride myself on not ever being late, so, I apologize. Thank you very much for the introduction.

I also want to thank all the volunteers and supports of the SEC Historical Society for your hard work. And to the SEC alumni who came out to join us today and, I assume, many who are participating by webcast.

Over the last eight years, the Society has collected and organized a really fascinating array of vital documents, rare photographs and personal histories, creating an extensive archive housed in a virtual museum which has become a unique and important resource for anyone who's interested in financial history.

Now in the year since I last spoke to the Society, this has been an incredibly active time for all of us at the agency. There's hardly been a chance to catch our breath between proposing significant new rules, rapidly responding to the May 6th market disruption, pursuing a tough new enforcement program and joining the effort to reform financial regulation.

The men and women who labor on behalf of American's investors have been in overdrive for many months now – exactly what I expected from a staff that has always answered every call and accepted every challenge. They are unnamed heroes of the financial system. For the work of the Society and the virtual museum, their efforts will be apparent to thousands of visitors every year.

There may have been a time when the SEC was little known outside a small segment of the investing public. But in a post-financial crisis world, one where half of all American households own securities, the general public has a far greater understanding of our role and importance. They recognize as we all do that a strong SEC brings greater protections for investors and greater

confidence in our markets. And their recognition provides important support for the changes being made as work to better protect investor interests and the integrity of the marketplace.

The financial crisis has highlighted the important role strong market regulation plays in fostering a growing American economy. The SEC has been able to bring sunlight to the dark corners of the financial markets with greater power to pursue wrongdoers and the resources and funding to support planning, investment and independence can add stability and confidence to the capital markets and encourage more efficient investment and growth.

I'm sure many of you have been focused on our progress over the past year, and you may know then that we're making many changes at the agency. We're hiring more staff and bringing in specialists and industry veterans to increase our institutional intellectual capital; we're working to upgrade our technical capacity; we're changing internal procedures and we're reorganizing to make the SEC more dynamic and improve communications between and among divisions and offices. In short, we have a mandate and an opportunity to build an SEC much more prepared for the realities of 21st century finance than it was just a few years ago. And the SEC staff has responded to the pressures and opportunities of this moment – not just with professionalism and determination, but with real enthusiasm.

But we do face a series of challenges as the agency staff and the veterans here today understand well. How do we leverage every resource and extract every ounce of productivity to catch up with an industry and market that trades and cancels trades in a fraction of a second? How do we keep up with an increasingly global, electronic and complex financial system where companies pay a premium to put their servers as close as they can to the trading floors – right on top of fiber optic cables – when the only limit seems to be the speed of light itself?

New regulations and better strategies will be essential, but so are a consistent set of values that will serve us, not just now but in the years ahead when the next generation of strategies and products present us with a new generation of challenges.

Sometimes, the most important thing to do when preparing for the future is to look back, and to remember the core principles that have always been at the heart of the SEC's work.

Now the SEC, as you all know, was created three-quarters of a century ago in the midst of the Great Depression to protect investors; maintain fair, orderly and efficient markets; and facilitate capital formation. The agency believed then, as we believe now, that investors are protected and markets are far more efficient when transparency is a guiding force of our actions.

In 1934, that meant giving accurate financial information on individual securities to investors and ensuring that the exchanges operated honestly. It still means that today, of course, but it also means, for example, bringing regulation, oversight and transparency to over-the-counter derivatives. And it means making meaningful information available to investors about the assets underlying asset-backed securities.

We believed then, 75 years ago, as we believe now – that every investor should play on a level playing field. In 1934, that meant cracking down on insider trading and stop manipulation – and

it still does. But today we're also looking at a playing field that is geometrically more complex in its structure. So, it means assuring that we truly understand our markets and the forces that are shaping them.

Earlier the year, the SEC issued a concept release on market structure that solicited public comments on the impact of different trading strategies, including high frequency trading on our markets and investors. These issues were also at the center of a market structure roundtable which we hosted yesterday.

And, finally, we understood then, 75 years ago, that healthy markets require tough enforcement. Then, as now, we were tracking pump and dump schemes and routing out fraud. But today enforcement also means employing new techniques and skills and working with a growing number of exchanges, trading venues and SROs to ensure that we have sufficient data collection and surveillance systems.

Last week, the Commission proposed a rule which will create a consolidated audit trail to allow regulators to track trading across multiple markets, products and participants simultaneously and often in real time. I would allow us to rapidly reconstruct trading activity and to quickly analyze both suspicious trading behavior and unusual market events like those of May 6th. In short, it would allow the agency and enforcement, in particular, to keep pace with the markets.

This is just a very small sampling of the regulatory changes underway. And there's no question that somewhere somebody is designing a new generation of products and strategies and frauds for us to keep up with. But our efforts are more than just individual answers to media challenges; they're part of our larger effort to now just react to the last crisis but to try to head of the next one; to build transparency, fairness and more effective enforcement permanently into the regulatory structure. We're embracing principles that will help us anticipate what might happen next, and to act and react rapidly and effectively.

So, sometimes the best way to keep up is to look back and to learn from the talented and dedicated people who came before us. And with our thanks to the SEC Historical Society and your work, it's easy to remember those important lessons of the past.

Thank you all very much.

DONNA NAGY: Thank you, Chairman Schapiro. We are honored to have had you as part of our program. I am Donna Nagy, and I'm a professor at Indiana University Maurer School of Law in Bloomington. This is my third year as a Vice-President of this Society and a member of its Board of Trustees. I also serve as a non-industry member of FINRA's National Adjudicatory Council. I am delighted to be moderating today's program on Self-Regulation in the Securities Industry.

Self-regulation is, of course, a key component of securities regulation in the United States. I cannot envision a finer panel to guide us through the many challenges that are currently confronting securities markets, in general, and self-regulatory organizations, in particular.

Over the last few years, we have seen SRO consolidation and expansion. We have also seen, and continue to see, exchange demutualizations as well as new technologies, new methods of investing and, unfortunately, as Chairman Schapiro just mentioned, new ways of defrauding investors. And those are just some of the issues up for discussion among the distinguished panelists on our program.

