Securities and Exchange Commission Historical Society
Oral History Project
Interview with Mark Sisitsky
Conducted on June 22, 2011 by James Stocker

JS: This is an interview with Mark Sisitsky for the SEC Historical Society's Virtual Museum and Archive on the History of Financial Regulation. Today is June 22, 2011. I'm James Stocker. We're talking at Mark's office at Jones Day, in New York City. Mark, welcome.

MS: Pleased to be here.

JS: I like to start at the beginning. Where were you born, and where did you grow up?

MS: I was born and raised in Springfield, Massachusetts.

JS: Were your parents lawyers?

MS: My father was a police officer, and my mother was a homemaker.

JS: Neither was involved in securities or business in any way?

MS: Hardly.

JS: How did you end up at Dartmouth, and what did you study there?

MS: I ended up at Dartmouth because I played basketball, and it was one of the schools that I was recruited to. When I got there, I ended up being a government major.

JS: Did you already know at that time that you were going to go to law school?

MS: No.

JS: Did you start law school right after your undergraduate degree?

MS: Yes. It was a process of elimination. I wasn't really interested in anything else, and I had a draft board that was very interested in me. At that time, I decided to go to law school.

JS: Did you know at the beginning of your law school days that you would end up focusing on corporate and securities law?

MS: No.

JS: How did you come to be interested in that area? Or was it just by default again?

MS: By default. I think I once said to somebody, "My whole legal career has been serendipity, just by chance and opportunity, going from one thing to another." It's been very rewarding, very interesting, but not very well planned.

JS: Were there any specific professors there that you'd like to mention that maybe had an influence on you or shaped the way that your career went?

MS: I had some excellent professors, but no one really shaped my career.

JS: This was at the University of Michigan, right? I don't think I mentioned that.

MS: Yes.

JS: After law school, did you begin right away at Carter, Ledyard & Milburn?

MS: Yes.

JS: Where was that located?

MS: Carter, Ledyard and Milburn is located at 2 Wall Street. It is still there. It's been there for 125 years, as I recall, at this point.

JS: So you were in New York City, not in Washington, D.C.

MS: Yes.

JS: Were you working on any issues related to the bond market at this time?

MS: Actually, I was doing corporate transactions and in the process, we were representing a client called the United States Trust Company of New York. The United States Trust Company of New York did a lot of trustee work, as well as other types of loans and financings. I got involved in a matter in which they were acting as trustee for the New York Port Authority, a bi-state organization. The two states retroactively repealed a covenant that effectively kept the Port Authority out of financing for mass transit. I think it could only spend $25 million a year on PATH and/or the New York subways.

When it was retroactively repealed, there was approximately about $10 billion of tax-exempt bonds outstanding, which were issued in reliance upon this covenant. The trustee determined to sue the states of New York and New Jersey separately, and I became involved in that. For about two years I moved over from being a corporate lawyer to being more of a litigator. It was great fun.

We actually had a five-day trial in Hackensack, New Jersey, against the state of New Jersey. Then it was appealed to the New Jersey Supreme Court. Then ultimately, it went to the U.S. Supreme Court. By that time I was at the Municipal Securities Rulemaking Board, but I was invited to attend the Supreme Court hearing. Ultimately, in a four-to-three decision, the Supreme Court concluded that the two states had violated the contract clause in the U.S. Constitution, and that the repeal of the mass transit covenant was not permissible. It was the first contract case since the thirties, so it was very interesting.

That was my introduction to the industry. In the course of that matter, I got to interview a number of the leading members of the industry and became very familiar not only with how the industry traded, sold, and underwrote municipal securities, but also some of the personalities that were involved.

JS: Now this was the era of the near-bankruptcy of New York City in 1974, which was linked to the city's inability to sell its municipal bonds. Did your work touch on that at all or was this a completely separate issue with the Port Authority?

MS: Totally separate issue.

JS: But you watched this from up close?

MS: Which?

JS: Well, the New York City issue.

MS: I'm very familiar with it and I knew some of the people involved in it, yes.

JS: But you weren't personally working on that at the time?

MS: No.

JS: Around this time, another major issue that was going on was a series of bond scandals in the late 1960s and 70s that were committed by different organizations in Tennessee and Arkansas. Was this something that affected your work at all?

