

MR4D00051

Wednesday, March 3, 1999

SEC HISTORICAL SOCIETY
Organizational Meeting on February 25, 1999
Notes of Paul Gonson

Pursuant to notice given by a letter from David S. Ruder on February 18, 1999, an organizational meeting was held on February 25, 1999 in a conference room at Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, N.W., Washington, D.C. Attending the meeting were:

- James H. Cheek;
- Gregg W. Corso (SEC staff);
- Linda D. Fienberg;
- Matthew P. Fink;
- Daniel L. Goelzer;
- Paul Gonson;
- Stephen L. Hammerman;
- John J. Huber;
- Jonathan Katz (SEC staff);
- Robert J. Kueppers (Deloitte & Touche);
- Edward Kwalwasser;
- Theodore Levine (by telephone);
- Harvey L. Pitt;
- David S. Ruder;
- Thomas A. Russo;
- Howard Schiffman;
- A.A. (Al) Sommer; and
- Judge Stanley Sporkin.

Professor Ruder welcomed all, and explained the possible goals for the SEC Historical Society:

1. Historical - preserving the history of the Commission by creating exhibits by sponsoring commemorations of significant events, and by maintaining historical archives for papers of commissioners and staff members.
2. Educational - sponsoring scholarly research and educational programs regarding the role of the SEC in ensuring the fairness, efficiency, and integrity of the SEC's disclosure system and the U.S. capital markets.

3. Cultural - preserving and imparting the importance of the Commission's mission and sponsoring events for SEC alumni, members of the securities bar, the financial community, and others who have common interest in preserving the integrity and well-being of our capital markets.

Paul Gonson spoke about the possible structure of an SEC Historical Society and described briefly the structure of the Supreme Court Historical Society and the White House Historical Association. Gonson suggested that the SEC Historical Society be patterned generally after the Supreme Court Historical Society.

Greg Corso discussed briefly some ethics considerations from the SEC perspective:

- 1) No SEC fundraising;
- 2) SEC staff may participate in an advisory role only;
- 3) anti-augmentation issue (i.e., the SEC may not receive funds or value in kind that would augment its Congressionally-appropriated funds): the SEC Controllers' Office is doing a study;
- 4) the SEC is sending a letter to the Chairman of its House Oversight Committee advising that a former SEC chairman and other alumni are exploring the possibility of establishing an SEC Historical Society, that the agency is interested but has not committed any resources to or formally endorsed this initiative, and that the SEC might seek special authority to permit it to interact with the Society by submitting appropriate language to the Congress as part of its authorization request; and
- 5) other historical societies have legislative recognition, and the SEC may seek such legislative recognition in its authorization this May, including:
 - a) gift-acceptance authority (e.g., to allow the SEC to receive funds for a lecture and a reception to be held at the SEC);
 - b) contractual agreement authority (e.g., to permit the SEC to provide materials from its archives).

Professor Ruder described the structure he thought would be appropriate - that the SEC Historical Society would be a not-for-profit, membership organization, modeled generally after the Supreme Court Historical Society, would engage in fundraising, would have several committees, and would have a large advisory board. Fundraising would be necessary, initially for seed money, and thereafter for larger gifts and endowments. Eventually, there would be a location for the Society and a paid person to run it.

Paul Gonson noted that Fried, Frank partners in New York hold prominent positions in the Supreme Court Historical Society - Leon Silverman is President and Robert Juceam is General Counsel. Both were very helpful in telephone conversations with Mr. Gonson. Harvey

Pitt added that he thought that these persons would be willing to speak to our group if we would wish that.

There was a brief discussion about whether legislation should come first so that the SEC Historical Society could receive a legislative imprimatur. Professor Ruder responded that his preference would be to have this group be private, and that waiting on legislation would not be necessary. In any event, this group should go forward, and legislation, if any, would be on a separate track.

There was an extensive discussion about obtaining oral histories both of members of this group and others of this generation who had been active at the SEC as early as the 60's and 70's, but also with an earlier generation, including such persons, for example, as Milton Kroll, Sidney Mendleson, David Ginsburg, Warren Blair and Irving Pollock.

Jack Katz said that the SEC is talking with the Federal Records Center which has some 70,000 cubic feet of SEC documents, primarily law enforcement records from 1934 to the 1970's. These are confidential documents, because they relate to law enforcement matters, but the SEC has discretion to make them public and, given their age, would be likely to do so. The Federal Records Center has given some time to the SEC to decide whether it wishes to pare these records down substantially for retention or pay a considerable amount of money for storage. Mr. Katz asked whether this might be a project for this Society.