For the last 10 years, or so, the SEC Historical Society has been offering similar programs on a variety of topics in financial regulation at our annual meetings. But this annual meeting's program has special significance. Today's discussion is helping to promote, and will be a vital part of the material linked to our upcoming Gallery on self-regulatory organizations – opening permanently in our virtual museum and archive on December 1st.

Galleries are the museum and archive's unique search function, giving visitors easy access to all material in the museum collection on a particular regulatory topic. Since our first Galleries opened five years ago, Galleries have also been our principal way of adding new material; papers, photos, oral histories, interviews, documentary media and programs to our collection.

The Gallery on self-regulatory organizations will be the 7th such gallery in the museum. I would like to thank all who are helping to build the gallery. In particular, our thanks go out to History Associates Inc., with Dr. Kenneth Durr and Robert Colby as principals who are curating the gallery. We are also grateful to the institutions that have contributed their historical material, including the New York Stock Exchange Archives, the Chicago Board Options Exchange, FINRA, the National Archives and Records Administration and the Library of Congress. We also wish to thank those individuals who have shared their remembrances through oral history interviews and all the individuals and institutions who have generously given to date to help in the Gallery's development.

I encourage all of you to access the self-regulatory organization material that is being added now the collection and to visit the Gallery when it permanently opens on December 1st.

The challenges facing self-regulation in the securities industry are not new ones entirely. Since the founding of the New York Exchange in the 18th century, questions concerning the nature, impact and effectiveness of self-regulatory organizations have continued.

I would like to quote from an SEC paper from December 19, 1938, that was drafted for, Chairman William O. Douglas, but never published, so, it has probably not been read until now.

"The decision of the New York Stock Exchange to take no action against its various members who were involved in the Whitney episode does not necessarily indicate that the ideal of self-regulation is impossible. It does, however, suggest the kind of limitation under which even the ablest and most upright management presently functions, as respects self-policing. It also suggests that the appropriate balance, by statute or otherwise, between stock exchanges and the federal government, has not yet been attained. It will not be attained until the rules are applied to the little fellow and the big shot alike."

It is now my great pleasure to briefly introduce these distinguished leaders from the securities industry. I'll begin from the far left, facing the audience: James Brigagliano, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission; James Duffy, interim Chief Executive Officer, New York Stock Exchange Regulation, Inc.; Richard Ketchum, Chairman and Chief Executive Officer, FINRA; and Joanne Moffic-Silver, General Counsel, Chicago Board Options Exchange.

I would like to begin by circling back to the statement drafted for then Chairman – later Supreme Court Justice - William Douglas concerning self-regulatory ideals and the struggle to attain an appropriate balance between self-regulation and government regulation.

Rick, your background allows you to draw from substantial experience as both a government regulator and private sector regulator. I'd like you to share a bit about what you see as the fundamental mission of an SRO, and then I'll ask our other panelists as well.

RICHARD KETCHUM: Thanks, Donna. You know, you've – in a low-key way – noted that one of the facts of me not being able to hold a job is that I have been in a variety of different spots in this, from the SEC to the New York Stock Exchange to a regulated entity to FINRA. And also, sadly, age has something to do with it. But I think that the quote you read in that memo probably sets out pretty well the goals of self-regulation. I don't think they're very different than the goals that Chairman Schapiro articulated for the SEC.

FINRA's mission, in the simplest terms, is to enhance and maintain market integrity and protect investors. And I think that while each [SRO] might need a slightly different approach depending on the responsibilities and the market activities of that SRO, those are the basic responsibilities of self-regulation. And as entities that are, fundamentally, statutory entities responsible to the SEC and to the nation, we do just that.

There's also some continuity in other way. Obviously, we all continue to be subject to specific statutory provisions - in 15A and in section 6, separately - that have been in place, largely unchanged since 1975, at least and in large part since 1934 and 1938. So, the basic responsibilities – of dealing in a non-discriminatory way with our members, to how we operate with respect to rules, and a variety of other goals - remain the same in very meaningful ways.

Yet, in other ways – even from my time from starting in the SEC in 1977, obviously - self-regulation has evolved in a number of ways. I'll just speak of it from FINRA's perspective and leave separately for Jim and Joanne to speak of it from the exchange perspective. But, obviously, FINRA comes as a merger of two proud legacies – the legacy of NASD and its entire operations and the legacy of New York Stock Exchange Regulation's member regulations program – with new responsibilities coming down the road with respect to New York Stock Exchange market surveillance.

That leads us to be – in looking at it from the NASD history - a very different animal than what I first came into in 1991 at the NASD. At that point, we were a single organization with responsibility for a major marketplace - NASDAQ - and for our self-regulatory responsibilities and regulatory oversight. That responsibility related to examinations of member rules across all

NASD members, but was shared with the New York Stock Exchange and CBOE with respect to those NASD members. And, with respect to market surveillance, we had very specific responsibility over trading by the NASDAQ Stock Market in NASDAQ-listed securities and in third-market activity with respect to New York- and AMEX-listed securities.

We were a single organization governed by a single board attempting to weigh and manage – and I know we'll talk later about conflicts – the issues and challenges of attempting to project and compete from a market standpoint and operate a regulatory program. That, obviously, evolved in a number of ways. It evolved in the mid-90s as a result of our concerns and the SEC's concerns on how our member reg program operated with regard to some of the things coming out of the Justice Department and SEC reviews of the NASD and, particularly, the NASDAQ Stock Market.

And that evolved to a first step of creating a discrete NASD Regulation with its discrete board that had fundamental responsibility below the holding company for delivering it. It evolved further with the – and this will be a story you'll hear several times – with NASDAQ beginning the road of becoming a discrete corporation and eventually a public corporation. And, with that, the determination for the NASD to fully spin off NASDAQ and have a discrete governance of that marketplace; and with the NASD operating with a board with sole responsibility with respect to what I'll say is the pure regulatory signs of self-regulation from a statutory standpoint.

It evolved from there with the merger into FINRA, where we took responsibilities for the member regulation program to try to address duplication and consistency concerns with, effectively, all firms that did a public business - though, again, continuing to share an important examination program with CBOE with regard to firms from a financial responsibility or a professional trading standpoint.