MS: Yes. As far as I'm concerned, the reason that the MSRB, Municipal Securities Rulemaking Board, was created – the only reason it was created. The shorthand name for it was Memphis Bond Dealers. What they had done that got the ire of Congress was that they had defrauded returning POWs from the Vietnam War, who had significant accrued back pay.

They went to them and said – and a number of cases had testimony that we read – something to the effect that, "We'll invest your money at no cost to you," at which point they put them in unrated, very dangerous tax-exempt paper. Some of them lost all or most of the money that they had accrued while they were prisoners of war. Congress reacted very strongly to that development and they created the Municipal Securities Rulemaking Board.

JS: While you were working on the Port Authority bonds issue, were you following the deliberations in Congress at all?

MS: Not really. I really never thought it was going to affect me. I thought I would just be at Carter Ledyard forever and really didn't pay much attention it, except to share

everybody's reaction to what had happened. I certainly had no interest in it from a professional perspective.

JS: How did you go from being a practicing lawyer, who happened to be working on a bonds-related issue, to becoming counsel at the MSRB?

MS: At Carter Ledyard, one of my colleagues for several years was a woman named Frieda Wallison. Frieda and I were good friends there. It turns out that there was a whole series of happenstances, but her husband was very close to Nelson Rockefeller, and when Agnew was removed from office – or resigned as vice president – Rockefeller was named vice president. He brought Peter Wallison – Frieda's husband – down to Washington as general counsel. Frieda went down there and started working at the Securities and Exchange Commission. She was instrumental in the creation of the Municipal Securities Rulemaking Board.

Just by chance one time, she was back in New York and she was just visiting friends at Carter Ledyard and stopped in to say hi. We were talking and she was telling me what she was doing. I said, "Geez that sounds exciting." She said, "Well, if you think so, I've got a spot for you." I said, "Whoa, let me think about that." I ultimately decided to join Frieda at the MSRB and went down to Washington.

Not only I, but even the board members and Frieda, certainly the board members thought that this would take a year or two at most to write the rules. Then the MSRB would be

merged into the NASD or something else and that we would be done with our work. I had a wife and two young children living in New York, and we considered keeping our New York apartment, and having me commute on weekends. We decided not to do that and we moved to Washington. Like so many people in Washington, we went down there for a year or so and we ended up staying there for thirty years.

JS: When you got involved in this project, the law had already been passed. Had the board members already been selected?

MS: When I got there, it was six or eight months after the MSRB had been created. The board members had been selected. We had temporary quarters in Washington for offices.

JS: Where were they at?

MS: I think they were at 1729 K Street. There was another executive director. I don't remember his name, but he was only there for a very short time before Frieda became executive director and general counsel. We had started out, but I don't think any rules had been passed, although everything was being worked on.

JS: How many staff members were there when you got there?

MS: I think I may have been the third or maybe the fourth. I was probably the fourth.

JS: Then over that first year, you probably hired a few more?

MS: We did hire a couple more. We didn't grow that fast.

JS: When the organization was created, did it already have a budget and things like that. Was there already financing available? How did it pay for its staff?

MS: I think one of the first things we did – we were empowered to raise money from the industry and we proceeded to do that. As far as the interim finance and funding, I don't recall.

JS: Let me just ask you a little bit about the board members at the time. Did you know any of the board members already?

MS: I knew of some of them through the litigation that I had been involved in at the Port Authority.

JS: At this time the board had fifteen members. There were five from banks, five from non-bank security dealers, and five public representatives. I understand that on the initial board there wasn't a single member from small dealers that dealt nothing but municipal bonds.

MS: I'm not sure that's right. I'm pretty sure there were a couple of representatives from relatively small dealers. There was Tom Masterson, from Underwood Neuhaus, which was a regional dealer in Texas. I think there was a fellow named Bill Rex, from a firm called Foster & Marshall, out in Seattle, which was another regional firm. I think there were some representatives of smaller firms at the time.

JS: At the beginning was the securities industry – bond dealers and everyone else involved in it – generally supportive of the MSRB?

MS: I don't think they were excited about us being there.

JS: No?