There was discussion of the availability and location of records of former commissioners and staff persons. Mr. Katz stated that records of SEC chairmen are generally preserved but not those of commissioners or of the staff. With regard to a question as to records of the Market Regulation Division, Mr. Katz responded that there is no central repository for such records but that these records often exist in working files of staff members. These records are not available in the SEC's library. Several persons discussed former Chairman Manual Cohen's files. When he left the SEC he took considerable papers with him to Wilmer, Cutler. Jack Katz mentioned that there are some 40 bound volumes of former Chairman Cohen's papers at the SEC. It was thought that the late Arthur Mathews had some eighty boxes of former Chairman Cohen's papers that he had taken to his home and placed in the basement. Mr. Gonson observed that when the SEC staff was drafting its amicus brief in the Gustafson case in the Supreme Court (on the meaning of the word "prospectus" in the Securities Act), it sent a lawyer to the library at Harvard Law School to look through former SEC Chairman James Landis' papers. (When Landis left the SEC in the 1930's, he went to Harvard Law School as its Dean, and took his papers with him.) There was some discussion as to whether a law school or business school might be an appropriate repository for the archives to be developed by an SEC Historical Society.

Matt Fink noted that the Investment Company Institute is doing a history of the mutual fund business. Steve Hammerman said that Merrill Lynch has a museum in its building in New York City for about a year and one-half now, devoted to a history of finance and Merrill's role.

Al Sommer suggested that several specific topics be developed and that archives be created around those topics. Some examples were: the unfixing of commission rates in the mid-70's, the 1975 Act Amendments (and the Tower Amendment).

Tom Russo, expanding upon that idea, suggested that perhaps that ten major topics be selected and that a game plan be developed for oral histories on each of these topics -- who should be spoken to and so on, and that each topic could be "its own movie".

Steve Hammerman, further developing on this theme, suggested that this be done in the form of a chronology, not necessarily limited to the SEC but focusing on major events such as the 1929 crash, World War II, what was going on in country at various times and that topics such as the ones proposed and other topics could be part of this larger chronology context. Mr. Hammerman offered yet another example - the Foreign Corrupt Practices Act, and what had happened before the enactment of that legislation.

John Huber, continuing on that theme, suggested that cases and rules could be looked at in the context of the markets of the time. He gave, as an example, the shelf rule.

Linda Fienberg observed that the discussion suggested to her that a substantial infrastructure must first be created, and that persons who are competent archivists, and perhaps an historian as well, would be needed and this would require a substantial amount of money.

Paul Gonson said that yesterday, in connection with a panel that he had moderated at the SEC's Fund Directors Roundtable, had chatted with a panelist, Wilson Nolan, a long-time mutual fund director. Mr. Nolan said there would be many persons who were not in the SEC or connected with the SEC who would also be interested in such an historical society, and mentioned a number of persons associated with the development of mutual funds and who taught at the Harvard Business School, who are still alive, and who could give a colorful oral history of the early days of the development of the securities industry.

Ed Kwalwasser pointed out that we needed a business plan. He observed that the New York Stock Exchange has an educational foundation, as well as the SIA, but to approach these foundations for funding would require a business plan. Tom Russo echoed that suggestion, noting that he is on the board of a number of foundations.

Steve Hammerman urged that this group develop a concept. Articulate whether it would wish to create a museum or something of that nature and explain the reasons why this Society was being created.

Harvey Pitt expressed the view that there was a sequencing issue - that the process of going forward to develop the Society should be done in a careful sequence. First, broad parameters of what we want to do should be sketched out. Then, who should organize this effort for us? He thought a small working group should be formed, perhaps including a person or two from the academic community and that eventually there would be a need for a full-time director. Then, careful thought should be given to soliciting a logical group for initial capital. There

would have to be some dollars initially, this cannot be done on a broad scale solicitation. A time line should be developed indicating milestones of what we want to reach and when. He thought that this group should promptly create a 501(c)(3) organization and that, with the enterprise already established, it could go forward much better.

Howard Schiffman, recounting his own experiences in the formation of the SEC alumni association ("ASECA"), thought that four or five persons should work on an organizing committee. He thought the law firms could support it and that this group should come up with a document.

There was a discussion in which Harvey Pitt and Howard Schiffman and others participated as to clearing informally what we were doing with the SEC, through a liaison. Schiffman noted that it was easier for ASECA to interact with the SEC, rather than individuals doing so, because a number of the members appear before the SEC in a representative capacity. Prof. Ruder observed that he would not want to the SEC to have a veto, and Pitt responded that informal clearance would not provide a veto.

Robert Kueppers noted that the stated purpose of the organization should meet the stated purposes of foundations - they should be lined up, so e.g., "educational" would be a purpose that would be in both the SEC Historical Society's organizational documents as well as in a foundation's stated purposes.

Judge Sporkin suggested that the Federal Bar Association might be able to provide some seed money.

Howard Schiffman volunteered some seed money from ASECA.

Harvey Pitt said that he would be willing to help organize a 501(c)(3) organization. He also suggested that there should be sub-working groups within the larger agenda dealing with administrative and technical matters and those working groups could be going ahead simultaneously with the larger organizational effort.

A final working group seemed to be: Prof. Ruder, and Messrs. Gonson, Schiffman, Pitt and Kueppers.

Mr. Gonson will again contact the Supreme Court Historical Society, which earlier had offered to provide more help, and will also work with Mr. Pitt to get the process of organizing the organization underway.

The meeting commenced at 11:15 a.m. and concluded about 1:00 p.m.

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Later in the day, at the ASECA annual dinner at the Capital Hilton Hotel in Washington, D.C., Prof. Ruder announced to the attendees the plans to establish an SEC Historical Society.