And it finally has evolved with regard to our first operating [NASDAQ] – then continuing by contract, rather than being part of the same organization - to do NASDAQ's self-regulatory responsibility to ensure market integrity of that business. And now it has evolved to us doing, by contract, the business of a number of other exchange and, most particularly, in a – hopefully, a week or so – the New York Stock Exchange's market surveillance.

So, that's led to some consolidation of responsibility, some sharing of that statutory responsibility across entities with different DNAs than what existed before. Our mission has not changed, and has probably sharpened. Governance, as we'll talk later, sharpened a great deal and there's been more consolidation, to some degree, with respect to FINRA's role.

NAGY: Thank you, Rick. Jim, I'll ask you the same question regarding the fundamental mission of an SRO. Clearly, the New York Stock Exchange, as a market, has some competition considerations that distinguish it from FINRA.

JAMES DUFFY: Thank you, Donna.

I actually would like to start out with the kind of disclaimer that those of you in the SEC use, that the views I express are my own and not necessarily those of NYSE Regulation or my colleagues

at the company. While we don't have a corporate policy that requires that I do that, I think it's appropriate given the nature and the scope of the topic here today. I also think it's particularly appropriate is I will be retired shortly after we complete the consolidation of regulation with FINRA, which makes it that much more difficult for me to predict what positions the organization might take in the times going forward.

In terms of the mission of the SRO, I have worked with or for securities exchanges for most of my legal career. So, obviously, I'll focus my remarks on an SRO that's a registered securities exchange. These organizations have been and are businesses – as well as SROs. That complicates life from the SRO point of view. It seems to me, clear, that the business purpose of these organizations have evolved very significantly since the securities laws were first adopted in the 1930s.

Now the statutory obligations, as an SRO, have not evolved to nearly the same extent, although, as a practical matter, I think that the way that the government has used exchanges as SROs has evolved – and I think we'll address that a little more later.

As a business, an exchange in the early 20th century existed to serve its members. It was an unincorporated association of members intended to enable them to do their business of buying and selling securities. It had rules about how that trading should be conducted and those rules, in time, came to constitute a signal to customers that brokers trading on the exchange should be trusted.

I think this made it a convenient platform for federal regulation when that came along in the 30s. And imposing SRO obligations on the exchanges became a convenient way to standardize the new governmental regulation of broker dealers.

Exchanges have evolved very far away from the member-run associations of the early 20th century. Their focus now goes beyond their members, obviously. Demutualization and public ownership have contributed to that quite considerably since many exchanges are now operated by companies with diverse business interests beyond just the maintenance of the particular exchange.

But even the exchange subsidiaries, themselves, are much more widely focused than the exchanges of old. They're, obviously, focused on listed companies – those that are in that business. They are focused on satisfying the needs of investors of various kinds; institutional, retail, proprietary traders – so forth. They're also still focused on satisfying the needs of the broker dealers that are members or users of the exchange.

But it is members as customers – not owners – and there really is a very significant difference, I think. When you own a co-op apartment, you have a very different relationship with the building than when you live in a rental apartment. And, I think, that's a reasonable analogy for the difference I have observed over the years in terms of the relationship of exchanges to their members.



By the way, this wasn't something that happened in the twinkling of an eye when exchanges demutualized recently. The New York Stock Exchange and the American Stock Exchange began to allow the leasing of seats in the 1970s. And this began to increasingly disassociate the people who were using the memberships from the people who owned the membership and owned the exchange – so, this has also been an evolution.

I think that the government's regulatory use of an exchange as an SRO has evolved. At the beginning, as I said, I think the primary purpose was broker-dealer regulation and the regulation of discipline – trying to make sure that both the big and the little guy was disciplined when they did something wrong. That's still a purpose, obviously – although, more and more that part of regulation is being outsourced to FINRA. And I'm sure we'll discuss more of that later on today.

I think exchanges have long been a way to regulate some aspects of behavior of public companies that are listed on those exchanges. I think that's evolving quite rapidly over the last decade, in particular – Sarbanes-Oxley, of course, and its progeny – some of which is part of legislation that we'll probably see this year.

I think, also, the exchanges have increasingly been an instrument for government implementation of the national market system that was envisioned by the '75 Act amendments. That also has been evolutionary and ongoing. I think it really hit its full stride with Regulation NMS and I think it has grown to be a very significant aspect of the role exchanges play in regulation of the securities industry these days.

So, I hope we can develop some of these thoughts a little bit further, but I'll stop there.

NAGY: Terrific. Thank you, Jim. Joanne, I'll turn to you next to talk to us about the CBOE.

JOANNE MOFFIC-SILVER: Well, CBOE is in the process of demutualizing. So, we have the benefit of history and precedent ...

KETCHUM: You can have so much fun.

MOFFIC-SILVER: So much fun. I'm going to make my disclaimer that my comments are not those of CBOE but my own – but having had a 30-year history with CBOE, I feel like I've evolved with self-regulation.

I started out as an enforcement lawyer with CBOE and, so, my instinct was to protect the public, to make sure that our members were complying with the exchange's rules, and if not, to enforce the rules and impose penalties accordingly. I did that for 15 years. It was difficult because, as was mentioned, the members that we were regulating were also the owners of the exchange.

Over time, as Jim mentioned, many of those owners did become members but, none the less – it was not an easy task. But we did it and we continue to serve the purpose of the '34 Act which, as Chairman Schapiro and the other panelists pointed out, is to provide for fair and orderly markets and to protect public investors, and that remains the goal today.

As we demutualize, I'm seeing that we are being faced with new issues of self-regulation - from serving the owners to now serving shareholders – all are or will be owners, and some are also members. The purpose of a stock company is to serve the purposes of the shareholders, and maximize the profits of the shareholders. At the same time, as a self-regulatory organization, we have the purpose of expending lots of dollars to ensure that regulation is strong and effective. So, those two goals are coming to head with each other. As we continue our process of demutualizing, I'm looking forward to the balance that needs to be created. I have all the confidence in the world that CBOE will be able to accomplish that.