MS: No. I mean, it was a mix. It was a whole new experience for them. It was interesting. It was the first time they'd ever been subject to regulation. There were some very basic issues that people were still contending about. For example, there were some people who didn't think that Rule 10b-5 applied to sales of municipal securities. They thought that the rule was only suppose to apply to taxable securities. They were disabused of that notion under a number of cases that were developed in the following years.

It was a whole new experience. If you ask anybody from the industry, would you rather be regulated or unregulated, I think most of them would have said, "We'd rather be

unregulated." But there were a lot of responsible people in the industry who saw the need for regulation, and if they weren't excited by it, they were at least willing to support it.

JS: There were a few different statutory limitations on the board's power. One of these was the so-called Turner Amendments.

MS: Tower.

JS: The Tower Amendments, that's right. Could you tell me a little bit about those?

MS: The MSRB was a great compromise. It was created directly to address the abuses that we have referenced before in the sales of municipal securities and unsuitable sales to POWs, etc. There were a number of forces involved. The five, five and five division, I think from my experience, was due to the fact that the banks did not want to be regulated by the Securities and Exchange Commission, so they wanted to be certain that the requisite bank regulatory supervision would continue, even though the SEC oversaw everything.

You had that division between the securities dealers and the banks. Then you had the issuers, who had the ears of Congress – because there are lots of issuers in every state. They certainly did not want new disclosure requirements put on them. That was put in to protect the issuers against regulations that could affect them directly.

JS: But the law did require municipal securities dealers to register with the SEC and to comply with a number of requirements for securities dealers, so they had to do new things like comply with net capital requirements. Was there resistance from the industry to this?

MS: Not once legislation was passed.

JS: They basically accepted it?

MS: Yes.

JS: In those early days, how did the MSRB go about setting its rules? Did board members tend to draft them or did staff members draft them and the board approved them? Was it a back-and-forth deal?

MS: Back-and-forth deal, I think would be the most accurate. The board was very lucky in that sometimes you have the right person at the right time. Frieda Wallison was just a very strong and very intelligent regulator who understood what the board needed to do in order to get off the ground. She was a great leader, not only on the drafting, etc., but also the board really developed a lot of confidence in her judgment. And so she became probably the most important person on the board staff ever. It was a brand new blackboard that she was writing on, and the board was writing on, and she provided tremendous leadership.

The board by no means delegated to staff. It was an interactive process. They had strong views on things and they let their views be known. There was a lot of back-and-forth, and the board worked very hard. The first year – these were all very senior people in their organizations – there were months where we would meet three, four, or five days, and work all day. It was very intense for the first year, even more than the first year, the first year-and-a-half or so, when we were getting all the basic rules in place.

JS: The board members of course kept their own day jobs, right?

MS: Yes.

JS: How often did you have these meetings? Were they every month?

MS: Well, that's what I said – in some months it was twice a month. After a couple years, things got more orderly and it got to more like a quarterly basis. But often there were committee meetings and there were conference calls. It was extraordinary how much time the initial board spent on this matter and they took it very seriously.

JS: Let's talk a little bit about some of the specific rules that were put out in these early days. One of the first proposals was put out in December 1975 and it had a number of different aspects. One of them was mandating that certain employees in bond dealerships would have to pass an examination. How did the industry feel about that?

MS: I think once the legislation was passed, that was not one of the more controversial issues. I think qualification of professionals in the industry just followed naturally, because if you were in the securities industry on the equity side, you had Series 7 and other exams. I don't think that was particularly controversial.

JS: Who wrote the exams?

MS: That was interesting. We on staff worked with the Educational Testing Service, out of Princeton, to formulate questions. They were very helpful, because we knew what matters we wanted covered. Writing questions is really not an easy task – formulating those questions so they weren't ambiguous, etc. The staff of the MSRB was intimately involved in that. As I recall, we also formed committees from representatives from the industry. It wasn't just staff – it was representatives of the industry who were on the question writing committees. It was a group effort.

JS: How long did it take to put the test together?

MS: I do not recall. It certainly took a couple years, and then it was revised on an ongoing basis, as questions were recalled and questions were put on.

JS: Because this was a new exam and a new requirement, did that mean that, in some cases, people with many years of experience in the bonds industry would have to take the exam?