And, for now, I think I'll end those remarks because it leads to a lot of other issues related to demutualization for profit exchanges and conflicts of interest.

NAGY: Thank you, Joanne. Jamie, I'll turn to you now as someone with the Securities and Exchange Commission, trading and markets perspective.

JAMES BRIGAGLIANO: Thank you, Donna. I don't usually have to give a disclaimer when I'm in this room, but I think I do today. So, to the extent that I express views, they are my own, not those of the Commission, individual Commissioners or colleagues on the staff.

The part of the mission of the SROs that I'd like to focus on here is to protect investors. SROs bring a couple of very important assets to that fight to protect investors: proximity to the activities, trading activities on markets – and that's important for surveillance; expertise in systems and products that are using on those markets and resources; and those are always important.

Those assets, I think, should be used to develop rules and surveillance mechanisms to protect the integrity of the markets, to develop fair, efficient and orderly markets, to enforce those rules and, where appropriate, to coordinate with the SEC when the SROs act sometimes as the front line eyes and ears. They bring information to us, which is important. We, then, work together and we can cover a much wider waterfront that way.

NAGY: Thank you.

I'd like to now focus a little more on SRO governance. We all know that in 1975, Congress amended the Exchange Act to set forth requirements with respect to the composition of SRO boards of directors. And, since then, additional requirements have been imposed both by the SEC and the SROs themselves, and so I'd like to focus on how SROs are governed today – how is the governance structure organized?

Jim, why don't we start with you and the New York Stock Exchange?

DUFFY: Well, I think that with respect to governance, you have to distinguish, again, between the exchanges and FINRA. FINRA is, obviously, a member-governed organization, and that's completely appropriate as it is an association of members.

The exchanges – particularly, those that have demutualized and, especially, those that have become public companies - have moved rather far away from member self-governance.

The New York Stock Exchange, actually, did that even prior to demutualization. There was a real dissatisfaction with the way the board, which then included members as well as non-members – with the way that it was functioning in the early years of this decade and the New York switched to a completely independent board.

When we demutualized, our governance structure became considerably more complicated because we had to serve the needs of the Exchange Act in terms of fair representation of members or users on the governing board. We also, at that time, of course – that was before the 2007 transaction which created FINRA, so the New York Stock Exchange had an extremely important regulatory role in the securities industry in the United States. And there was a lot of concern about whether a public company could adequately perform that role. And, so, we had to do a number of things – go quite far, I think, in terms of separating regulation from the business.

We did try to incorporate members in the governance of the exchange subsidiaries where we could – where we did not perpetuate a requirement to have entirely independent boards. And what we found was that the members did not want to serve on boards of what was a subsidiary of a public company, in large part, because the security – the stock of that company, NYX, was publically traded. It was, thankfully, a popular stock and those member firms tended to have to deal in it, either on their proprietary side or for their customers, and they were very paranoid about being put in the position of learning some non-public information that might impact their firm's ability to trade in the stock.

So, we have tried to involve members in user-committees and that sort of thing, in order to involve them to the extent we can in governance. But when they ceased to be owners, they also ceased to be interested in being part of governance.

Now, you know, you pay a price for everything. And, so, we have to struggle with governance being done by directors who are independent and, thus, know less about how the business works than those directors who are not independent.

So, I think, it is still something that is evolving. The New York Stock Exchange, as I mentioned, went far beyond what the SEC was even proposing to require in its release proposing rules on SRO administration, by going to this entirely independent board structure. It has its good and its bad points.

One thing I will also mention, though – the very separation of regulation that was done at the New York Stock Exchange has been good for FINRA, because I think it has been a part of why the New York Stock Exchange has, over the last several years, elected to increasingly outsource regulation. But, I think, it's appropriate to be cautious because – by removing regulation from the suite of things that the head of the company has to worry about (indeed – he or she is specifically told that it's not their business; it's only the separate organization that should be involved in regulation) - we run the risk of a business that is less focused on regulation than

might be ideal. So, I guess I think we just have to be aware of the fact that separation comes at a price and we should be mindful of that.

NAGY: Thanks. Rick? I'll turn to you in terms of the governance structure as a member-governed organization. FINRA has industry members but there are public members on your board as well.

KETCHUM: Thank, Donna. And let me just do two things quick upfront and then I will respond to it. I guess, everybody else is disclaiming – it's a little harder with FINRA, since we are single-focused on a regulatory side, to say that I can disclaim anything I say. Although, I know that there are probably employees of FINRA shaking their head right now and saying, "Boy, I'd never believe anything he says," so, there's that. Maybe I'll just leave it at this if – certainly, if board members of FINRA look askance on anything that I say today, much less, Jamie, or anybody else at the SEC, and, certainly, Chairman Schapiro, "I never said it. You never heard it."

On the second thing, before I get to FINRA's unique governance structure, just to underline what Jim said, I think there are a number of things that still deserve some study in the evolution of exchanges going public and, I guess, we'll get one more chance to study it with CBOE now.

I would hit on one piece that I think my experience at New York Exchange would suggest is terribly important, even as the responsibilities of those SROs on the exchange-side evolve. And that is that, I think, the discrete board at New York Stock Regulation - constituted in part of holding company members, but only a minority part and a majority of others who had no other relationship with the New York Exchange other than regulation - was extremely helpful in assuring attention and focus on regulation in an organization that, as Jim very well described, had moved on to another focus from that standpoint.

I found my relationship with both John Thain and Duncan Niederauer to be consistently respectful and a great interchange. But it is helpful to know you have a regulatory board behind you if that conversation ever becomes more problematic. I think that that was the critically important step that the exchange took, that I think worked well.

From the standpoint of FINRA - as you note and as Jim, noted – we are at least different now than the for-profit exchanges. We continue to be a membership organization - albeit, a fairly unique membership organization, because by statute, firms that do business with the public have an obligation to be a member of a securities association. And, "Oops," at the moment, there's only one; us – legacy NASD and now FINRA.