MS: Again, as I recall, it wasn't a very controversial thing. I do think there was a grandfather provision. I just don't remember how it operated. Certainly not everybody in the industry had to take it. I just don't remember how the grandfather provisions worked.

JS: We talked a little bit earlier about the decision to levy fees on the industry. I think it was five cents for every $1,000 in securities that were underwritten. Was the industry in general okay with this, or was it seen as a lot?

MS: I think there was pushback. If I recall right, there were two fees. One, you paid the fee just because you were a dealer in the industry, an annual fee, and then there was a volume fee for underwriting. I think there was some tense discussion about whether that fell on everybody the same. I'm sure it was worked out by the board. We involved board members to try to make it as fair as possible. There were actually two different fees and it was a balancing act.

JS: Did the board have any problems with its budget in the early years or did it go pretty smoothly?

MS: I think it went pretty smoothly.

JS: Another proposal that the board put out in the early days dealt with recordkeeping. It required firms to keep records of purchases of sales of securities, as well as individual accounts. Do you recall any resistance to this or did it go over smoothly?

MS: That was probably a little more controversial, because everybody at that point had their own recordkeeping. What the board was striving for was to create rules that would make them uniform. The reason they were trying to make them uniform is because, along with the grand compromise that I mentioned, the actual enforcement of these rules were left to five different organizations. They wanted to have some conformity among the different type of entities that were being regulated. So that was an issue.

JS: Did the board tend to divide up along sectional lines when it dealt with these issues? So was there ever a case when the bank representatives would take one position and then the public representatives would take another? Or did it tend to mix up a little bit?

MS: It was mixed up. There were several different dynamic forces involved in the formulation of the rules. There was the basic banks versus securities firms. They operated differently, and they had different reactions to proposals. Then there was a dichotomy between big organizations and small organizations. That cut across – that was not necessarily a function of the type, whether you were a bank or not. It was a question of were you a major underwriter or not. Or were you a regional dealer. Their roles suffused their positions on some of the more difficult issues that the board had to address.

JS: I'm going to cover just a couple more specific rules from this period that are of interest. There was a proposal for something called a bona fide offering period, designed to give public investors a chance to buy securities at the same price. Can you explain a little bit what that was?

MS: It's a rule called G-11 and – I have not, in the last fifteen or twenty years, been really active in municipal regulation. I find it amusing that some of the things that the board wrestled with in those very early years are still being contended to this day. So we're talking almost thirty years later, the same issues are still there. It really was a question of who has access to bonds during an underwriting period.

Certainly this is one of those issues where if you were a small dealer, etc., you often did not feel you got your fair allocation, which meant that your retail customers didn't get their fair allocation. That was a very contentious rule. Every rule was put out for comment, and a significant amount of comments were received in respect of that rule. I saw recently, maybe even in the last couple of years, that it was up for reconsideration again. It is a rule that's constantly being modified. That was a very controversial issue.

JS: Do you recall how the board felt about the rule? Was it divided up between the big dealers and the small dealers or the banks and securities brokers?

MS: It was. It was very interesting. I think the board members certainly came with their own prejudices, given what their role was. They were leaders of their firms and this was revenue that was at stake for them. It was an important issue. At the same time, my recollection is that I was constantly somewhat surprised that the number of them could look at it from an industry perspective – from the perspective of what is the best for the industry. What is the right thing. I'm not saying that they necessarily totally divorced themselves from their own interests, but they did try to take the bigger view. When comments came in, they really tried to balance things. They tried to come up with a balanced consensus position.

JS: Another proposal during this period was to only require a part of the bank to register as a securities dealer, instead of the entire legal unit. Was that a controversial issue at all?

MS: Not from the banks' perspective. (Laughter.) Banks are huge organizations, into all kinds of businesses. They felt very strongly that – since the SEC was the overseer of all of the organizations and could come in and do its own examinations, they wanted to be very clear that the only areas that were subject to the SEC oversight were the ones that were directly involved in the underwriting, sale and trading of securities.

It was natural. I don't think it was controversial within this dealer community. The question was just who is involved in that unit. It then sometimes spilled over into other issues, such as rules on the gifts and gratuities. If persons in some other part of the bank

were making gifts to political individuals – office holders – was that influencing what business they got. For the most part, it was not controversial within the board at all.

JS: I'm going to ask you about the SEC here in just a minute – just a couple of last questions about rules. In September 1977, the MSRB issued a rule that required municipal securities underwriters to disclose whether they had a financial advisory position with municipalities. Do you recall that being an issue?

MS: Huge – a very, very controversial issue. It's also currently an issue. It's constantly brought up. I have not followed what they have done recently, except every once in a while I read in the trade press or public newspapers that this is an issue that they are wrestling with. I think the SEC has taken it up in other contexts, about financial advisors acting as financial advisors.

Part of the problem was that you had your pure financial advisors, who did no underwriting at all. It wasn't necessarily size, because a lot of the regional firms also provided financial advisory services – they would act as financial advisors and would switch over and act as underwriters. How do you address this issue? I think the board at the time decided that it was a disclosure issue – that you needed to disclose. They had to do it in writing and get some acknowledgement from the issuer that they had received it and understood what they had received.

JS: Did this affect a lot of underwriters?

MS: Yes. It was a very controversial issue. It was one of the issues that received a significant volume of comments from the industry.

JS: The MSRB did not see itself as having an enforcement function?

MS: It had no enforcement function. The legislation was very clear that the enforcement was to reside in the three bank regulatory agencies for the banks for which they had principal supervisory responsibility and the NASD and the SEC.

JS: But in June 1979, the SEC approved a rule that allowed the MSRB to penalize dealers who ran false or misleading advertising. Do you recall that?

MS: That can't be. It may have been a rule. The way it would have been formulated is that you had to have truth in advertising. But it would not be the MSRB that would enforce it. It would be enforced by the five regulatory agencies. The MSRB had absolutely no one on its staff that had any examination or enforcement authority.

JS: We were just talking about the SEC in regards to a couple of these questions. In general, how would you describe the MSRB's relations with the SEC during these years?

MS: The formal process is that the MSRB would propose rules, obtain comments from the industry and do a ruling filing with the SEC. The SEC would comment on it – either

approve or comment and ask the MSRB to review it. There was always some tension between the MSRB and the SEC, because the MSRB really felt – and I think were accurate in their conclusion – that they knew more about the municipal securities industry than did the SEC. That was a fact. The SEC, though, felt that they had a larger mandate to follow than the MSRB. Often, there would be disagreements as to the substance of the rules, which were, for the most part, amiably worked out.

JS: Were most of the communications between the SEC and the MSRB done by the staff or directly between the board members and the SEC? Or how did that work?

MS: I think they were mostly done between the staff of the SEC and the staff of the MSRB. There were periodic meetings of either the chairman of the MSRB with the chairman of the SEC, etc. On occasion there would be meetings between the board and some of the senior staff of the SEC.

I remember one meeting of particular interest, which I think caused some irritation among the board members. The board members were senior officers of their respective banks, etc. We had a meeting with the enforcement division of the SEC, in the board's offices. The head of the enforcement at that time was Stanley Sporkin, who was certainly well known on the Street. I think the consensus among the board members is he fell asleep. It's humorous from this perspective, but I don't think it was appreciated at the time. (Laughter.)

JS: No, I can certainly imagine that. Did the SEC often push the MSRB to adopt perhaps more forceful rules than it otherwise might have been inclined to?

MS: I can't talk about the situation subsequent to my tenure, but I think there was always that tension. The board really viewed itself as independent regulators and would try to work with the SEC to reach a mutual point of agreement. It would not write rules that it did not think were appropriate for the industry.

JS: Following the New York City bankruptcy crisis, several attempts were made to pass legislation that would require municipalities to file with the SEC under certain circumstances. These never really went anywhere. Organizations like the Municipal Finance Officers Association resisted these efforts. Did the MSRB ever take a position on those types of issues?

MS: No. The MSRB took seriously the constraints in the statute that created it. I don't think they even voiced an opinion, because although individuals on the board had strong views, they didn't think it was appropriate for the board to take a position.

JS: In 1977, the SEC released its well-known report on the New York City crisis. Do you recall how this was received by municipal bond dealers and by the board?