It is important to note, unlike some other entities, that there is always the ability for members to create another securities association - which is, I think, important in continuing to distinguish FINRA as a self-regulatory organization. But still, that creates different obligations. When you look at the fair representation requirement in the statute there, I think it does demand that FINRA, because of that near-mandatory nature of a large percentage of our members, really has to be careful in the manner in which it provides that representation. And, as you know, it does that in a variety of ways. But part of it is to provide that a minority of its board can continue to

be members of the organization – always a minority. And, indeed, with respect to any acting committee, a minority of that committee, to ensure that public members always have a predominance.

The other step that was taken, that I think is important, given the range and importance of FINRA's responsibilities - and the evolution and sometimes controversy, of self-regulation today – was to, at the time of the FINRA merger, re-address how those industry members would be elected and what the membership's ability to elect members of the board was. And we shifted from an environment in which the NASD membership elected the entire board and as one group, elected all the industry members as well, to an environment in which there were all public governors run through a nominating committee containing industry members to ensure a level of fair representation under the statute. But those public members are appointed.

In addition, there are groupings of industry members – both to ensure representation of each of the wide range of business models that exist in FINRA and also, frankly, to ensure that there isn't an ability for a tyranny of the majority – so that each portion of the industry elect some number of directors, whether they be large firms, small firms, medium firms, cats, dogs or insurance members and independent contractors and the like. And I think that's quite important.

I think it's quite important for an organization with the mandatory elements that FINRA has in place to have significant membership representation. And it's also quite important for an organization with that range of responsibilities to ensure that the majority of its board does not fear for its re-election by the membership, or that even a single majority of the membership can re-elect all the industry governors. I think that is a very significant evolution from legacy NASD to the structure that exists in FINRA.

NAGY: Joanne?

MOFFIC-SILVER: CBOE has seen a tremendous evolution in our governance structure in the last 10 years. The self in self-regulation used to mean almost 100 percent of our board was comprised of industry members. Though the act does require that there be representation of the public on a board, we went from almost 100 percent member industry board members to 50-50 – fifty percent public and 50 percent industry.

Now we have a majority of public directors on our board, and, as we demutualize, our proposed structure will be a majority of non-industry directors and the exchange will be a holding subsidiary of the parent company, which will be the public company. The public company will be two-thirds independent. That's quite an evolution. In our view, the self-regulation still remains, in the sense, that the exchange's board will still have the representation of the members and, yet, we'll have a majority of non-industry.

As a public company, I believe that's a healthy balance. As we have evolved from a governance standpoint – again, getting back to the for-profit motive or objective and the objective to protect public investors, as an SRO, are being dealt with in that way. In addition, CBOE has had a business conduct committee since the beginning. The business conduct committee has gone through a similar evolution. The business conduct committee used to be made up of all members

– all industry representatives and, again, I was an enforcement lawyer – I thought we did a great job enforcing our rules and the business conduct committee had the duty to enforce the rules, as well, and to impose penalties when appropriate.

The business conduct committee then decided that would be good to have one public representative on the business conduct committee. For many years we had one public representative. Now our business conduct committee has over 40 percent public representatives, including professors of securities laws and ethics professors. So, that evolution has been quite drastic. But, again, this self-regulation is still there with a majority of the business conduct committee being composed of industry representatives.

We're one of the only SROs that still has a business conduct committee and I'm proud of it. I assume that FINRA may want some of that business too. But, at the moment, we're still structured that way.

One more change that we made 10 years ago – we decided to have a regulatory oversight committee, a committee of the board that would be comprised of all public directors. And we've had that committee consistently since then. We plan to continue with that when we are demutualized.

That committee has taken on a role of overseeing certain activities of the business conduct committee and, also providing a forum for the regulators at CBOE to discuss issues that they have and to make sure that there is a dialogue and a forum for regulators at the exchange, while we're not yet demutualized.

Again, once we're demutualized, we believe that that's an important function to maintain. So, in each of those areas, CBOE has responded to some of the issues that have been raised about how do you run a business, and how do you stay an effective regulator at the same time.

NAGY: Jim mentioned the 2004 SRO Release proposing SRO governance rules. The SEC put forth at that same time a Concept Release on Self-Regulation. In that Concept Release, the SEC stated that “inherent in self-regulation is the conflict of interest that exists when an organization both serves the commercial interest of and regulates its members or users.” Now that statement zeros in on much of what we have been talking about. And the governance changes, that all of you have mentioned, have certainly been one way, and probably the principal way, that SROs have sought to mitigate those conflicts.

In addition to those governance changes, are there other ways that the SROs have worked to eliminate, or at least reduce, conflict-type issues? Jim?

DUFFY: Well, I think the governance arrangements were the principal ways that the conflict issue was intended to be addressed. I have always maintained that the conflict issue – while it, obviously, exists – is overstated. The exchanges – even before they were self-regulatory organizations, had as part of their purpose to have the public believe that trading was conducted fairly on the market. So, to the extent the exchange falls down on that job, it is at a business risk – and that is truer than ever today as they are part of business companies.

I think that the most practical way to address the conflict of interest is to do what exchanges are increasingly doing, which is to, essentially, outsource the doing of the regulation to an organization like FINRA. Now the exchange does not rid itself completely of its regulatory obligations by doing that – it remains responsible to oversee the regulation that's conducted by FINRA but, nonetheless, the frontline decisions about how to regulate somebody is being made by a completely separate organization. The only hole in fabric at the moment, is the fact that not every broker-dealer who wants to be a member of an exchange has to be a member of FINRA. My own personal view is that that is an appropriate hole to be plugged and once it is, we can achieve what I think is the best end state, which is for all of that frontline regulation to be done by a separate organization – namely FINRA.

NAGY: I now want to talk more specifically about the 2007 NASD-NYSE consolidation, as well as the proposal for further consolidation that is pending approval by the SEC. But before I do that, Jamie – another way of mitigating and eliminating, to some extent, conflicts of interest is through the SEC's statutory responsibilities for oversight. SROs have operated under SEC oversight for more than 70 years. The SEC's oversight role has, certainly, expanded over time – SRO rules and SRO disciplinary actions, for example, are subject to the SEC's review and approval and aggrieved persons can, then, seek review in a federal court of appeals.

I have two questions. First, Jamie, could you please give us your view as to how SEC oversight may have changed over time?