MS: I do remember we studied the report and tried to see if there was anything in there that the board should consider in its rulemaking activities. Because so much of it went to

disclosure and the inadequacy of disclosure, and since we had the Tower Amendment, there wasn't a lot that we thought that we could do.

JS: If you recall the specifics, speaking as an individual, what did you think of the report?

MS: I don't recall. I thought the report was well-written. I think that it was also very low hanging fruit. I mean, the one or two-page disclosure on the City of New York was obviously inadequate to form an opinion as to whether to make an investment or not, so I don't think anybody was disputing that. But beyond that, I don't remember. It's misty history, sort of. I would have to take a look at it again. I think everybody thought it was a pretty good job.

JS: The municipal bond industry tends to think of itself as kind of a clean industry – one that hasn't had a whole lot of scandals. Yet this report was fairly critical of it. Do you think it was hitting on something there?

MS: The municipal securities industry, at the time, was a relatively small industry. I think that the people did pride themselves on their intra-action among themselves. It was before phone calls were recorded, etc. For the most part, among the responsible traders, responsible members of the industry, trades were done over the telephone and they were honored. They took great pride in the fact that they were able to deal with each other on that basis. As to disclosure from issuers, the industry was evolving. I think a lot of people understood that. I don't remember with any more precision what the reaction was.

JS: Around this time, the bond industry was growing throughout the decade and in the decades that followed. At the end of the 1970s, the passage of Proposition 13 in California – that limited property taxes – and similar measures in other states increased the number of bonds that were offered pretty dramatically. Did this impact the MSRB's work at all?

MS: I don't think so. Most of those things went to the impact on the disclosure documents that would be used in selling bonds. How do you analyze what the new restrictions would have on the ability of issuers, both statewide and countywide, in California, to pay their bonds on time. This was, again, disclosure, which was beyond the mandate of the board. There was really nothing that they could do.

JS: Before we move on, do you have any other thoughts about your period at the MSRB?

MS: It turned into four years, five years, and it was an interesting time to be at the startup of a new organization. I was impressed by the seriousness of purpose that board members brought to their responsibilities. Everything was taken very seriously. We also had a lot of fun. There were a lot of characters on that board, and there were a lot of laughs, and there were a lot of ongoing relationships and jokes. It was an interesting experience. But central to it was the seriousness of purpose that they brought to what they were doing.

JS: Would you like to talk at all about the staff at the MSRB?

MS: I think the MSRB, in those early years, was very fortunate to have the staff that it had. They also deserve credit for putting it together as they did. Frieda Wallison was just a tremendous leader and earned their respect. It was very unusual at that time to have a woman leading an organization.

I know that sounds strange, but when I was leaving Carter Ledyard – I actually took a leave of absence from Carter Ledyard – when I told them that, a number of my friends who knew Frieda very well came up to me and said, "Geez, that should be interesting. But are you going to have a problem working for a woman?" I wasn't a great feminist or anything, but my reaction was, "She's a better lawyer than me. I'm going to learn a lot from her. She's a great lawyer."

Indeed, she proved to be that. She was just a great executive director and general counsel. I think the board, to their credit, appreciated her contributions and her skills. She was critical in giving the board direction and moving it forward.

We had some other people. We had a fellow named Don Donahue, who was in the back office of a securities firm, a broker's broker in New York. Don was the most knowledgeable person, in terms of operations and all of the board's rules and recordkeeping and trading and sales practices, etc. We all looked to Don for guidance on that.

He became the face of the board in talking to the industry across the country on these rules and earned tremendous respect. He was another proven commodity. He's now CEO of the Depository Trust Company and is leading that organization through all the changes that the industry is seeing, in terms of trading and settling transactions, as well as derivative transactions. Don just was an invaluable member of that staff.

Then Richard Nesson, who followed me, became general counsel for DTC. It really had a good staff. There was a couple of other people. There was a fellow named Brent White, who became a partner at Willkie Farr, and he made significant contributions also.

JS: In 1980, you left the MSRB and joined Kutak Rock. Did you stay in Washington?

MS: Yes. It was very strange. I'd had enough of regulation and – I hate to say this – wanted to get back to the real world. There was a fellow there, one of the original board members, who I had become very close to named Dick Kezer. He was head of municipal finance at Citibank. One day we were talking and I told him I was about to move on and he said, "Well, let me make a phone call." He called Bob Kutak, with whom Citibank did a lot of business. He and Bob Kutak had a good relationship. Three weeks later I had an offer from Kutak Rock and I moved on to Kutak Rock.

It was a natural transition for me at the time, because I had been immersed in municipal finance, knew a lot of people and had traveled around the country, talking to bond clubs

and at different places. At Kutak Rock, that was basically their main business. It was a relatively easy transition for me to move over.

JS: So you knew Bob Kutak?

MS: I knew Bob Kutak. He was a very interesting character. I was lucky to have known him and to have worked closely with him.

JS: He was well-known for his work to improve the legal profession's ethical standards, I believe.

MS: Right, he was the chairman of something called the Kutak Commission, which rewrote the ethical rules for lawyers.

JS: Tell me a little bit about the role of bond counsel at this time. Has it changed much since then or is it pretty much the same thing?

MS: It's changed a lot. I haven't done any work in this area for many years. I've transitioned into a related, but very different area. But at the time, I did a lot of work as a bond counsel and underwriters counsel – mostly underwriters counsel. All the organizations I worked for disappeared. I did a lot of work for Kidder Peabody. I did a lot of work for E.F. Hutton. I did a lot of work for Bank One. It may appear to some people that maybe

I shouldn't have be working for them, because all these organizations I worked for ultimately went under.

But it was interesting work at the time. It was very creative. The single family mortgage bond market was exploding and we were creating new products all the time. So it was fun. It was a lot of fun. I did a lot of traveling. It changed. They still call it the "Red Book", but national firms listed in the Red Book could practice in different states. I was bond counsel for Orange County Housing Finance Agency, which includes Orlando. I did a lot of work there. I also did a lot of work in Palm Beach County, Dade County, Monroe County, all these counties in Florida.

Slowly but surely, the local firms pushed out the national firms, first out of bond counsel positions and ultimately out of underwriter counsel positions. I view myself as very fortunate to have left that field and moved into another field, where a lot of the people I had worked with on single family mortgage bonds ultimately ended up moving over to – sales and trading of derivative securities. I made the transition with them to derivative securities and that's what I do now.

JS: I'll just ask briefly about muni-bonds during this period. In 1983, the Washington Public Power Supply System defaulted famously on $2 billion dollars worth of bonds, which raised a lot of questions about the industry. Were you working on muni-bonds at that time?

MS: Eighty-three? Yes.

JS: Do you recall that having an impact on your work at all or was it sort of isolated?

MS: It suffused everything. Everybody paid more attention to disclosure after that.

JS: Another big bond-related issue during this period was industrial revenue bonds. Were you working on these types of things at all?

MS: Yes. It wasn't the major part of my practice, but I was involved in some of those.

JS: In 1989, the SEC adopted Rule 15c2-12, which required underwriters to obtain and review an issuer's official statement before there was any big issue of municipal securities. Did that have any big impact on your work or were you even working on bonds by that time?

MS: By that point, I was pretty much out of municipal securities practice, and into more of a structured finance practice with derivatives – even though nobody really had a derivatives practice then. A lot of the people that I had worked with on the single family mortgage bonds were doing all kinds of swaps and things like that. I was focusing more on that than I was on the municipal securities.

JS: So you started in the 1980s to work on structured finance?

MS: Late eighties.

JS: What was it like at that time and how did it differ from today?

MS: Everything was brand new. We were doing documents from scratch. Now, most of the documentation you start off with is well-negotiated, thought-out basic documents that have been created using the ISDA documents as a basis. That's a starting point. It's just a contract, but you negotiate the special provisions.

JS: Did the Savings and Loan Crisis impact structured finance at all?

MS: There was a crazy period in 1984 and '85, when people were able to use FSLIC and FDIC insurance to guarantee multi-family bonds. I think it was late 1985 or 1986 they finally put a stop to it. But like so many things the IRS did, they said it was going to end on December 31st. So for four or five months, everybody did tons of deals – probably deals that they shouldn't have been doing, etc., but for the guarantees of FSLIC and the FDIC – which only exacerbated the abuses that were going on. There were a lot of deals that were done. Of course, all my clients were responsible citizens, so I don't think we did many of those.