BRIGAGLIANO: Well, starting with the regulation, the SEC oversight is active, ongoing and, I think, constructive. I think the self-regulators will find it that way as well.

First, there's a real coordinated effort that's going on on a daily basis to address market issues. I think it was recently illustrated when we had the market break or a flash crash or a disruption in trading – however, one wants to characterize May 6th. Chairman Schapiro very swiftly asked the SEC staff to work with the SROs and the markets to facilitate the filing of rules for single-stock circuit breakers to facilitate the development of objective and transparent standards for breaking trades and that work has been ongoing. The SROs have all devoted considerable resources and expertise to come up with rule filings – those are out for comment and the comment period closes today – but it's an example of how the Commission is fulfilling its statutory role, its statutory mandate to protect the integrity of the markets, to promote fair and efficient markets. The SROs, with their frontline proximity and expertise, have stepped up to work in what I think is going to be a very productive synergy and one that will protect investors.

So I think there's that coordinated and cooperative oversight that's ongoing. We also have robust exam programs where, in an organized way, our exam teams go into not only firms, but they go into SROs and markets to make sure that rules are being enforced and that oversight is important. So, I think the oversight is active and productive.

KETCHUM: Donna, maybe I can just add a little from the historical perspective. You know, I think, Jamie's absolutely right. And if you look back even from the days when I started at the SEC in 1977, there's been a remarkable change. But you start with Justice Douglas' famous

statement with respect to the shotgun behind the door – loaded, well-oiled, cleaned and hopefully, not to be used.

Well, they've used it a few times, but I think it is reasonably fair to say that, over its first decades, the SEC's attention to oversight of SROs was more episodic. First, it didn't involve all the rule approvals. Secondly, it didn't involve a regular exam program. And even as it started to evolve using its regional offices to look at the member reg program of the exchanges and the NASD, its view of oversight with respect to market surveillance was still fairly episodic – quite intense at times such as the Special Study, Institutional Investor Study and a variety of other things, but, nevertheless, episodic. It moved from the 70s and early 80s, where then-market regulation – now trading and markets and investment management - as parts of their program, began to do exams of the exchanges themselves, rather than just oversee exams of broker-dealers that had also, been looked at by the exchanges. It evolved from there to – with Chairman Levitt – moving OCIE off into an independent division.

And now I think it's fair to say that there's nothing episodic about oversight of the SROs at this point. It is, indeed, purely continuous in a variety of ways. So, I think there's been a significant change as the SROs have focused on their responsibilities and obligations to properly balance conflict-of-interest concerns with the benefits that Jamie mentioned earlier, of leveraged knowledge and easier and simpler access. I think the SEC's acknowledged that its responsibility has to be a continuous one.

NAGY: Let me ask a follow-up then. If the SEC over time has developed a closer relationship with the SROs, then is it still correct to say that SROs retain significant discretion and autonomy, notwithstanding the SEC's enhanced role as an overseer?

BRIGAGLIANO: Donna, can I jump in there first? Rick brought up the rule filing process and, obviously, that's an important area of oversight. It's a lot of work for SROs – many, many rules are filed. But, I think it illustrates your point about whether to what extent the SROs still have autonomy even while there's a lot of oversight.

It's worth thinking about. Two-thirds of the SRO proposed rule changes are filed for immediate effectiveness. That's a significant amount of our autonomy and it's very important that those be done of good quality and they're consistent with the act and they're still reviewed. Our job is to make sure that SRO rules are consistent with the Exchange Act; that's our statutory mandate. After the two-thirds that are effective upon filing, there's another group that go out for comment. Of course, before they're effective, most of those are noticed within five to six days. And there's a small group of rules that raise additional issues that require further consultation analysis and it's about 2 percent that are held longer than 15 days, so, those are where the most intensive oversight may be required.

So, there's kind of range that allows the SROs to conduct – and the market to conduct - their businesses and remain competitive, but make sure that there's the back stop of oversight for consistency with the Exchange Act.

NAGY: Yes.



KETCHUM: And I certainly would agree with Jamie. I think the variety of things in the rule filing process that have occurred in recent years - though always with the potential on the exchange side to discuss where there may still be issues with respect to the things at the edges of market rules – it's certainly, dramatically better.

Autonomy is absolutely critical to make self-regulation work. If you're going to gain the benefits from the standpoint of leverage, knowledge, access, then SROs have to be making independent decisions with the full understanding that the SEC's going to be there. And that often, when they are required for rules, the SEC will vet with public comment and make decisions as to whether that autonomy is acceptable. But without that – without that autonomous responsibility, you lose the creativity from a self-regulatory standpoint. You lose desire to think about how to make the investor protection rules more effective and, frankly, you also lose the other benefits.

I'm now on an advisory committee and proud to be, working with both the SEC and CFTC with respect to market issues. I would say that in our first meeting, we spent about an equal amount of time in private being explained the variety of restrictions - with respect to how we needed to act as an advisory committee and how to operate from the standpoint of the public requirements of the advisory committee – as we did discussing anything about markets. That's probably thoughtful and needed from a governmental standpoint.

SROs should be about providing substantial access to constituents, whether they be members, whether they be investors, whether they be other participants in the market – absolutely, there should be much more flexible access with absolute determined independence of decision making. So, if they can't operate with effective autonomy and speed, much of the benefits of that will be lost.

NAGY: Sure, and much of our attention has thus far been on rulemaking. I would assume that the same goes for the enforcement side, as well.

KETCHUM: Well, Joanne could probably best answer that – but absolutely, enforcement decisions have to be made quickly. Enforcement decisions should not be an evaluation from the standpoint of when the SEC feels like it. We have our statutory responsibilities. We are the ones that understand the facts. And while there may be some certain circumstances within efforts to ensure that we never act as state actors where coordination with the SEC is critical, those decisions have to be made by the SROs. And, obviously, if we make them wrong, there's an appellate process – an appeal process that goes through the SEC to help rectify that.

NAGY: Joanne?

MOFFIC-SILVER: One thing I wanted to add is that – and maybe in connection with the rule filing process, but it relates more to what an SRO means in two different contexts. One is the securities industry and the other is in the futures, commodities industry and because CBOE also has a wholly-owned futures exchange, we've had an opportunity to experience the differences. I'm glad that you're on the advisory committee.

KETCHUM: I'll take notes.

MOFFIC-SILVER: We're hoping that the harmonization efforts work because we all know that the CFTC probably has closer to 90 percent or higher effective on filing rules. I'm not suggesting that that should always be the case. There are reasons for why rules should be published for comment in the securities markets and, perhaps, even in the futures markets. But we're at an age now where some of the products are so similar and there's a sensible overlap in terms of jurisdiction, yet, the rules are different, and the processes are different.

CBOE is very innovative; we pride ourselves on that. We find that we're facing delays because the CFTC is getting involved in the SEC's backyard and it's not a positive thing for competition – not just domestically, but internationally. New products are really what make the business what it is. And, so, that's one of my wishes. I'm going to make a wish list today, Rick, so that's one of them for your advisory committee.

NAGY: Critics of securities industry self-regulation argue that government regulation is more efficient, is more effective, and is more accountable to the public, Congress and the President. So, I'd like to focus on what you see as the specific advantages flowing from self-regulation or, as Joanne suggested, perhaps independent private sector regulation – as opposed to government regulation. Jim?

DUFFY: Well, I think it's primarily what Jamie referred to before, in terms of additional expertise, understanding of business functions – needs of the market, and so forth.

He also mentioned resources in a way that suggested that we have more than he does – which is news to me.

BRIGAGLIANO: We have whatever Congress gives us.

DUFFY: But that is also, frankly, another respect in which the outsourcing of frontline regulatory activities to an organization, all of whose resources are devoted to it, can be useful.

I think in terms of the SRO's autonomy, it clearly exists. It's clearly important for the reasons we've suggested. However, everything is relative. And the extent of that autonomy, I think, has been reduced over time. In part, because of the closer SEC oversight, that Rick was referring to – in part, because of closer SEC oversight in other areas as, for example, with respect to listed standards or corporate governance standards, where both Congress and the SEC have taken a much more active stand regarding what sort of products can be traded on exchanges and what sort of governance must be imposed upon public companies.

So, I'm by no means suggesting that we have reached some sort of a tipping point in terms of SRO autonomy, but, I think, we have to recognize that it has been reduced, and government control increased quite substantially since the 1930s.

BRIGAGLIANO: Donna, you know

MOFFIC-SILVER: I was going to say one thing about that. When there have been recent market developments or crises, exchanges have worked very well and the clearing organizations have also worked very well. There's a whole segment of a market that isn't really overseen so strongly by the SEC - and we hope that that does happen - and that's the over-the-counter market. I know that's a subject of legislation and regulatory reform, but there's a lot of positive to be said for having consistency, having rules and regulations that apply across the board. Because, again, if the goal is investor protection, then it's not just in the markets that the SEC regulates but it's in all of the other markets.

NAGY: Jamie?

BRIGAGLIANO: I agree, in my personal view, with those principles. They're important.

I had mentioned proximity, expertise and resources as advantages as real assets of the SROs, but there is one other aspect in which the SROs can bring additional protection to investors, and that's with some of the more flexible business conduct standards if we're thinking of just and equitable principles.

There have been times with SROs have brought cases that have promoted market integrity, where a practice was not constructive and helpful for investors, but it may not have fit neatly within a rule or a statutory provision, but the SROs have used something like just and equitable principles to set a higher bar for their business conduct and that can be very useful for protecting investors as well.

KETCHUM: I think that's a really important point to underline. Given the breadth of FINRA's program, obviously, we take seriously - and may even be very focused on - critiques that talk about whether self-regulation is not as effective and efficient and accountable. Just to have a principle of trade is a perfect example of where SROs can - and have, in the past, in a variety of ways, from issues like mutual breakpoints to, if you go back far enough, to concepts of suitability and "know our customer," to a range of issues from the standpoint of advertising and the like - where SROs have been able to respond to issues and shape them in a detailed way that's sometimes difficult for the SEC to do with respect to the statutory provisions regarding anti-fraud and disclosure. So, there are many aspects of it that both allow self-regulation or independent regulation to be even more efficient.

In many ways, what makes a good regulator happens to be exactly the same. Jamie exhibits it from a government standpoint, and I never had a different view when I managed government regulators at the SEC than I do now. A regulator has to be absolutely independent in her decision making, but has to have a fascination with respect to what makes the industry markets tick. I think it's one of the things that has always separated the SEC from many other agencies. I think it's certainly what separates the independent regulation program of FINRA and the exchanges over time.

And the accountability point, I think, is subtle. I think there's two points of it that get to Jamie's research piece. First, while SRO resources are certainly not limited, they do leverage the SEC - hence, the ability for the Commission not to do to the direct exam program of broker-dealers and

the like. They also can tend to be somewhat more predictable. Certainly, those not associated with the for-profit corporations can tend to be somewhat more predictable, whereas the SEC faces the vagaries of political decisions, budget control decisions and the like – as has been witnessed over the last 10 years and discussed by Chairman Schapiro in a number of her testimonies.

Now that world could be made simpler and better if the SEC was a self-funding agency, but there is a predictability in the availability of SRO resources from a leverage standpoint that's important.

And the last piece is we don't feel terribly unaccountable to Congress. I see Marti Cochran – she never had any problem calling SROs for hearings and I don't notice that the Congress of today has any trouble having just testified a couple of times in the last couple of months.

So, I think, in fact, as statutory entities, Congress feels very much that they have the ability to call us to account and call the SEC to account for their oversight and I think the unaccountability piece is just not true.

NAGY: Well, I had promised to come back to the topic of consolidation. When the NASD and the NYSE proposed member firm regulatory consolidation to form FINRA in 2007, the petition to the SEC observed that consolidation will “enhance oversight of U.S. securities firms and help ensure investor protection.” I assume that objective has been met because FINRA and the NYSE have recently proposed further consolidation with respect to the surveillance and enforcement functions that had been retained by the NYSE.

So, Jim, maybe you could talk about what self-regulatory responsibilities will remain with the New York Stock Exchange after this second consolidation.