JS: In 1990 you moved over to Jones Day, where you are today.

MS: Yes.

JS: Have you worked exclusively on structured finance issues?

MS: Yes, pretty much.

JS: And derivatives work also?

MS: Yes.

JS: What was the state of those industries in the early 1990s?

MS: Just developing. In truth, if you track back to the single family mortgage bonds, all kinds of financing devices were created that are still being used in mortgage-backed securities or were used in mortgage-backed securities when there was a market for mortgage-backed securities, which hopefully will come back. Tranche payments, turbo-payments and tender options, all those things were baked into the single family mortgage bond structures. Those were transmuted to mortgage-backed securities and ultimately to CDOs and CLOs and things like that.

JS: At the end of the 1990s, the Long-Term Capital Management collapse was a real threat to global finance. How did you experience that collapse? Or were you just watching from afar?

MS: Because there was a rational solution in the end, the threat never materialized into serious harm. I think maybe we all should have taken more instruction from it, but it really didn't impact the markets that much in the end.

JS: What about other issues around this period, like Enron? Enron, at this point, was using these special purpose entities. That ended up becoming something of a problem for them. What impact did that have on the securitization practice?

MS: It had a significant impact on how we looked at transactions. I think it hit everybody, in terms of the type of transactions that people were willing to do. I think it had a significant impact. I think it helped. It's not an original thought, but it seems on the finance front people sometimes have short memories. I mean, how do we move from Enron to the problems we have had recently in 2008, on the CDO, CLOs and mortgage securities. Hopefully we have learned our lesson this time and won't repeat it.

JS: Do you recall the point at which you realized there was going to be a crisis in mortgage-backed securities or in the securities area?

MS: I don't think there was a single point.

JS: Well Mark, are you still working at all on municipal securities?

MS: I have kept my hand in one very specialized area, which overlaps the structured finance area that I've been focused on. That is representing money market funds, large money market funds in reviewing new municipal securities derivatives products. That, to me, is fun, because I still have a very special place in my heart and brain for municipal securities. While I'm not involved at all in the regulatory aspect of it, we do review any new product that they look at to buy. We do it from A to Z.

Now money market funds are very careful about products that they buy. They do not rely on the rating agencies. They never did – nothing to do with recent developments. They just always want to be certain that the concerns that they have can be managed and they can monitor the products. So at this point in time, part of my practice is to review these products. For me, it's like coming home, in a sense.

JS: We're going to cover one last matter here. How did the different constituencies of the MSRB react to the enforcement of the rules that the board had put in place?

MS: That was really an interesting phenomenon. They actually reacted very differently. There was a major division between securities firms and banks and then within the banking community they reacted differently. The banks, particularly those that were subject to the rules and examination by the Comptroller of the Currency or the Federal Reserve, were very upset if they were ever found to be in violation of any of the MSRB rules, even on a technical basis.

For example, if they were being written up for a violation of the recordkeeping rules, they would – well, first of all, they would correct it. They would also strive to try to get us involved in trying to convince the regulatory authorities that they were not in violation.

In contrast, the securities firms had a much more laissez-faire approach to these types of regulatory examinations. If they got cited for recordkeeping, they'd say, "Okay, we'll fix it." They just didn't care that much. They weren't as concerned. I think the difference was that senior management of the banks would be reviewing any adverse comments made by the regulatory authorities and the people on line did not want these kinds of reports going to senior management. There was much more accountability for compliance with regulatory matters in the banks.

Among the three banking regulators there was a lot of difference. The Comptroller of the Currency was very active, both in involvement in the rulemaking process and assistance to the board, as was the Federal Reserve. The FDIC, which managed smaller banks, which also had fewer securities dealers embedded in them, paid less attention.

JS: Mark, looking back over your long career, do you have any final thoughts before we wrap up?

MS: No, it's been an interesting and varied career. I've had a lot of fun and met a lot of nice people along the way. I think I've been very fortunate.

JS: Mark Sisitsky, we thank you very much for your time.

[End of Interview]