DUFFY: Well, as I alluded to before, even with respect to those things that are going to FINRA as frontline regulator – and, so, in terms of the upcoming transaction that is market surveillance and the related disciplinary or enforcement work, the registered exchange and its holding company will continue to have oversight responsibilities as a self-regulatory organization. So, we'll be in there auditing you, Rick.

KETCHUM: Yes, you will – can't wait.

DUFFY: In addition, the exchange will retain and keep in its regulatory division the oversight of listed companies. It is the case both at the New York Exchanges as it is at NASDAQ, that the review of whether an applicant is qualified to list and the review of whether listed companies continue qualified to be on the exchange – is done by separate people from those who are out marketing, trying to convince companies to list. It is self-explanatory why that's a sensible approach to take.

Oversight of listing is also an activity that FINRA is not involved with - not something in which it has any expertise from its other regulatory work. So, it's also sensible that that remains with the SRO. Frankly, thinking years ahead, if that [activity] were to go anywhere, I suspect it might

conceivably go to the government, as with the FSA in the U.K., as opposed to going to some separate SRO.

So, that is what will remain at NYSE Regulation and, in that regard, as I alluded to, NYSE will simply have come to the place that the NASDAQ exchange was at even prior to becoming an exchange but, certainly, from the point in January 2006 where it became a registered securities exchange.

KETCHUM: And just noting on that, from the standpoint of NASDAQ, Jim's point with respect to auditing is quite important to understand – to see the evolving of self-regulation.

FINRA has two sets of responsibilities. With respect to its member regulation program, the New York Stock Exchange made the decision - essentially, with the SEC through the statutory provisions in section 17D - to, in virtually all cases except New York-only rules, cede that responsibility statutorily to FINRA. That means that with FINRA and its corporate and statutory obligations are virtually total – vis-a-vis New York's continual oversight, albeit with a lot of things from a governance standpoint to include New York participation in the board of FINRA to make sure that the transition worked well.

With respect to FINRA's market surveillance responsibilities across each exchange market that it provides - or will provide market surveillance for – it's very different. Those are contractual responsibilities – the exchange, as Jim notes, does not cede any of its self-regulatory statutory responsibilities. And I can say that all the exchanges take that very seriously. All of them have a regulatory committee of their board – FINRA meets with that regulatory committee regularly and with the staff on a very regular basis. So, there really is an understanding, from the standpoint of the exchanges, that that oversight responsibility is critical and it is accomplished and done well.

NAGY: Rick, you mentioned before the issue of state action – SROs have often been described as quasi-governmental entities. SROs and their officials are generally immune from damage actions when lawsuits are brought in connection with their regulatory functions and activities. On the other hand, as private sector corporations, SROs, generally, have not been subject to certain constitutional obligations such as extending Fifth Amendment self-incrimination privileges to persons under investigation.

Which, I guess, leads me to ask – as one of our final questions – when SROs are exercising government-delegated power, why shouldn't they be subject to constitutional and procedural constraints?

KETCHUM: Answering that question to you, Donna, is particularly perilous since you are one of the top academic persons who have spoken quite thoroughly on these issues.

Maybe I'd start with the why, and then why we're different than the PCAOB – not much, as we all have a rooting interest in the PCAOB succeeding in their present litigation.

First, why I think that while, certainly, an organization like FINRA has evolved, it remains an organization in which we are not making life-and-death decisions with respect to the entities where they have no choice. We're making decisions as to whether they can continue to participate as FINRA members and, with that, continue to participate in dealing with the public in the securities industry – they can continue to operate as a member of another exchange. And to the extent FINRA is not responsive, they can go form their own securities association and reach decisions.

So, we do operate in a venue that's quite different from the government. We're still with, undoubtedly, substantial responsibilities and substantial authority but, I think, quite different. We also operate in a way that's quite different from the PCAOB, where the SEC has much more control of the budget of that organization. It appoints the board members and there can be only one PCAOB; there can't be any other entity that is created to share or provide separate statutory oversight with respect to it.

So, I think that there are good reasons why, as long as we operate in a careful way from the standpoint of state actor, and do not improperly coordinate activity with the SEC with respect to investigations in ways that are improper. It makes sense to have the flexibility of an organization that Congress has been aware of and noted how it operated from a disciplinary standpoint for, literally, generations, and has not chosen to change its oversight or change its requirements for it. It seems to me to make sense to still pay some recognition or respect to the membership nature of it and not subject it to all the governmental requirements in the Constitution.

NAGY: Joanne?

MOFFIC-SILVER: I have just a couple of comments. One is that when members decide to apply to become a member of an exchange, it is voluntary. And when they do that, they know they're going to be subject to the exchange's rules, one of which does require a member to cooperate in an exchange investigation.

But to say that it is their own constitutional rights may be too extreme. All of the exchanges – and I'm sure FINRA too – have rules that provide a fair process when it comes to regulation and discipline. So, I believe that there are semblances of due process in connection with the SRO rules.

And, lastly, the SROs do not have the ability to impose criminal sanctions on a member. The Fifth Amendment right is more geared towards criminal cases and making sure that people have the right not to incriminate themselves for fear of loss of their property or life, depending on the nature of the alleged crime.

So, there are some differences. The exchanges and FINRA are still SROs. We're not government bodies at this point. Although I understand the question where there may be some overlap or functioning as an adjunct to a government agency, but we're not.

BRIGAGLIANO: And the SROs disagree with that.

NAGY: Jamie, we have about a minute left.

BRIGAGLIANO: The SRO disciplinary decisions are subject to review by the Commission and, of course, the Commission's orders may be subject to judicial review within jurisdiction.

NAGY: I now would like to thank all our distinguished panelists for sharing their insights on self-regulatory organizations. It has been quite a discussion and a tremendous pleasure to spend this time with you.

Today's broadcast is now permanently preserved in the collection of our virtual museum and the archive at [www.sechistorical.org](http://www.sechistorical.org), and I encourage you to access it at any time. I also encourage you to visit our Gallery on self-regulatory organizations which will permanently open in the museum and archive on December 1st. This program will be an important part of the material linked to the gallery.

Thank you for being with us today, and good afternoon.